

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION, et al.)	
)	
Plaintiffs,)	
)	
v.)	Cause No. 4:03CV-00107HEA
)	
MIDAMERICA HOTELS CORPORATION,)	
d/b/a BURGER KING, et al.)	
)	
Defendants.)	

**ANSWER OF DEFENDANT MIDAMERICA HOTELS
CORPORATION TO PLAINTIFF EEOC'S SECOND AMENDED COMPLAINT**

COMES NOW, Midamerica Hotels Corporation ("Midamerica Hotels") by and through its attorney, Susan Nell Rowe of The Stolar Partnership, and for its answer to the Second Amended Complaint of Plaintiff Equal Employment Opportunity Commission ("EEOC"), states as follows:

NATURE OF ACTION

Midamerica Hotels admits that the Second Amended Complaint (the "Complaint") purports to be a claim under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, admits that the complaint seeks relief on behalf of seven former employees, Plaintiff/Intervenors Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, Erin Bronskill, Brandy Alexander, and an unidentified employee ("Jane Doe") and admits that the complaint is for alleged sexual harassment. Midamerica Hotels further admits that Plaintiff/Intervenors were employees of a restaurant located in Peerless Park, Missouri owned and operated by Northwest Development Company ("Northwest Development"). Except

to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment contained in the paragraph entitled “Nature of Action.”

JURISDICTION AND VENUE

1. Midamerica Hotels admits that the Complaint purports to invoke federal question jurisdiction over this matter. Midamerica Hotels denies each and every other averment contained in Paragraph 1 and further denies that it has any liability to Plaintiffs herein.

2. Midamerica Hotels admits that Plaintiff/Intervenors were employed by Northwest Development Company at a restaurant located in the Eastern District of Missouri. Except to the extent expressly admitted, Midamerica Hotels denies each and every allegation contained in Paragraph 2.

PARTIES

3. Midamerica Hotels admits that the EEOC is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment in Paragraph 3.

4. Midamerica Hotels admits that it is a Missouri corporation, has continuously been doing business in the State of Missouri, and has continuously employed at least 15 employees. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 4.

5. Midamerica Hotels admits that Northwest Development is a Missouri corporation, has continuously been doing business in the State of Missouri, and has continuously employed at least 15 employees. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 5.

STATEMENT OF CLAIMS

6. Midamerica Hotels admits that prior to the institution of this lawsuit, Brandy Alexander, Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, Erin Bronskill, and “Jane Doe” were employed at a restaurant in Peerless Park, Missouri owned and operated by Northwest Development. Except to the extent herebefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 6.

7. Midamerica Hotels admits that Mary Beth Souders, Rachel Nunley, Erin Kirk, Natoshia Hanneken, Erin Bronskill, and Brandy Alexander each filed a charge of discrimination with the Commission alleging sexual harassment by Midamerica Hotels in violation of Title VII. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 7.

8. Midamerica Hotels denies that it has engaged in an unlawful employment practice in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a).

8(a) Midamerica Hotels admits that Mary Beth Souders was employed as an hourly employee by Northwest Development. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 8(a).

8(b) Midamerica Hotels admits that Rachel Nunley was employed as an hourly employee by Northwest Development. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 8 (b).

8(c) Midamerica Hotels admits that Erin Kirk was employed as an hourly employee by Northwest Development. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 8 (c).

8(d) Midamerica Hotels admits that Natoshia Hanneken was employed as an hourly employee by Northwest Development. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 8 (d).

8(e) Midamerica Hotels admits that Erin Bronskill was employed as an hourly employee by Northwest Development. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 8 (e).

8(f) Midamerica Hotels admits that Brandy Alexander was employed as an hourly employee by Northwest Development. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 8 (f).

8(g) Midamerica Hotels admits that “Jane Doe” was employed as an hourly employee by Northwest Development and admits that “Jane Doe” is identified in the Commission’s September 25, 2003 Determination of Cause sent to counsel for Midamerica. Except to the extent hereinbefore expressly admitted, Midamerica Hotels denies each and every averment of Paragraph 8(g).

9. Midamerica Hotels denies each and every averment of Paragraph 9.

10. Midamerica Hotels denies each and every averment of Paragraph 10.

11. Midamerica Hotels denies each and every averment of Paragraph 11.

AFFIRMATIVE DEFENSE NUMBER ONE: Further answering, Midamerica Hotels states that the Complaint fails to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSE NUMBER TWO: Further answering, Midamerica Hotels states that it is not and has never been the employer of any of the Plaintiff/Intervenors, and further states that the Plaintiff/Intervenors were employed by Northwest Development.

AFFIRMATIVE DEFENSE NUMBER THREE: Further answering, Midamerica Hotels denies that it was a joint employer with Northwest Development.

AFFIRMATIVE DEFENSE NUMBER FOUR: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that Plaintiffs have failed to exhaust their administrative remedies.

