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

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 94A00015
CONTINENTAL SPORTS CORP., Respondent.	)	

ORDER DENYING COMPLAINANT'S MOTION TO AMEND THE COMPLAINT
(July 13, 1995)

I. *Procedural History*

On January 26, 1994, the Immigration and Naturalization Service (INS or Complainant) filed a Complaint alleging four counts in violation of 8 U.S.C. § 1324a requiring that employers complete an employment eligibility verification form (Form I-9) for each employee. In its Answer filed May 12, 1994, Continental Sports Corporation (Continental or Respondent) denied the allegations of the Complaint, contending that "due to the change in administration and management," evidence of compliance with § 1324a is missing because Continental changed ownership at various times and "it is difficult to determine whether some of the persons listed in Counts I, II, III, and IV were actually employed by Continental. . . ." Answer at 2.

In a September 23, 1994 status report, Complainant advised[1] that the parties had reached a settlement agreement in which "Respondent has agreed to pay a civil money penalty of $15,000. . . ." On October 6, 1994, the ALJ granted Complainant's Motion (filed October 6, 1994) to continue until October 24, 1994 the time in which to submit all settlement papers because those papers "needed to be forwarded to Respondent for his review and signature."

[1] This case was originally assigned to Administrative Law Judge (ALJ) Robert Schneider and was reassigned to me on February 7, 1995.

In a second status report filed December 1, 1994, Complainant stated that

> [s]ince October 24, 1994, Respondent's counsel has been unable to obtain Continental Sports Corporation's cooperation in completing the settlement process. On November 18, 1994,
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> Respondent's counsel informed Complainant that he has negotiated all aspects of this case with Continental Sports Corporation Vice-President, Gary Mathiesen, and was of the opinion, at all times during the pendency [sic] of these proceedings, that Mr. Mathiesen had the authority to bind the Respondent to an agreed upon settlement. Mr. Mathiesen has informed Respondent's counsel that the settlement agreement reached between Respondent's counsel and Complainant is unacceptable to Continental Sports Corporation President, Ron Dixon.

A subsequent status report filed by Complainant on January 25, 1995 advised that settlement negotiations with Respondent remained at an impasse.

Notwithstanding these failures at settlement, during a telephonic prehearing conference on March 16, 1995, counsel for Respondent stated his intent to resubmit a settlement offer to his client, Continental. Unfortunately, this attempt also failed and at a prehearing conference on May 5, 1995 an adversarial evidentiary hearing was scheduled for September 28-29, 1995.

On May 25, 1995, Complainant filed a Motion to Amend the Complaint (Motion) "to read Ronald B. Dixon d/b/a Continental Sports Corp." Motion at 1. According to Complainant, "Mr. Ronald B. Dixon [Dixon], as the president of . . . [Continental], is the only corporate officer with the authority to make decisions regarding the Corporation." Id. at 3. Gary K. Mathiesen, Continental's vice-president, with whom counsel for Respondent had apparently been in contact regarding Complainant's proposed settlement, "did not have the authority to bind Continental to the agreement which had been reached by the parties." Id. at 2. Complainant states that "[i]t appears . . . that Continental Sports has engaged in settlement negotiations it never intended to complete, and did so by allowing Complainant and Respondent's attorney to relay [sic] on Mr. Mathiesen's participation in negotiation sessions without advising them that Mr. Mathiesen did not, in fact, have the authority to settle this matter on its behalf." Id. at 3. Therefore, Complainant asserts that the amendment is necessary in order "to hold Mr. Ronald B. Dixon personally responsible for all future proceedings involving Continental Sports Corporation." Id. To date, no timely or other response to the Motion has been filed by Respondent.

II. *Discussion*

While I sympathize with Complainant's continuous problems while attempting to negotiate a settlement with Respondent, I am unpersuaded that it is appropriate to amend the Complaint to hold Dixon personally liable.

OCAHO regulations and caselaw hold that, although the definition of "employer" for purposes of § 1324a, embraces both corporate entities and individuals,[2] personal liability of principals in addition to liability on the part of a corporation has been limited to very specific factual situations only. For example, in analogizing to personal liability of corporate officers charged with violations of the Fair Labor Standards Act, the ALJ in United States v. Wrangler's Country Cafe[3] stated

> it should not lightly be inferred Congress intended to disregard in this context the shield from personal liability which is one of the major purposes of doing business in a corporate form. It is difficult to accept . . . that Congress intended that any corporate officer or other employee with ultimate operational control over payroll matters be personally liable for the corporation's failure to pay minimum and overtime wages as required by FLSA.

