

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION)
Plaintiff,)

and)

Case No. 4:03CV107 HEA

BRANDY ALEXANDER, MARY)
BETH SOUDERS, RACHEL NUNLEY,)
ERIN KIRK, NATOSHIA)
HANNEKEN, and ERIN BRONSKILL,)
Plaintiffs/Intervenors,)

vs.)

MIDAMERICA HOTELS CORP.)
and NORTHWEST DEVELOPMENT)
COMPANY d/b/a BURGER KING)
and NATHAN P. KRAUS, Individually)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff EEOC and plaintiff/intervenors’
(collectively referred to as plaintiffs), Joint Motion for Partial Summary Judgment,
[# 63]. Defendants Midamerica Hotels Corporation (Midamerica) and Northwest

Development Company (collectively referred to in this Order as defendants),¹ oppose this motion. For the reasons set forth below, the motion is granted.

Facts and Background

The individual plaintiffs allege that they were sexually harassed and otherwise discriminated against because of their sex while working at the Burger King Restaurant located in Peerless Park, Missouri. This Burger King is owned by Northwest Development Company. Midamerica Hotels Corporation owns the property on which the Burger King is located. Midamerica's corporate office and principal place of business is 105 South Mount Auburn Road. Northwest has no corporate office and lists its principal place of business as 105 Mount Auburn Road on the report that it files with the Missouri Secretary of State. James L. Drury is the registered agent for both Midamerica and Northwest.

Midamerica was incorporated in 1968. It is a corporation organized and existing under the laws of Missouri. Northwest was incorporated in 1982. It is a corporation organized and existing under the laws of Missouri. These corporations have separate Articles of Incorporation and separate corporate by-laws.

¹ Although defendant Kraus has been served, he has not filed an answer. While certain documents are filed on behalf of "defendants," perhaps in error, (see document 41 entitled "Defendant's [sic] Suggestions in Opposition to Plaintiff EEOC's Motion to File Second Amended Complaint), it appears that only defendants Midamerica and Northwest Development have filed responsive pleadings in this matter.

James L. Drury and his family own Midamerica as follows: James and Wanda Drury own roughly 33-34% of the stock. Each of their four children own roughly 5% of the stock. Each of their eleven grandchildren own .6% of the stock. James L. Drury and his family own Northwest as follows: James Drury owns 50% of the stock and Wanda Drury owns 50% of the stock.

The members of the board of directors of Midamerica are: James Drury, Wanda Drury, Daniel Drury, John Drury, Kenneth Drury, Diane Edwards, and Harold Hale. The members of the board of directors of Northwest are: James Drury, Wanda Drury, Daniel Drury, and John Drury.

Midamerica owns and operates a real estate development business, three hotels and twenty-four Burger King restaurants, not including the Peerless Park Burger King. Northwest owns and operates seven Burger King restaurant operations, including the Peerless Park Burger King. Northwest's field operations consist of the seven Burger King restaurant operations it owns.

Northwest's district managers and all employees below the managers operate the day to day operations of the restaurants. Midamerica is not involved in the day to day operations.

Under an oral management agreement, Midamerica provides higher level management and some administrative and accounting services to Northwest.

Northwest pays a fee calculated at 5% of each month's gross sales. This fee is reflected on the financial statement of Midamerica.

Midamerica provides certain human resources and personnel services, including the development, handling and storage of Northwest personnel files and other employee records, providing guidance and training on the implementation of the sexual harassment policy, as well as other employment policies, and the development of general policies regarding the hiring, firing, evaluation, and pay rate of Northwest employees as part of the administrative services provided under the management agreement. Midamerica is not involved in the development of individual store policies.

As part of the administrative services provided under the management agreement, Midamerica provides the services of Jerry Barker, Midamerica's Loss Prevention Manager, who provides advice and consultation on employee policies and who also conducts investigations of employee complaints, including sexual harassment complaints. Barker reviews and approves the discharge of Northwest employees. This service is provided as part of the human resource services provided and Barker's review is directed to determining whether the discharge was appropriate in light of various employment laws.

Midamerica also provides certain accounting and book-keeping functions, including the handling of Northwest's bank account, the preparation of its payroll and the administration of fringe benefits.

Midamerica and Northwest have different workforces, but some cross-over of their workforces occurs. Midamerica's workforce consists of employees who work in its hotels, its Burger Kings and its real estate development business. In addition, Midamerica's workforce consists of employees who provide administrative and support services. Northwest's workforce consists of District Managers, Restaurant Managers, Assistant Managers, Production Leaders, and Crewpersons who work in its seven Burger King restaurants. JoAnne Crane and Julie Jones, both Northwest District Managers, are supervised by Bud Herron, Midamerica Regional Burger King Manager.

The members of management at Midamerica are: James Drury (chairman of the board), Daniel Drury (president), John Drury (vice president and secretary), Joel Neikirk (director of operations), Harold Hale (controller, treasurer and vice president of finance), Bob Hahn (vice president of development), Jerry Barker (director of human resources), and Carl Archer (director of IT).

James Drury, Daniel Drury, John Drury, and Harold Hale are officers of Northwest and, pursuant to an oral management agreement between Midamerica and Northwest, they manage Northwest's operations. Northwest employees make

lower level management decisions involving the day to day operations. Joel Neikirk of Midamerica reviews all pay raises, and Jerry Barker of Midamerica reviews and approves all terminations. Neikirk, as Director of Operations for Midamerica spends about 20% of his time going to Drury Properties, including the Burger King. During this time, he talks with restaurant managers about how business and staffing are going, reviews schedules, looks at quality control reports to ensure food safety, reviews cash control procedures, and talks to crew members.

The franchise agreement for the Peerless Park Burger King is between Burger King and Northwest. Northwest pays the franchise fee for the operation of the restaurant.

Under the management agreement, Midamerica provides the services of two regional managers, whose responsibilities are divided along geographic lines, to Northwest. Julie Jones, Northwest District Manager, provided the services of a district manager to three stores operated by Drury Restaurants, Inc., a wholly owned subsidiary of Midamerica. Northwest was reimbursed by Drury Restaurants, Inc. for Jones' services.

On occasion, Northwest employees may work temporarily in restaurants owned by Midamerica. On those occasions, Northwest receives compensation for the employee's services within thirty days of the date that the services are performed. On occasion, Midamerica employees may work on a temporary basis, in

a restaurant owned by Northwest. Midamerica receives compensation for the employee's services within thirty days of the date the services were performed.

Payment of salaries, fringe benefits, workers' compensation, unemployment insurance, and liability insurance for Northwest employees comes from Northwest bank accounts.

Northwest owns the equipment and inventory at the Northwest restaurants. Payments for equipment and inventory comes from Northwest bank accounts.

Northwest rents the real estate and building in which the Burger King operates from Midamerica. The amount of rent is 8 ½ % of its gross revenues.

On occasion, Northwest has obtained short-term loans from Midamerica, at the prevailing market rate. Northwest has separate payroll, profit and loss statement, maintenance records, deposit slips, and sales reports for each of its restaurants.

Northwest and Midamerica have separate bank accounts. Both have separate balance sheets, income and expense statements and tax returns. Midamerica and Northwest have separate payrolls and separate personnel records. The accounting records of Northwest are kept separate from the accounting records of Midamerica.

Midamerica does not determine the amount of retained earnings of Northwest, nor does Harold Hale. Hale does not determine the amount of, or whether, Northwest will make a distribution to its shareholders.

The following are also pursuant to the management agreement:

Joel Neikirk and Jerry Barker oversee personnel for Northwest. The day to day employment decisions of hiring, firing and employee pay rates of Northwest are preformed by Northwest employees, which must conform to the policy guidelines established by Midamerica. Neikirk reviews all pay raises and Barker reviews and approves all terminations.

Barker maintains the personnel records for both Midamerica and Northwest. The personnel records for both Midamerica and Northwest are stored at the Midamerica offices.

Harold Hale handles the accounting and record keeping responsibilities for Midamerica and Northwest. He is in charge of the bank accounts for both companies. The bank records for both companies are maintained at the Midamerica offices. Hale signs the salary and benefit checks for both Midamerica and Northwest employees. He also prepares the tax return for Northwest and sets up the data for Midamerica's tax return.

Midamerica establishes the employment policies applicable to the Burger King and it establishes the policies for hiring and firing employees. Northwest employees make the day to day decisions concerning hiring and firing and employee pay rates within the policy guidelines. Midamerica establishes the policies for evaluating and disciplining employees. Northwest employees evaluate and discipline crew persons and lower level employees pursuant to the policies set by Northwest.

Midamerica establishes the pay scales and general policies regarding raises for managers and crew persons at the Burger King. Midamerica establishes the benefit policies at the Burger King.

Northwest employees determine the pay rates and raises of particular Northwest employees within the scales set by Midamerica. These decisions are subject to review by Neikirk.

Jerry Barker, Director of Human Resources for both Midamerica and Northwest and a Midamerica employee, investigated the claims of sexual harassment and sex discrimination.

The employment application filled out by the individual plaintiffs have “Midamerica Hotels Corporation” printed at the top. The New Employee Data Information sheets for the individual plaintiffs have “Midamerica Hotels Corporation” printed on the top. The employee roster for the Burger King listing the individual plaintiffs has “Midamerica Hotels Corporation” printed on the top. The employee handbook for the Burger King contains the following statement: “Congratulations and welcome to Midamerica Hotels Corporation. . .” It further states: “Your handbook has been designed to provide basic information about some of the more important aspects of your employment with Midamerica.”

Counsel for Midamerica responded to the charges filed by the individual plaintiffs. The responses do not mention Northwest. These responses do not state that the individual plaintiffs were Midamerica employees. Midamerica’s Position Statement in response to the charges admits, however that the complaining employees were “employed in Midamerica’s Peerless Park Restaurant.” Midamerica employees provided information used to complete the interrogatory

answers of Northwest; the answers were signed by Daniel Drury in his capacity as Vice President of Northwest.

Discussion

Plaintiffs move for summary judgment on the issue of whether Midamerica Hotels Corporation and Northwest constitute a “single employer” of the individual plaintiffs. Separate entities may constitute a “single employer” for purposes of Title VII if there is a “substantial identity” between the entities. In determining whether separate entities constitute a single employer, courts consider the following factors: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. *5YArtis v. Francis Howell N. Band Booster Ass’n, Inc.* 161 F.3d 1178, 1184 (8th Cir. 1998); *baker v. Stuart Broadcasting Co.*, 560 F.2d 389, 392 (8th Cir. 1977).

Considering the undisputed facts before the Court, the Court necessarily concludes that Midamerica and Northwest can be considered a “single employer” for this matter. Although Northwest and Midamerica are separate entities, Midamerica owns the real estate upon which Northwest operates the Burger King. Northwest’s corporate offices are located at the same location as Midamerica. All of Northwest’s financial and employment records are stored at that office. All the members of the Board of Directors of Northwest are members of the Board of Directors of Midamerica. The members of management of Northwest are all

management officials at Midamerica. The director of human resources at Midamerica and its director of operations oversee the personnel at Northwest. The responsibility for the Northwest bank accounts and for accounting and record keeping for Northwest is performed by Harold Hale, an employee of Midamerica.

The labor relations at Northwest are controlled by Midamerica. Barker and Neikirk oversee personnel for Northwest. Midamerica establishes the employment policies for the Burger King. The hiring, firing, evaluating and disciplining policies are set by Midamerica. Further, the pay scales and policies regarding raises for managers and crew members are set by Midamerica as is the policies for benefits. Further, the employees of Northwest are given employment related documents and information which denotes Midamerica as the company.

Jerry Barker and his assistant investigated the internal complaints of sexual harassment. Midamerica responded to the charges filed with the EEOC.

The same family that owns Midamerica owns Northwest. This clearly and unambiguously satisfies the “commonality of ownership” factor of the analysis.

Furthermore, all of the financial records and bank accounts are maintained by Hale, an employee of Midamerica. He repairs the tax return and signs the salary and benefit checks for the Northwest employees.

While it is recognized and undisputed that Northwest employees may make the day to day decisions regarding the running of the Burger King, it is clear that

these decisions can and are reviewed by employees of Midamerica. The major issues of policy determinations are only made by Midamerica employees and Northwest is required to follow those policy decisions.

Conclusion

Based on the factors which must be assessed for the “single employer” determination, the undisputed facts establish that, as a matter of law, Northwest and Midamerica are a single employer of the individual plaintiffs.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs’ Motion for Summary Judgment, [# 63], is granted.

Dated this 8th day of March, 2004



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE