

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

IN RE CHARGE OF )  
ROSA GAYTAN )  
 )  
UNITED STATES OF AMERICA, )  
Complainant, )  
 )  
v. ) 8 U.S.C. § 1324b Proceeding  
 ) CASE NO. 92B00242  
CREATION & INNOVATION, INC. )  
Respondent. )  
\_\_\_\_\_ )

ORDER GRANTING COMPLAINANT'S  
MOTION FOR LEAVE TO AMEND THE COMPLAINT

A two count Complaint in this case was properly served on Respondent, Creation & Innovation, Inc., as evidenced by a copy of the U. S. Postal Service certified return receipt, on November 3, 1992. Respondent, through counsel, filed a timely Answer on December 2, 1992.

On May 19, 1993, Complainant filed a motion to amend the complaint, in which it requested allowance to amend the complaint to include additional Respondents, for Counts I and II, i.e., Araceli Granados, the principal operator of Creation & Innovation, and Guillermo Granados, an individual who runs a larger, unincorporated family enterprise of which Creation & Innovation is a part and to add an additional related count of prohibited intimidation relating to further new Respondents.

Complainant's request to include additional Respondents in Counts I and II is based on the assertion that Respondent's corporation was

not a "proper" corporation and that Complainant would be arguing that the Court should allow it to pierce the corporate veil so that individual liability could be imposed on the appropriate individuals. In support of its request, Complainant enumerated the criteria used by other courts in deciding to allow piercing of the corporate veil and then cited to my previous decision in U.S. v. Sargetis, OCAHO No. 90200143 (8/15/90), in which I allowed an amending of the complaint to include the shareholders of a closed corporation as Respondents, based on Complainant's argument that the corporation was the alter ego of those individuals.<sup>1</sup>

Complainant's second amendment request, which includes adding an additional count to the complaint for violation of 8 U.S.C. § 1324b(a)(5), prohibited intimidation, and naming new Respondent's, i.e., another business entity, New Dimention Manufacturing (allegedly related to the original Respondent through Mr. Guillermo Granados) Mr. Guillermo Granados, and Mr. Gerardo Granados, the controlling operator of New Dimention Manufacturing. Complainant's basis for this requested amendment is that, although a separate complaint could still be timely filed on this charge, the underlying facts are identical to the ones for the discriminatory firing alleged in Count I. Further, Mr. Guillermo Granados as a Respondent in both instances, would be less inconvenienced as far as time and expense if he could defend all charges at one time. Complainant notes that there would be a saving of judicial resources, less bother to the witnesses, many of whom are identical for two of the Counts, and that there is no prejudice to the Respondents or to the public interest if his Motion is granted.

Under our Rules of Practice and Procedure, specifically 28 C.F.R. 68.9(e), I am empowered to allow appropriate amendments to a complaint if, and when, a determination of the controversy on the merits will be facilitated by such amendments, after considering whether they will prejudice either the public interest or the rights of the parties.

I have considered Complainant's motion and have taken notice that all the proposed Respondent's have been personally served with this

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<sup>1</sup> In my Final Decision and Order, of U.S. v. Sargetis, 3 OCAHO 407 (3/5/92), I found that Complainant had not met its burden of proof as to piercing the corporate veil and I dismissed the individual parties as Respondents and imposed liability on the corporation only.

motion and have not opposed it. Additionally, Respondent, Creation & Innovation, which is still represented by counsel, as I have not ruled on his motion to withdraw, has not filed any opposition.<sup>2</sup>

Further I agree with Complainant's position that the the facts relating to the new alleged violation appear to encompass the facts relating to those of Count I and that it would promote better use of judicial time and resources if the hearing on these alleged violations were heard at the same time. I further agree that, although discovery could be uncomfortable for any party, it would be less uncomfortable for Mr. Guillermo Granados to comply with discovery one time instead of twice.

In this case, I find that allowing the amending of this complaint, as requested, will not be prejudicial to the public interest or to that of any of the Respondents, original or proposed. As such, Complainant's motion to amend the complaint is hereby granted.

The new Respondents must file a proper Answer on, or before thirty days from receipt of this Order. Respondent, Araceli Granados, must respond to the original two counts, now the new Counts I and III; New Dimention Manufacturing and Gerardo Granados must respond to the new count, Count II; and Guillermo Granados must respond as to all three counts. Creation and Innovation, which has previously responded to the original complaint, now incorporated into the Amended Complaint as Counts I and III, is not required to refile its Answer. However, should it wish to file a new timely Answer, I will accept it.

Respondents are cautioned that, should they not be represented by counsel, they are still bound by the Rules of Practice and Procedure. They must file a proper answer under the enclosed rules, accompanied by a proper Certificate of Service, see sample enclosed, evidencing service of that document on the other parties. On the other hand, should Respondents be represented by counsel, counsel should file a notice of appearance with this court in addition to the filing of the Answer.

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<sup>2</sup> I note that Respondent's counsel currently has pending a Motion to withdraw in which he asserts that he is counsel for Creation & Innovation, Inc., Araceli Grandos, Guillermo Granados, Gerardo Granados and New Dimention Manufacturing.

**IT IS SO ORDERED** this 16th day of June, 1993, at San Diego, California.

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E. MILTON FROSBURG  
Administrative Law Judge

Enclosures:  
28 C.F.R. 68.6  
28 C.F.R. 68.9  
Sample of Certificate of Service