Wrangler's Country Cafe at 934[4] (citing Donovan v. Agnew, 712 F.2d 1509, 1513 (1st Cir. 1983)).

Although the Donovan and Wrangler's decision-makers ultimately found individual corporate officers personally liable, they did so based on facts not present in the case at hand. In Donovan, the court "held that in view 'of the entire remedial context of the Act . . .," it was fair to hold individual officers liable if they had "operational control of significant aspects of the corporation's day to day functions." Id. (citing Donovan at 1513-14).

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[2] See, e.g., 8 C.F.R. § 274a.1(g); United States v. Ulysses, Inc., 3 OCAHO 409 at 13 (1992).

[3] 1 OCAHO 138 (1990), aff'd, Steiben v. Immigration and Naturalization Service, 932 F.2d 1225 (8th Cir. 1991).

[4] Citations to OCAHO precedents reprinted in the recently distributed bound Volume 1 (Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Employment Practices Laws of the United States) reflect consecutive pagination within that bound volume; pinpoint citations to Volume 1 are to the specific pages, seriatim, of the entire volume. Pinpoint citations to other OCAHO precedents subsequent to Volume 1, however, are to pages within the original issuances.

Similarly, in Wrangler's the ALJ found that INS charged the principal personally because he had stipulated to personally hiring the alleged illegal aliens and had "even provided transportation and board for the illegal aliens so that they would be in a position to render employment services for the Respondents." Wrangler's at 935. The ALJ further stated that "[u]nder such circumstances, the Complainant's attempt to hold Respondent Steiben responsible for such alleged violations in [sic] not unjustified." Id. Essentially, the Wrangler's court, as well as the Donovan court, "pierced the corporate veil" in order to make the true employer liable. Compare with United States v. Kurzon, Ind., 3 OCAHO 583 at 69 (1993) (ALJ refuses to impose personal liability on corporate principal).

Generally, however, courts will countenance piercing the corporate veil where a party creates "the corporation as a means of perpetrating a fraud upon his creditors." Ulysses, Inc., 3 OCAHO 409 at 14 (discussing Wrangler's). As in Donovan and Wrangler's, Ulysses held the corporate principals personally responsible for hiring two unauthorized aliens because the individuals were closely involved in the hiring and supervising of personnel and by definition were the corporation because they "engag[ed] the services or labor of an employee." Ulysses at 15.

In contrast to the cases discussed above, there is no basis at this juncture for assuming that Continental was utilized as a front for Dixon or as his alter ego. Complainant does not assert that the Motion to Amend is necessary because Respondent intended to perpetrate fraud on investors or use the corporation as a financial shield. Complainant desires personal liability because the extremely prolonged and frustrating settlement negotiations since at least May of 1994 have fallen apart due to Respondent's holding out of a negotiator not authorized to commit Respondent to a settlement. While I agree with Complainant that such practices do not represent a good faith attempt at resolving litigation, they do not invite the conclusion that the corporation is a sham. Complainant alleges no basis for concluding that Dixon was so closely involved in the supervising and hiring of personnel as to disregard the corporate entity.[5] Accordingly, grounds for piercing the corporate veil have not been shown. The Motion to Amend is denied.

[5] Whether the proof will show that Dixon was the essential actor for the corporation is another matter

As the putative principal of Respondent, Dixon has successfully avoided resolution of this case for months. I now direct the parties to initiate efforts to stipulate facts and narrow issues in order to expedite preparation for hearing and to streamline the hearing itself. At the telephonic prehearing conference scheduled for **August 8, 1995 at 11:30 a.m., EDT**, I will expect a status report as to such efforts and a timetable for submission of fact stipulations prior to hearing. At the conference, the parties will be expected to identify all witnesses, to estimate the duration of their direct testimony and to set a date for the exchange of exhibits to be accomplished **no later than August 29, 1995**. The hearing remains as scheduled to be held in or around Seattle, Washington on **September 28-29, 1995**.

SO ORDERED.

Dated and entered this 13th day of July, 1995.

MARVIN H. MORSE
Administrative Law Judge