AFFIRMATIVE DEFENSE NUMBER SIX : Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that Plaintiffs have failed to mitigate their damages, if any.

AFFIRMATIVE DEFENSE NUMBER FIVE: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and that Plaintiffs unreasonably failed to take advantage of any preventive or corrective opportunities provided by Midamerica Hotels or to avoid harm otherwise.

AFFIRMATIVE DEFENSE NUMBER SIX: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that it took all actions herein in good faith and in the exercise of its legitimate business judgment.

AFFIRMATIVE DEFENSE NUMBER SEVEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that its actions were taken and decisions made herein in good faith.

AFFIRMATIVE DEFENSE NUMBER EIGHT: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that Plaintiffs' claim for punitive damages, if granted, would be grossly excessive and would violate the Due Process clause of the Fourteenth Amendment to the U.S. Constitution. Any punitive damages would be unreasonable and disproportionate to the harm suffered by Plaintiffs and to the amount of general and compensatory damages recoverable. Midamerica Hotels has not received fair notice that it could be subject to substantial punitive damages in this state for the conduct alleged. Midamerica Hotels alleged conduct was not deliberate, and the damages, if any, to Plaintiffs were economic. The punitive damages sought by Plaintiffs are greatly disproportionate to any actual damages and far exceed any civil or criminal sanctions that could be imposed for similar alleged misconduct.

AFFIRMATIVE DEFENSE NUMBER NINE: Further answering, and pleading in the alternative, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states Plaintiffs' claim for punitive damages would violate the Eighth Amendment to the U.S. Constitution and comparable provisions of the Missouri Constitution because it seeks to impose an excessive fine upon Midamerica Hotels, is penal in nature, and seeks to punish upon vague standards. Plaintiffs' claim for punitive damages would violate the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution and comparable provisions of the Missouri Constitution because it discriminates against Midamerica Hotels on the basis of wealth and because different amounts can be awarded against two or more defendants for the same act where those defendants differ only in material wealth.

AFFIRMATIVE DEFENSE NUMBER TEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that Plaintiffs' claim for punitive damages violates the Due Process clause of the Fifth and Fourteenth Amendments to the U.S. Constitution because it seeks to punish Midamerica Hotels based upon unconstitutionally vague standards.

AFFIRMATIVE DEFENSE NUMBER ELEVEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that Plaintiffs' claim for punitive damages would violate the Fifth Amendment to the U.S. Constitution and comparable provisions of the Missouri Constitution because it would expose Midamerica Hotels to multiple punishments and fines for the same act or conduct.

AFFIRMATIVE DEFENSE NUMBER TWELVE: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that Plaintiffs' claim for punitive damages violates the Due Process clause of the Fifth and Fourteenth Amendments to the U.S. Constitution in the absence of an order bifurcating that claim from the issue of liability.

AFFIRMATIVE DEFENSE NUMBER THIRTEEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of Plaintiffs, Midamerica Hotels states that any award of punitive damages in this case would violate the Separation of Powers Doctrine since this Court and the jury would be usurping the exclusive power of the legislature to define crimes and establish punishment.

AFFIRMATIVE DEFENSE NUMBER FOURTEEN: Further answering, and pleading in the alternative, in the event Midamerica Hotels is determined to be the employer of

Plaintiffs, Midamerica Hotels states that Plaintiffs' burden of proof is to support a punitive damage recovery by clear and convincing evidence.

AFFIRMATIVE DEFENSE NUMBER FIFTEEN: This Court lacks jurisdiction over the claim of "Jane Doe" because "Jane Doe" has failed to file a charge of discrimination with the EEOC, such a charge being a jurisdictional prerequisite to the claims filed herein.

AFFIRMATIVE DEFENSE NUMBER SIXTEEN: "Jane Doe" has failed to exhaust her administrative remedies.

WHEREFORE, Defendant prays that this Court dismiss Plaintiffs' claims at Plaintiffs' costs, and award Midamerica Hotels its attorneys' fees and costs.

THE STOLAR PARTNERSHIP LLP

/s/ Susan Nell Rowe

Susan Nell Rowe Bar #: 4219

Attorneys for Defendant

Midamerica Hotels Corporation

911 Washington Avenue, 7th Floor

St. Louis, Missouri 63101

Telephone: (314) 231-2800

Fax: (314) 436-8400

E-mail: snr@stolarlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2003, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

John S. Appelbaum

johnappelbaum@charter.net jacq@starband.net

Anne E. Gusewelle

anne.gusewelle@eeoc.gov donna.harper@eeoc.gov

Robert G. Johnson
bob.johnson@eeoc.gov

William E. Moench
bmoench@swbell.net

Rebecca S. Stith
rebecca.stith@eeoc.gov patricia.bowens@eeoc.gov

Patavee Vanadilok
patavee@swbell.net

/s/ Susan Nell Rowe

709963.doc