

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

Jaime Banuelos, et al., Complainants v. Transportation Leasing Company (Former Greyhound Lines, Inc.), Bortisser Travel Service, G.L.I. Holding Company and Subsidiary Greyhound Lines, Inc., Bus Wash, Missouri Corporation, Respondents; 8 U.S.C. § 1324b Proceeding; Case No. 89200314.

ORDER DENYING RESPONDENT BORTISSER TRAVEL'S MOTION TO DISMISS

On June 21, 1990, Respondent Bortisser Travel filed a Motion to Dismiss for a lack of jurisdiction. The main contention in its Motion is that Complainants did not file their Complaint until after the dissolution of Bortisser and therefore I am precluded from considering it in this administrative proceeding because I lack jurisdiction over Bortisser under federal and state law.

It is not disputed that Complainants filed their Complaint in July 1989, and that Bortisser Travel dissolved itself as a corporate entity in January 1989.

It is clear that under Rule 17(b) of the Federal Rules of Civil Procedure ``the capacity of a corporation to sue or be sued shall be determined by the law under which it was organized.'' The relevant provisions of the applicable California statute can be found at section 2010 of the California General Corporations Law. It provides:␣

(a) A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof.

(b) No action of proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof.

In legal support of its narrowly argued position, Respondent Bortisser cites to only one California state case which concludes, in reliance on federal court cases, that California law ``bars the assertion of post-dissolution claims in equity.'' See, Pacific Scene Inc. v.

Penasquitos, Inc., 250 Ca. Rptr. 651, 657, 46 Cal.3d 407, 417 (1988), accord, Levin Metals Corp. v. Parr-Richmond Terminal Co., 631 F Supp 303, 304, (N.D. Cal. 1986), affd. 817 F2d 1448, 1450 (9th Cir. 1987).

Through counsel, Respondent Bortisser makes no effort to argue how, if at all, Pacific Scene, Inc. applies to the case at bar. Specifically, Respondent Bortisser fails to mention how or why it views Complainants' statutorily-based cause of action, filed pursuant to section 102 of the Immigration Reform and Control Act, as an ``assertion of post-dissolution claims in equity.'' Respondent Bortisser's unargued reliance on Pacific Scenes Inc., as well as its apparent unwillingness to distinguish a post-dissolution filing of a complaint from a pre-dissolution cause of action are not persuasive to me.

Instead, it is my view that a corporation cannot escape service of process through dissolution if it is otherwise amenable to suit. See, 4 C. Wright & Miller, Federal Practice and Procedure, section 1069 at 396-97 (2d ed. 1987). I conclude that Respondent Bortisser is ``amenable to suit'' because, under California law, as I see it, ``there is no time limitation for suing a dissolved corporation for injuries arising out of its pre-dissolution activities.'' See, North American Asbestos v. Superior Court, 128 Cal.App.3d138, 179 Cal.Rptr. 889 (1982); see also, Abington Heights School District v. Speedspace Corp., 693 F2d 284 (3d Cir. 1982) (a dissolved corporation ``is subject to suit arising out of its pre-dissolution activities.'').

Applying California law herein, I find that Respondent Bortisser's Motion to Dismiss has no merit because Complainants cause of action alleges discriminatory injury arising out of Bortisser's pre-dissolution activities pursuant to its contract obligations with Respondent GLI in 1987. Accordingly, I deny Respondent Bortisser's Motion to Dismiss, and hereby Order it to file an Answer to the Complaint on or before August 16, 1990.

SO ORDERED: This 6th day of August, 1990, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge