

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

Andrew Obriecht
1420 1/2 Sheridan Drive
Madison WI 53704

Complainant

vs.

Midwest Infinity Group
5325 Wall Street
Madison WI 53718

Respondent

HEARING EXAMINER'S DECISION AND
ORDER ON COSTS AND FEES

CASE NO. 20162022

BACKGROUND

On February 22, 2016, the Complainant, Andrew Obriecht, filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division (EOD). The complaint charged that the Respondent, Midwest Infinity Group, Inc., had discriminated against Obriecht on the basis of his conviction record when it failed or refused to hire him for a sales position. The Respondent denied having discriminated against the Complainant on any basis.

Subsequent to an investigation, on August 5, 2016, an EOD Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant in employment because of his conviction record. Efforts at conciliation were unsuccessful. The complaint was transferred to the Hearing Examiner for a hearing on the merits of the complaint.

On October 20, 2016, the Hearing Examiner held a Pre-Hearing Conference at which both parties appeared in person and the Complainant by counsel. At the Pre-Hearing Conference, the Hearing Examiner determined the issues for hearing and set a date for the hearing as well as various interim dates. On October 24, 2016, the Hearing Examiner issued a Notice of Hearing and Scheduling Order setting forth the matters discussed at the Pre-Hearing Conference.

Hearing of this matter was set for February 7, 2017. Prior to the date of hearing, the Respondent, on December 30, 2016, notified the Hearing Examiner and the Complainant that on November 30, 2016 it had dissolved as a Wisconsin corporation. The Complainant sought to amend the complaint on January 9, 2017 and the Hearing Examiner determined on February 1, 2017 that dissolution of the corporate entity did not deprive the Department of jurisdiction. Despite the various issues raised prior to the hearing, the hearing went forward, as scheduled, on February 7, 2017. The Complainant and counsel appeared and the Respondent did not.

On March 24, 2017, the Hearing Examiner issued Recommended Findings of Fact, Conclusions of Law and Order concluding that the Respondent had discriminated against the Complainant. The Recommended Findings of Fact, Conclusions of Law and Order provided for an award of damages to the Complainant in the amount of \$7,500.00 for emotional distress, but made no award for back pay or lost wages. The Order provided that the Complainant could submit a petition for his costs and fees including a reasonable attorney's fee once the Order became final.

The Complainant received the Recommended Findings of Fact, Conclusions of Law and Order on March 27, 2017. The Respondent received the Recommended Findings of Fact, Conclusions of Law and Order on April 1, 2017. This means that the Order became final on April 17, 2017 without an appeal by either party. No appeal was received.

On March 30, 2017, the Complainant submitted a petition for his costs and fees including attorney's fees expended in pursuit of this complaint.

DECISION

Section 39.03(10)(b)(4) indicates that upon a finding that a Respondent has discriminated in violation of the Equal Opportunities Ordinance, the Equal Opportunities Commission or its designee (the Hearing Examiner) shall order such relief as to make the Complainant whole again. In this context, making a prevailing Complainant whole includes an award of attorney's fees expended in bringing the complaint. Chung v. Paisans, MEOC Case No. 21192 (Ex. Dec. on attorney's fees 07/29/1993 and 09/23/1993), Gardner v. Walmart Vision Center, MEOC Case No. 22637 (Ex. Dec. on attorney's fees 06/01/2001), Sprague v. Rowe and Hacklander-Ready, MEOC Case No. 1462 (Comm. Dec. 02/09/1998).

In order to prevail on a petition for the reasonable costs and fees including an attorney's fee, a prevailing Complainant must submit an itemized list of expenses along with a contemporaneously documented itemization of the time charged by an attorney for his/her time. The base amount of an award of attorney's fees is established by multiplying an attorney's per-hour fee by the number of hours expended in the representation. The itemization of tasks and charges permits a reviewing individual to determine whether the work expended appears to have been reasonably necessary and not to duplicate charges. Once this base figure is determined, a reviewing official may make additions or subtractions for a variety of reasons.

In the present matter, the Complainant submitted a petition for his costs and fees on March 30, 2017. This date was well before the Recommended Findings of Fact, Conclusions of Law and Order became final in this matter. As noted above, the Order became final on April 17, 2017 when the Respondent did not submit an appeal within 15 days of its receipt of the Recommended Findings of Fact, Conclusions of Law and Order. While an argument might be made that the Respondent should have additional time to oppose the Complainant's petition for costs and fees because the Order on which it is based has just become final, the Hearing Examiner is convinced that the Respondent had adequate notice of the petition and its contents and adequate time to submit its opposition or to request additional time to do so.

The Complainant's petition seeks an award of a total of \$7,606.52. This figure is comprised of \$7,100.00 in attorney's fees and \$506.52 in costs. The Complainant was represented by William Sulton and additional work was performed by an associate, Jessica

Butler. Sulton and Butler have provided contemporaneously maintained records of their time and work. Both attorneys bill their work at the rate of \$250.00 per hour. The total number of hours expended on this matter are 28.4. All but 1.1 hours of this time was attributable to Sulton.

Sulton provides a copy of a decision of the United States District Court for the Eastern District of Wisconsin indicating that Sulton's hourly rate of \$250.00 is reasonable, if not modest. The Hearing Examiner finds no reason to question the reasonableness of Sulton's hourly rate. This would be a matter for the Respondent to challenge.

Review of the billing records submitted as an attachment to the petition does not reveal any work that was not reasonably necessary and does not appear to be duplicative of charges made on the record.

Given this record, the Hearing Examiner finds no reason not to order the Respondent to pay the Complainant's costs and fees as set forth in his petition dated March 30, 2017. The Respondent shall pay the requested amount no later than 30 days from the date upon which this Decision and Order becomes final.

ORDER

The Respondent is hereby ordered to pay to the Complainant, no later than 30 days after the date on which this order becomes final, the sum of \$7,606.52 for the Complainant's reasonable costs and fees including a reasonable attorney's fee.

Signed and dated this 21st day of April, 2017.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: William F Sulton
Elise O'Brien

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
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Andrew Obriecht
1420 1/2 Sheridan Drive
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Complainant

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Midwest Infinity Group
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Madison WI 53718

Respondent

HEARING EXAMINER'S RECOMMENDED
FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

CASE NO. 20162022

The Commission Hearing Examiner, Clifford E. Blackwell, III, held a public hearing on the merits of the above-captioned complaint in room 108 of the City County Building, 210 Martin Luther King, Jr., Blvd., Madison, Wisconsin, on February 7, 2017 commencing at 9:00 a.m. The Complainant, Andrew Obriecht, appeared in person and by his counsel, William F. Sulton of Peterson, Johnson & Murray, S.C. The Respondent, Midwest Infinity Group, Inc., did not appear in person or by counsel.

Based upon the record in this matter, the Hearing Examiner now enters his Recommended Findings of Fact, Conclusions of Law and Order.

RECOMMENDED FINDINGS OF FACT

1. The Complainant is an individual with a conviction record.
2. At all times relevant to this complaint, the Respondent was a Wisconsin corporation with its principle place of business located at 5325 Wall Street, Madison, Wisconsin.
3. The Respondent was a contractor that sold contracts for Direct TV service and other AT&T subscription services to the public. The Respondent sold these contracts at kiosks in various locations within the City of Madison.
4. On or about February 3, 2016, the Complainant applied for an entry-level Customer Service Representative position with the Respondent. The Respondent utilizes a three-step interview process to screen potential employees.
5. After an individual submits an application, the application is reviewed for minimal qualification. If this review demonstrates that the applicant might be a reasonable candidate, the first interview is set up. In the present matter the reviewing individual was

Yekatarina Kirilikhina. Kirilikhina found that the Complainant's application passed her initial screen and set up an initial interview on or about February 5, 2016.

6. At the initial interview, the application is reviewed and both the applicant and interviewer have the opportunity to ask questions of each other. If the interviewer finds the applicant to be a possible fit for the position, a second interview is set up. In the present matter, the individual conducting the initial interview was again Kirilikhina.
7. The second interview is conducted at one of the kiosk sites by either Kirilikhina or a Team Leader. The second interview is an opportunity for the applicant to try selling the product and to demonstrate his or her abilities. During the second interview, the applicant is given a form authorizing a third party contractor to perform a background check of the applicant, including any criminal history.
8. During the initial interview, the Complainant disclosed to Kirilikhina that he had a conviction record. Despite this disclosure, Kirilikhina was sufficiently impressed by the Complainant's application to schedule him for a second interview. Kirilikhina told the Complainant that a background check would be conducted by a third party.
9. The Complainant's second interview was an "on-site" where he could be observed and where he could ask questions of his observer. The person conducting the interview/observation was Team Leader Brandon Powell.
10. At the end of the interview, the Complainant understood that the interviewer had no additional questions or concerns about his application. The Complainant completed an authorization form to permit the third-party review of his background and understood that he'd been offered a position.
11. On or about February 18, 2016, the Complainant received a document from Sterling Information Systems, the company doing the background check. In the letter, the Complainant was informed that he could dispute any of the findings of the background check and that the background investigation might preclude his being hired by the Respondent
12. The Complainant did not contact Sterling Information Systems because he found the information contained in the background check to be accurate.
13. On or about March 3, 2016, the Complainant received another letter from Sterling Information Group on behalf of the Respondent indicating that any employment offer that might have been made was being withdrawn and that the Respondent could not hire the Complainant because of his conviction record.
14. Shortly after receiving the letter retracting any employment offer, the Complainant contacted the Respondent for verification of that fact. Though he was not able to speak to Kirilikhina, the Complainant spoke with her secretary. He asked her if the letter meant that the Respondent would not hire him because of his conviction record. The Secretary confirmed that was her understanding.

15. The position for which the Complainant applied paid, at least \$11.00 per hour, plus some form of commission on sales. The position would have been a full-time opportunity, presumably 40 hours per week.
16. The decision not to hire the Complainant because of his conviction record disheartened the Complainant and made him feel "bad." The work was that for which the Complainant believed himself to be qualified and was the type of work that he enjoyed. He was injured by the knowledge that even though he'd completed his incarceration, he would still be judged for the mistakes of his past.
17. The Complainant was prepared to start work immediately. There is no information in the record to indicate for how long the Complainant was without comparable employment or for how long he might have stayed employed by the Respondent.

CONCLUSIONS OF LAW

1. The Complainant is an individual with a conviction record and is entitled to the protections of the Equal Opportunities Ordinance.
2. The Respondent, at all times relevant to this matter, is or was an employer within the meaning of the Equal Opportunities Ordinance and is subject to the requirements of the Ordinance.
3. The Respondent violated the Ordinance's prohibition against discriminating against the Complainant in employment because of his conviction record.
4. The Complainant suffered economic loss and noneconomic injuries as a result of the Respondent's refusal to hire him because of his conviction record.

ORDER

1. The Respondent shall cease and desist from discriminating against the Complainant on the basis of his conviction record and shall offer him the first available equivalent position for full-time employment.
2. The Respondent shall not retaliate against the Complainant for his bringing of this complaint.
3. No later than 30 days after this order becomes final, the Respondent shall pay to the Complainant \$7,500.00 as compensatory damages for his emotional distress, embarrassment and/or humiliation resulting from the Respondent's discrimination.
4. No later than 45 days after this order becomes final, the Complainant shall file a petition setting for his reasonable costs and fees, including attorney's fees expended in bringing this complaint. The Respondent may respond to the Complainant's petition no later than 15 days after filing of the petition.

MEMORANDUM DECISION

This matter was essentially tried as a default due to the failure of the Respondent to appear. The Respondent had notice of the time and date of the hearing and failed to appear either at the time noticed for hearing or within thirty minutes of the scheduled start time. Though the Respondent may have claimed to have dissolved, as noted in a Decision and Order dated February 1, 2017, the Hearing Examiner believes that the Respondent could not necessarily escape liability by dissolving itself after the commencement of this action.

The Complainant appeared and testified on his own behalf. His testimony was adequate to set forth a *prima facie* claim of discrimination and there is no objective reason for the Hearing Examiner to doubt the Complainant's credibility.

It appears that the Complainant expressed interest in a sales position with the Respondent. The Respondent is or was a Wisconsin corporation that sold a variety of services for Direct TV, a provider of satellite communication and entertainment services. The Respondent ran several kiosks housed in other businesses for the selling of the Direct TV services.

The Complainant, who had experience selling similar services for a competitor of Direct TV, appears to have been qualified for the position. The Complainant stated that in order to sell similar services for Dish Network, he had to learn about the services and capabilities of Direct TV, so he was familiar with the company and its products when he first applied at the end of January or beginning of February, 2016.

After expressing interest in a position and providing some background information, the Complainant was provided an application and an initial interview was set up with the Respondent's CEO, Yekaterina Kirilikhina. At that interview with Kirilikhina, the Complainant disclosed his somewhat extensive conviction record. Kirilikhina, despite the information about the Complainant's conviction record, believed that the Complainant's work experience made him a good potential candidate. As is the Respondent's process, Kirilikhina set up a further interview with one of the Respondent's supervisors to see how the Complainant would perform in the work setting and to judge if the Complainant would be a good employee. Kirilikhina informed the Complainant that a background check would be performed by a third-party source.

The Complainant went through the on-site interview and understood that he'd performed well and expected that he'd be hired, given Kirilikhina's enthusiastic discussions with him in the initial interview. As part of the on-site interview, the Complainant completed the form authorizing the Respondent's outside contractor to conduct a background investigation. Upon completion of that investigation, the Respondent, through its contractor, Sterling Information Systems, provided the Complainant with a copy of the results of the investigation and gave the Complainant five (5) days to contest any inaccuracies in the results. The Complainant did not contact Sterling as he found the investigation to correctly state his record.

Approximately two weeks later, the Complainant received another letter from the Respondent's contractor on the Respondent's behalf indicating that the Respondent would not hire the Complainant due to his conviction record. The Complainant contacted the Respondent's office to confirm his understanding of the letter he received. Though he was not able to speak to

Kirilikhina, her secretary indicated that she believed the Complainant's understanding was correct.

This set of facts establishes that the Complainant is a member of the protected class "conviction record," that he experienced an adverse employment action, and that there is a causal connection between his membership in the protected class and the adverse employment action. This is sufficient to establish a *prima facie* claim of discrimination. Additionally, there is evidence from the Complainant's testimony that he was qualified for the position.

There is no doubt that the Complainant has an extensive conviction record. Equally, it is clear that he was not hired for a position for which he appears to have been qualified. Finally, the record is clear that the reason for the Respondent's rejection of the Complainant was his conviction record.

The Respondent might have contested the above showing by either demonstrating that the Complainant's conviction record was sufficiently related to the nature of his employment that it would have been unreasonable for the Respondent to have hired the Complainant, or that it acted not because of the Complainant's conviction record, but rather after investigation, that it acted due to the nature of the conduct that resulted in the Complainant's conviction record. However, the Respondent did not appear and the Hearing Examiner is not able to speculate as to the basis of the Respondent's actions absent the testimony of witnesses presented by the Respondent.

The record is sufficient to establish liability on the part of the Respondent for a claim of discrimination in employment on the basis of the Complainant's conviction record. Having established liability, the Hearing Examiner must now turn to the question of damages.

It is the Complainant's burden to demonstrate both the entitlement to damages as well as the appropriate amount of those damages. Generally speaking, the Department has awarded two types of damages in claims of employment discrimination: economic damages for wages lost as a result of discrimination and other out-of-pocket expenses, and noneconomic damages for emotional distress, embarrassment and humiliation resulting from discrimination.

In the present matter, the Complainant testified that the position for which he applied paid a base salary of \$11.00 per hour. On top of the base salary, the Complainant might have been entitled to commissions or other payments based upon his performance in the position. The position was full-time by which the Hearing Examiner understands it was for 40 hours per week.

Customarily, one would calculate economic losses by multiplying the hourly or other periodic payment by the number of hours worked in a set period and then multiplied by the length of time for which the Complainant was unemployed or underemployed. In the present matter, the Complainant established that the rate of pay was \$11.00 per hour and that he expected to work a 40-hour work week. However, the record does not demonstrate for what period of time the Complainant might have been paid this wage or for how long he'd have remained employed by the Respondent. In his post-hearing submission, the Complainant asserts that he should receive back wages for the period of a year or until the time of this decision. However, this represents speculation of a type prohibited to any finder of fact. It was

the Complainant's burden to establish the period for which he might be due back wages. In this regard, the Complainant has failed.

The Complainant has an obligation to attempt to mitigate his damages by seeking alternative employment. Customarily, it is the Respondent's burden to allege a failure to make this effort. While the Hearing Examiner makes no finding with respect to the Complainant's efforts to mitigate his damages, it is another factor that keeps the Hearing Examiner from making an award for back pay. The record is devoid of any information concerning the Complainant's efforts to obtain employment subsequent to being rejected by the Respondent. The record does not disclose whether the Complainant found work, when he found it or to what extent, if any, it replaced the wages he might have been paid by the Respondent.

In considering the testimony of the Complainant, the Hearing Examiner considered making a general finding of what seemed reasonable under the circumstances. Ultimately, the Hearing Examiner decided that it was outside of his authority to replace facts with speculation and accordingly, the Hearing Examiner declines to make any award of back wages.

