

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 11-cv-00492-PAB-CBS

DONITA L. SELF,

Plaintiff,

v.

I HAVE A DREAM FOUNDATION–COLORADO,

Defendant.

ORDER

This matter is before the Court on remand from the Tenth Circuit, which ordered the Court to dismiss without prejudice plaintiff Donita L. Self’s claim for retaliation under the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101 *et seq.* *Self v. I Have a Dream Foundation–Colorado*, 2013 WL 6698079, at *5 (10th Cir. Dec. 20, 2013).

On February 27, 2013, the Court accepted the Recommendation of United States Magistrate Judge (the “Recommendation”) [Docket No. 95] and granted Defendant’s Motion to Dismiss and/or for Summary Judgment [Docket No. 86] filed by I Have a Dream Foundation–Colorado. *Self v. I Had a Dream Foundation–Colorado*, No. 11-cv-00492-PAB-CBS, 2013 WL 752949 (D. Colo. Feb. 27, 2013). In its Order, the Court did not indicate whether it was granting the motion as a motion to dismiss or as a motion for summary judgment, but stated that the entire case was dismissed. *Id.* at *4.

With respect to the retaliation claim, the Court found that Ms. Self failed to

exhaust her administrative remedies. *Id.* at *2. Since exhaustion of administrative remedies is a jurisdictional prerequisite to suit under the ADA, the Court lacked jurisdiction over Ms. Self's retaliation claim. See *Shikles v. Sprint/United Management Co.*, 426 F.3d 1304, 1309 (10th Cir. 2005). The appropriate disposition for Ms. Self's claim is accordingly dismissal without prejudice. See *Fields v. Okla. State Penitentiary*, 511 F.3d 1109, 1113 (10th Cir. 2007) (noting Supreme Court holding that courts should dismiss unexhausted claims without prejudice). Wherefore, it is

ORDERED that the February 27, 2013 Order [Docket No. 98] and the Final Judgment [Docket No. 99] are vacated to the extent they grant summary judgment to defendant I Have a Dream Foundation–Colorado on plaintiff Donita L. Self's claim for retaliation under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* It is further

ORDERED that Ms. Self's retaliation claim is dismissed without prejudice for lack of jurisdiction.

DATED December 30, 2013.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge