

Mega Force Productions Corp. and Tomasz Kondek.
Case 13–CA–44252

May 23, 2008

SUPPLEMENTAL DECISION AND ORDER¹

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

The Respondent's motion to vacate default judgment and for leave to file its appearance and answer to the complaint is granted. On February 28, 2008, the Board issued a Decision and Order granting the General Counsel's Motion for Default Judgment on the ground that the Respondent had failed to file an answer to the complaint or a response to the Notice to Show Cause. 352 NLRB No. 27 (2008) (not reported in Board volumes). The Respondent asserts that it did not receive notice that an unfair labor practice charge had been filed, and that it did not receive copies of the complaint, the General Counsel's motion for default judgment, or the Board's Notice to Show Cause. The General Counsel maintains in his opposition brief that the Respondent was served with copies of these documents and was provided several opportunities to file an answer but failed to do so.

A review of the record reveals that all of the documents in this case were inadvertently sent to an incorrect address. The charge, amended charge, and the Respondent's motion all list 5635 W. Belmont Avenue as the Respondent's address. All of the documents sent from the Regional Office to the Respondent, however, were sent to 5835 W. Belmont Avenue, an incorrect address.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

Subsequently, the documents sent from the Board's Office in Washington, D.C., to the Respondent were also sent to the incorrect address.²

Due to this inadvertent error, we find it unnecessary to resolve the parties' conflicting arguments regarding whether the Respondent actually received copies of the complaint. Rather, we find it appropriate to afford the Respondent another opportunity to respond to the complaint. See, e.g., *B&G Building Maintenance, Inc.*, 339 NLRB 117, 117–118 (2003), *enfd. mem.* 123 Fed. Appx. 551 (2005) (granting General Counsel's motion to vacate prior Board decision granting summary judgment because notice to show cause was sent to an incorrect address). Accordingly, we grant the Respondent's motion without prejudice to the General Counsel's filing of a Motion for Default Judgment if the Respondent fails to file an answer within 14 days from service of this Order.

IT IS ORDERED that the Board's Decision and Order, 352 NLRB No. 27 (2008), is vacated.

IT IS FURTHER ORDERED that Case 13–CA–44252 is remanded to the Regional Director for Region 13 for further processing in accordance with this Order.

² The Board's Decision and Order dated February 28, 2008, and the Order Transferring Proceeding to the Board and Notice to Show Cause dated January 9, 2008, were returned to the Board with certified mail receipts marked "unclaimed," and the first-class mailing of the Board's Decision and Order was returned to the Board marked "Return to Sender; Not Deliverable as Addressed; Unable to Forward." The record does not indicate whether the documents sent from the Regional Office to the Respondent via certified mail were received or returned unclaimed.