

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

May 24, 1994

DORON A. TAL,)	
Complainant,)	
)	
v.)	8 U.S.C. 1324b Proceeding
)	OCAHO Case No. 92B00143
M. L. ENERGIA, INC.,)	
Respondent.)	
_____)	

ORDER

On May 9, 1994, the pro se complainant filed a pleading captioned Second Motion for An Interlocutory Decision, in which he requested that the undersigned issue a decision addressing the following verbatim inquiries:

1. Is the business entity the sole Respondent to the pending allegations?
2. Why would the motion of September 22, 1993, not be used?
3. Why may the letters of interrogation (served by Complainant upon Respondent (sic) Ms. Nira Lavid and Dr. Moshe Lavid) not be used?
4. Why would Respondent not be ordered to provide essential undiscovered documents?

In his initial question, complainant asserts that Ms. Nira Lavid and Dr. Moshe Lavid should be named as parties respondent in this action.

There is no relevant caselaw assessing personal liability, per se, for violations under section 102 of IRCA, 8 U.S.C. § 1324b. The pertinent statutory wording clearly reveals that Congress did not intend to

impose personal liability upon employees of persons and business entities.

Similarly, the national origin discrimination provisions of IRCA, found at 8 U.S.C. § 1324b(a)(1)(A), those under which complainant brings his remaining claim, apply only to persons and entities employing more than three (3) individuals. 8 U.S.C. § 1324b(a)(2)(A). By definition, therefore, liability for national origin discrimination with respect to discharge under IRCA does not apply to individuals acting in their individual capacities.

In this case, complainant's employing entity was M.L. Energia, Inc., a corporation. Accordingly, because the Lavidis, acting in their individual capacities, did not occupy an employment relationship with complainant, he may not bring a claim against the Lavidis in their individual capacities, either individually or jointly.

Complainant maintains in his motion that the Lavidis should be held liable in this action as the sole shareholders of M.L. Energia, Inc., and as officers of that corporation. In seeking such relief, complainant requests that the corporate veil be pierced in order to fasten liability upon the Lavidis, in their roles as shareholders and officers of respondent firm.

A corporation is a legal fiction designed to encourage business investment by shielding the investor's personal liability exposure. United States v. Kurzon, 3 OCAHO 583, at 59 (12/6/93). In piercing the corporate veil, however, the corporate form is disregarded, and the personal assets of the controlling shareholders may be used to satisfy the debt or liability of a corporation. Id.

Complainant bears the burden of establishing that under these facts he is entitled to pierce the corporate veil. See generally id. In the absence of having offered such relevant factual evidence, that equitable remedy is not available to complainant.

Accordingly, I find that the corporate entity known as M.L. Energia, Inc. has been properly named as the sole respondent in this matter.

In his second inquiry, complainant asks why the "motion of September 22, 1993" would not be used. A review of this record fails to reveal any pleading, document or correspondence from either party which was dated or filed on September 22, 1993. In view of that fact, that question is moot.

For his third question, complainant inquires why the "letters of interrogation (served by complainant upon Respondent (sic) Ms. Nira Lavid and Dr. Moshe Lavid) not (sic) be used."

The procedural regulation governing discovery, and more specifically interrogatories, provides:

Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation ..., by any authorized officer or agent, who shall furnish such information as is available to the party.

28 C.F.R. § 68.19(a).

It can be seen that interrogatories may only be propounded to parties named in an action, in effect, the named complainants and respondents. Complainant may therefore serve interrogatories upon the named unrepresented respondent firm, M.L. Energia, Inc., which may, at the latter's option, be answered by information supplied by either or both of the Lavid's. However, because they are not parties to this action, the Lavid's, in their individual capacities, may not be compelled to respond to interrogatories, or to otherwise engage in discovery activities.

Finally, complainant asks why respondent would not be ordered to provide essential undiscovered documents.

In general, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding. See 28 C.F.R. § 68.18(b).

The procedural regulation governing requests for production provides that a party may serve any other party with a request to:

Produce and permit the party making the request
... to inspect and copy any designated documents
... in the possession, custody, or control of the party upon whom the request is served.

28 C.F.R. § 68.20(a)(1).

That regulation further provides:

The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after service of the request.

28 C.F.R. § 68.20(d).

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If a party upon whom a request for production fails to respond adequately to the discovery request, the party seeking the discovery may move the Administrative Law Judge for an order compelling a response in accordance with the discovery request. 28 C.F.R. § 68.23(a).

It should be noted, however, that upon motion by a party or a person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may issue a protective order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense. See 28 C.F.R. § 68.18(c).

Accordingly, complainant may, by serving a proper request for production of documents upon the respondent firm, obtain discovery of any non-privileged document which is relevant to the subject matter of this proceeding.

In doing so, however, such discovery requests must fully conform, both in format and substance, with the pertinent procedural rules, those set forth at 28 C.F.R. §§68.1 - 68.54. And although both parties in this case have chosen to litigate these disputed facts without the benefit of counsel, neither party is excused from complying fully with the pertinent procedural rules applicable to this proceeding.

JOSEPH E. MCGUIRE
Administrative Law Judge