

OCT 10 2003

For The Northern Mariana Islands
By _____
(Deputy Clerk) *[Signature]*

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff)
)
v.)
)
PACIFIC MICRONESIA CORPORA-)
TION, ASIA PACIFIC HOTEL, INC.,)
and TAN HOLDINGS CORPORA-)
TION, all doing business as DAI-ICHI)
HOTEL SAIPAN BEACH,)
)
Defendants)
)

Civil Action No. 02-0015

ORDER GRANTING
PLAINTIFF'S MOTION TO
STRIKE JURY DEMAND
and PLAINTIFF'S MOTION
TO QUASH THE DEPO-
SITION SUBPOENA
SERVED ON SUSAN
McDUFFIE

THIS MATTER came before the court on Thursday, October 9, 2003,
for hearing of plaintiff's motions to strike the jury demand and quash the
deposition subpoena served on Ms. Susan McDuffie. Plaintiff appeared by and

1 through its attorney, David F. Offen-Brown (by telephone); defendants Asia
2 Pacific Corporation, Inc. and Tan Holdings Corporation appeared by and
3 through their attorney, Colin M. Thompson; defendant Pacific Micronesia
4 Corporation made no appearance.
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7 THE COURT, having considered the written submissions and oral
8 arguments of the parties, rules as follows:
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10 Plaintiff's motion to strike the jury demand is granted. Prior to the 1991
11 amendments to 42 U.S.C. § 2000e *et seq.* ("Title VII"), juries were not available
12 to the parties because the only relief provided by the statute was in equity. The
13 1991 amendments to Title VII provided a jury, but only if and when
14 compensatory or punitive damages (*i.e.* "legal" damages) are sought: "In an
15 action brought by a complaining party...against a respondent who engaged in
16 unlawful discrimination..., the complaining party may recover compensatory
17 and punitive damages...in addition to any relief authorized by [42 U.S.C. §
18 2000e-5(g)]." Section 1981a(c) states explicitly that "if a complaining party seeks
19 compensatory or punitive damages under this section---(1) any party may
20 demand a trial by jury[.]" Section 2000e-5(g) provides that "if the court finds
21 that the respondent has intentionally engaged in...an unlawful employment
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1 practice...the court may enjoin the respondent...and order such affirmative
2 action as may be appropriate, which may include, but is not limited to,
3 reinstatement or hiring of employees, with or without back pay...*or any other*
4 *equitable relief* as the court may deem appropriate.” (Emphasis added.)
5

6 Accordingly, if plaintiff does not seek compensatory or punitive damages, the
7 equitable remedies provided by Section 2000e-5(g) do not entitle any party to a
8 jury trial. Because plaintiff has expressly disavowed any intention to seek
9 compensatory or punitive damages, a jury is not allowed to either party.
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12 Defendants Asia Pacific Hotel and Tan Holdings seek to depose Susan
13 McDuffie, a now-retired EEOC District Director, in regards to their defense of
14 laches on the ground that, in its answer to Interrogatory No. 7, the EEOC
15 identified her as a witness who can support the contention that “all conditions
16 precedent to the institution of this lawsuit has been fulfilled.”
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19 Plaintiff moves to quash the subpoena on three grounds: that Ms.
20 McDuffie’s testimony is protected by the “governmental deliberative process”
21 privilege, that her knowledge of the proceedings is limited, and that to require a
22 (now retired) District Director to testify places an undue burden on the EEOC.
23
24 Plaintiff has offered to provide one of the investigators for deposition, but
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1 defendants have so far declined that alternative.

2 Fed.R.Civ.P. 45(c)(3)(A)(iii) provides that a court may quash or modify a
3 subpoena if it finds that the subpoena “requires disclosure of privileged or other
4 protected matter and no exception or waiver applies[.]” The U.S. Supreme
5 Court has held that a federal agency’s deliberative and decision-making process
6 is privileged up to the point of the final determination. N.L.R.B. v. Sears,
7 Roebuck & Co., 421 U.S. 132, 150-154 (1975). In a Freedom of Information Act
8 lawsuit, the Ninth Circuit has recognized that the “governmental deliberative
9 process” privilege helps encourages “frank and open discussions of ideas,” thus
10 improving the decision-making process. National Wildlife Federation v. U.S.
11 Forest Service, 861 F.2d 1114, 1117 (9th Cir. 1988).

12 The court finds that the information sought from Ms. McDuffie goes to
13 the very heart of matters that the “governmental deliberative process” privilege
14 was designed to protect. If defendants seek information relevant to their defense
15 of laches, deposing an investigator will perhaps significantly aid them in
16 discovering the date from which they argue laches should run. From the
17 information presently before the court, it does not seem unreasonable that
18 seven months elapsed between the time the Regional Administrator received the
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investigator's final report and recommendations and the institution of this lawsuit. However, the court makes no ruling on that issue at this time.

FOR THE FOREGOING REASONS, plaintiff's motion to strike the jury demand is granted and plaintiff's motion to quash to subpoena of Susan McDuffie is granted.

IT IS SO ORDERED.

DATED this 10th day of October, 2003.



ALEX R. MUNSON
Judge