Starrs Group Home, Inc. *and* Raymond A. Barnes.
Case 5–CA–36537

October 14, 2011

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Raymond A. Barnes (the Charging Party) on March 31, 2011, the Acting General Counsel issued a complaint on June 22, 2011, against Starrs Group Home, Inc. (the Respondent), alleging that it committed several violations of Section 8(a)(1) of the Act.[1] Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 5, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. On August 11, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 25, 2011, the Respondent filed an "Answer" to the Notice to Show Cause, signed by its program administrator, Riddick Parker, stating that because the Respondent was unrepresented in this matter, it was unaware that it was required to file an answer to the complaint. In the answer, the Respondent further states that it is in the process of retaining an attorney and requests that the Board defer entering a default judgment against it. The Respondent also states that it has a meritorious defense to the complaint and wishes to file a formal answer.

On September 8, 2011, the Acting General Counsel submitted a reply to the Respondent's answer to the Notice to Show Cause, asserting that the Respondent had, in fact, received ample notice of its need to file an answer to the complaint and that, because the Respondent had had 5 months in which to retain counsel, its claim that it needed extra time to find counsel was not an appropriate basis for deferring default judgment.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that an answer must be received by the Regional Office on or before July 6, 2011, and that if no answer is filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by certified letter dated July 19, 2011, notified the Respondent that unless the Respondent filed an answer by August 2, 2011, a motion for default judgment would be filed. No answer or request for an extension of time to file an answer was received by that date, and, for the reasons discussed below, we find that the Respondent has not established good cause to excuse that failure.

Although the Board has shown some leniency toward respondents who proceed without the benefit of counsel, the Board has consistently held that pro se status alone does not establish a good cause explanation for failing to file a timely answer. See, e.g., *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153 (2003); *Sage Professional Painting Co.*, 338 NLRB 1068, 1068 (2003). Where a pro se respondent fails to timely file an answer, despite being reminded to do so, and provides no good cause explanation for its failure to file a timely answer, subsequent attempts to file an answer will be denied as untimely. *Patrician Assisted Living Facility*, above at 1153–1154 (citing *Kenco Electric & Signs*, 325 NLRB 1118, 1118 (1998)).

Here, there is no dispute that the Respondent did not answer the complaint until after the Notice to Show Cause issued on August 11, despite counsel for the Acting General Counsel's repeated, explicit directions to do so. The essence of the Respondent's position is that, because it was not represented by counsel, it failed to fully understand the ramifications of its failure to file an answer. As stated, the Respondent's status as a pro se litigant does not establish good cause to excuse its failure to file a timely answer. See *Lockhart Concrete*, 336 NLRB 956, 957 (2001).

Nor is good cause established by the Respondent's assertion that its "Executive Director," not being "licensed to practice law in any state," was unaware of the procedural requirements for responding to a complaint and the need to provide an answer in addition to the statement given to the Board agent during the investigation of the charge. See *Country Lane Construction*, 339 NLRB 1321, 1321 (2003). Even if the Respondent originally thought its statement to the Board investigator was a sufficient answer, the July 19 letter from counsel for the Acting General Counsel made clear that additional action

[1] The Acting General Counsel's motion notes that the case number in the affidavit of service of the complaint attached as Exh. 4 of the Motion for Default Judgment was inadvertently transposed from Case 5–CA–36537 to 5–CA–36357.

on the Respondent's part was required. Indeed, the Respondent was repeatedly warned in formal government documents that the failure to file an answer would result in the allegations in the complaint being deemed admitted and that a Motion for Default Judgment would result. Given those repeated warnings, we find that the Respondent's and/or its representatives' lack of legal sophistication does not establish good cause for its failure to file an answer. See *Associated Supermarket*, 338 NLRB 780, 780–781 (2003).

We also reject the Respondent's argument that the Acting General Counsel was not prejudiced by the Respondent's failure to file a timely answer, as it is not necessary to show prejudice to the Acting General Counsel before requiring the Respondent to comply with the Board's rules. Id. at 781. Finally, regarding the Respondent's claim that it has a meritorious defense, the Board will not address a respondent's assertion that it has a meritorious defense unless good cause has been shown for the late response. *Dong-A Daily North America, Inc.*, 332 NLRB 15, 16 (2000).

Accordingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Maryland corporation with an office and place of business located in Baltimore, Maryland, has been engaged in operating a group home offering social services. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of $250,000, and provided services valued in excess of $50,000 directly to the State of Maryland, an entity directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Redoma Miller	House Manager
Barbara Jeanette Vaughan Parker	Assistant Director
Riddick Thurston Parker, Jr	Program Administrator

On about November 2, 2010, the Charging Party engaged in concerted activities with other employees for the purposes of mutual aid and protection, by talking with other employees about work schedules.

On about November 2, 2010, the Respondent, by Barbara J.V. Parker, via telephone communication, directed employees that they should not discuss their work schedules with other employees.

On about November 2, 2010, the Respondent suspended the Charging Party.

From on about January 1, 2011, until on about February 6, 2011, the Respondent assigned less than a full-time work schedule to the Charging Party.

On about February 6, 2011, the Respondent terminated the employment of the Charging Party.

The Respondent engaged in the conduct described above because the Charging Party engaged in concerted activities with other employees for the purposes of mutual aid and protection by talking to other employees about their work schedules. The Respondent engaged in the conduct described above to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by suspending, assigning less than a full-time work schedule to, and terminating the employment of Raymond A. Barnes because he engaged in concerted activities with other employees for the purposes of mutual aid and protection and by discouraging employees from engaging in concerted activities, we shall order the Respondent to offer Barnes full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent or similar position, without prejudice to his seniority or other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for*

the Retarded, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). We shall also require the Respondent to remove from its files any and all references to the unlawful actions against Raymond A. Barnes and to notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Starrs Group Home, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Directing employees not to discuss their work schedules with other employees.

(b) Suspending employees because they engage in protected concerted activity.

(c) Assigning employees less than a full-time work schedule because they engage in protected concerted activity.

(d) Terminating employees because they engage in protected concerted activity.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Raymond A. Barnes full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Raymond A. Barnes whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful suspension of, assignment of less than a full-time work schedule to, and termination of Raymond A. Barnes, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Baltimore, Maryland, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[3] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 2, 2010.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 14, 2011

Mark Gaston Pearce,	Chairman
Craig Becker,	Member
Brian E. Hayes,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[3] For the reasons stated in his dissenting opinion decision in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell you that you should not discuss your work schedules with other employees.

WE WILL NOT suspend any of you because you engage in protected concerted activity.

WE WILL NOT assign any of you less than a full-time work schedule because you engage in protected concerted activity.

WE WILL NOT terminate any of you because you engage in protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Raymond A. Barnes full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Raymond A. Barnes whole for any loss of earnings and other benefits resulting from the discrimination against him, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful suspension of, assignment of less than a full-time work schedule to, and termination of Raymond A. Barnes, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.

STARRS GROUP HOME, INC.