The Complainant also makes a claim for noneconomic damages for the emotional effects of having been discriminated against. The record in this regard gives the Hearing Examiner something more with which to work. Though the Complainant was not particularly expressive while describing the impact of discrimination upon him, he did speak of his frustration of having to continue to pay for his past mistakes even though he's completed his sentences. The Hearing Examiner observed the Complainant to be genuinely "disheartened" by the Respondent's decision not to hire him for a position for which he felt qualified and excited to perform. The Hearing Examiner finds this expression of injury to be more than *de minimis*.

The Hearing Examiner has found for many years that a Complainant's own expression of the nature and extent of his or her emotional distress injuries is sufficient to establish the entitlement to an award and the extent of that award. Morgan v. Hazelton Labs, MEOC Case No. 21005 (Ex. Dec. 04/02/1993), Chung v. Paisans, MEOC Case No. 21192 (Ex. Dec. on liability 02/10/1993, on attorney's fees 07/29/1993 and 09/23/1993). The Hearing Examiner finds that the testimony of the Complainant is sufficient both to establish the fact of his emotional injury and that the extent of that injury is somewhat greater than those found in Morgan and Chung.

It is always a difficult part of the duties of the Hearing Examiner to assess the degree of emotional damage and to assign a dollar amount to redress the injury. The Hearing Examiner, in doing so, is guided by the Ordinance's dictate to redress the act of discrimination and to attempt to return the injured party to the condition in which they'd have been absent the act of discrimination.

In the context of this complaint, the Hearing Examiner finds that the Complainant was somewhat more eloquent than the Complainant's in Morgan or Chung, but not so compelling as the Complainant's in Leatherberry v. GTE, MEOC Case No. 21124 (Comm. Dec. 04/14/1993, Ex. Dec. 01/05/1993) or Miller v. CUNA, MEOC Case No. 20042175 (Ex. Dec. 05/16/2008). Had the Complainant, in the present matter, been somewhat more forthcoming about the impact upon him or presented the testimony of other to corroborate the extent of his injury, the Hearing Examiner might have made an award of greater than the \$7,500.00 that he has made.

In order for the Complainant to be made whole, he must receive an award of attorney's fees to compensate him for bringing this action. Mosley v. Gantos, MEOC Case No. 22247 (Ex. Dec. 08/20/1997), Gardner v. Wal-Mart Vision Center, MEOC Case No. 22637 (Ex. Dec. on attorney's Fees 06/01/2001).

The Hearing Examiner is not certain about the future of this matter given the Respondent's dissolution. However, the Hearing Examiner has attempted to apply the case law and the facts to the Ordinance as best he can given the Respondent's failure to appear.

Signed and dated this 24th day of March, 2017.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: William F Sulton
Elise O'Brien

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

Andrew Obriecht
1420 1/2 Sheridan Drive
Madison WI 53704

Complainant

vs.

Midwest Infinity Group
5325 Wall Street
Madison WI 53718

Respondent

HEARING EXAMINER'S DECISION AND
ORDER ON COMPLAINANT'S MOTION TO
ADD A PARTY

CASE NO. 20162022

BACKGROUND

The above-captioned matter is scheduled for a public hearing on the merits of the complaint on February 7, 2017. On December 30, 2016, Yekaterina Kirilikhina filed a notice/letter with the Department of Civil Rights asserting that the Respondent in this matter had been dissolved on November 30, 2016. On January 9, 2017, the Hearing Examiner sent a letter/order to the parties requesting argument on whether the dissolution of the Respondent deprives the Department of Civil Rights jurisdiction over the Respondent. The parties had until January 27, 2017 to respond to the Hearing Examiner's Order. On January 12, 2017, the Complainant filed a response to the Hearing Examiner's Order. As of the undersigned date, the Respondent has not filed a response.

On January 9, 2017, the Complainant filed a motion seeking to add Yekaterina Kirilikhina as a Respondent. On January 16, 2017, Kirilikhina, by counsel, filed an opposition to the Complainant's motion to add Kirilikhina as a party Respondent. The Complainant has not filed a reply to the submission of Kirilikhina.

DECISION

The Rules of the Equal Opportunities Commission which govern the processing and hearing on complaints states at Section 3.2 that a Complainant may amend a complaint as a matter of right at any time up to the filing of a Notice of Hearing. In the present matter, the Hearing Examiner issued a Notice of Hearing on October 24, 2016. This means that the motion of the Complainant must be considered as requesting leave to file an amendment to the complaint in this matter. The Hearing Examiner denies the Complainant's request for the following reasons.

First, the motion comes with less than a month to go before the hearing. This would not be sufficient time for the parties to properly prepare for hearing. It would deprive the parties of the opportunity to conduct discovery and take advantage of other Pre-Hearing process.

Second, amendment of the complaint would require the Hearing Examiner to remand the complaint to the Investigator/Conciliator for further investigation and issuance of an amended Initial Determination. Only those issues for which there has been a finding of probable cause including the appropriateness of the named parties may go forward to a hearing. In the present matter, there is currently only a finding of probable cause as to the named party, Midwest Infinity Group, Inc. Adding Kirilikhina would necessitate a remand to properly bring Kirilikhina into this matter.

Third, as Kirilikhina notes in her opposition, the law only recognizes the corporate entity as a valid party. The Equal Opportunities Commission (the predecessor to the Department of Civil Rights) was instructed when it attempted to maintain a claim against an individual corporate officer in Hovde v. Equal Opportunities Commission of the City of Madison, 00 CV 0803 (Dane County Cir. Ct. 2/20/01), the Ordinance does not support claims against individuals separate from their corporate persona.

Given the court's ruling in Hovde and the citations provided by Kirilikhina in her brief in opposition, the Hearing Examiner must deny the Complainant's motion to add Kirilikhina as a separate party.

Signed and dated this 1st day of February, 2017.

EQUAL OPPORTUNITIES COMMISSION

Very truly yours,

Clifford E. Blackwell, III
Hearing Examiner

cc: William F Sulton
Elise O'Brien

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

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Complainant

vs.

Midwest Infinity Group
5325 Wall Street
Madison WI 53718

Respondent

HEARING EXAMINER'S DECISION AND
ORDER ON RESPONDENT'S
MOTION TO DISMISS

CASE NO. 20162022

BACKGROUND

This matter was commenced on February 22, 2016 when the Complainant, Andrew Obriecht, filed a complaint of discrimination with the Madison Department of Civil Rights. The complaint named Midwest Infinity Group, Inc. as the Respondent and charged that the Respondent had discriminated against him in employment on the basis of his arrest and conviction record. The Respondent denied that it discriminated against the Complainant.

The complaint was assigned to a Department Investigator/Conciliator for investigation and issuance of an Initial Determination. On August 5, 2016, the Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant in employment on the basis of arrest record and conviction record. Efforts to conciliate the complaint were unsuccessful and the complaint was transferred to the Hearing Examiner for further proceedings.

The Hearing Examiner conducted a Pre-Hearing Conference on October 20, 2016 at which time the Complainant appeared by counsel and the Respondent appeared by Yekaterina Kirilikhina. On October 24, 2016, the Hearing Examiner issued a Notice of Hearing and Scheduling Order setting the issues and a date for hearing of this matter. The hearing in this matter is currently set for February 7, 2017.

On November 30, 2016, the Respondent apparently dissolved itself. The fact of dissolution was transmitted to the Department on December 30, 2016 by Kirilikhina. In that transmittal, neither Kirilikhina nor the Respondent specifically filed a Motion to Dismiss the complaint; however, the Hearing Examiner takes the notification as some form of a request to end the current proceeding.

On January 9, 2017, the Hearing Examiner issued an Order requesting the positions of the parties with respect to the Department's continuing jurisdiction over the Respondent in light

of the Respondent's dissolution. On January 12, 2017, the Complainant filed a response to the Hearing Examiner's Order. The Respondent has not filed a response to the Hearing Examiner's January 9, 2017 Order.

DECISION

Section 180 of the Wisconsin statutes regulates the formation, operation and dissolution of corporations. Most pertinent to the current matter is section Wis. Stats. 180.1405(2)(f) which indicates that dissolution of a corporation does not require dismissal of an action pending against the corporation. Wis. Stats. 180.1405(2)(e) also indicates that dissolution of a corporation does not prevent initiation of an action against a named corporation.

Given these statutory provisions and lacking any contrary argument from the Respondent, the Hearing Examiner denies any motion to dismiss or other form of a request to cease the pending action.

ORDER

The hearing scheduled in this matter to commence at 9:00 a.m. on February 7, 2017 in Room 108 of the City-County Building, 210 Martin Luther King, Jr. Blvd., will go forward as scheduled.

Signed and dated this 1st day of February, 2017.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: William F Sulton
Elise O'Brien