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**Apollo Detective, Inc. and Frank Rogers and Local 1,
Service Employees International Union.** Case
13–CA–061510

September 26, 2012

ORDER DENYING MOTION AND REMANDING

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

The Acting General Counsel seeks default judgment in this case on the ground that the Respondents have failed to file an answer to the supplemental compliance specification.

On January 31, 2012, the Board issued a Decision and Order,¹ directing Respondent Apollo Detective, Inc. (Respondent Apollo), inter alia, to remit to Local 1, Service Employees International Union those dues that Respondent Apollo had collected from its employees but had not remitted to the Union, in violation of Section 8(a)(1) of the Act.

A controversy having arisen over whether Respondent Frank Rogers (Respondent Rogers) was jointly and severally liable to fulfill the remedial obligations of the Board's Order, the Acting Regional Director for Region 13 issued a supplemental compliance specification and notice of hearing on July 26, 2012, notifying the Respondents that they should file timely answers complying with the Board's Rules and Regulations. Although properly served with copies of the supplemental compliance specification, the Respondents failed to file an answer.

By letter dated August 16, 2012, counsel for the Acting Regional Director advised the Respondents that they had failed to file an answer to the supplemental compliance specification by the specified deadline, and that if an answer was not received by August 23, 2012, a motion for default judgment would be filed with the Board.² To date, the Respondents have failed to file an answer to the supplemental compliance specification.

On August 29, 2012, the Acting General Counsel filed a Motion to Transfer Proceedings to the Board and Motion for Default Judgment. On August 30, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion

¹ 358 NLRB No. 1 (2012).

² As set forth in the Acting General Counsel's Motion, the Respondent Frank Rogers affirmed during the compliance investigation on June 26, 2012, that the address where the Region achieved service (in Schererville, IN) was in fact the correct address.

should not be granted. The Respondents failed to file a response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the compliance specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the compliance specification and without further notice to the respondent, find the compliance specification to be true and enter such order as may be appropriate. The Respondents have failed to file an answer or to establish good cause why a timely answer was not filed. Nevertheless, for the reason set forth below, we deny the Acting General Counsel's Motion for Default Judgment.

The Supplemental Compliance
Specification Allegations

In his Supplemental Compliance Specification, the Acting General Counsel has added, as an additional named respondent, Apollo owner Frank Rogers. The specification asserts that Respondent Rogers is jointly and severally liable with Respondent Apollo to remedy the unfair labor practices because, at all material times, Respondent Rogers has been an officer and sole shareholder of Respondent Apollo, and has failed to adhere to corporate formalities in the management and direction of Respondent Apollo by: (1) failing to maintain arm's-length relationship between Respondent Apollo and himself; (2) failing to follow the rules of corporate governance; (3) failing to segregate accounts; (4) diverting corporate funds or assets for noncorporate purposes; and (5) commingling corporate and personal funds and money. The Acting General Counsel alleges that based on this conduct, the corporate veil shielding Respondent Rogers from personal liability arising from the Board's Order should be pierced.

Analysis

On these pleadings, we decline to grant the Acting General Counsel's Motion for Default Judgment. The test for imposing personal liability is set forth in *White Oak Coal*, 318 NLRB 732 (1995), *enfd. mem.* 81 F.3d 150 (4th Cir. 1996). Pursuant to *White Oak Coal*, the Board will pierce the corporate veil when: (1) there is such a unity of interest, and lack of respect given to the

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separate identity of the corporation by its shareholders, that the personalities and assets of the corporation and the individuals are indistinct; and (2) adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations. Here, the allegations concerning Respondent Rogers's failure to adhere to corporate formalities in the management and direction of Respondent Apollo are sufficient to satisfy the first prong of the *White Oak Coal* test. However, the motion for default judgment and the supplemental compliance specification fail to allege any facts that would satisfy the second prong of the *White Oak Coal* test. As stated therein, "[t]he showing of inequity necessary to warrant the equitable remedy of piercing the corporate veil must flow from misuse of the corporate form." *Id.* at 735. Further, "the individuals charged with liability must have participated in the fraud, injustice, or inequity." *Domsey Trading Corp.*, 357 NLRB No. 180, slip op. at 3 (2011). Absent allegations sufficient to satisfy this second prong of *White Oak Coal*, we cannot find that the corporate veil should be pieced and that Respondent Rogers is personally liable for the unfair labor practices. We note, however, that nothing herein will require a hearing if, in the event of an amendment to the complaint alleging that adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations, the Respondents again fail to answer, thereby admitting evidence that would permit the

Board to find the alleged violation. In such circumstances, the Acting General Counsel may renew the motion for default judgment with respect to the amended allegations in the supplemental compliance specification.³

ORDER

IT IS ORDERED that the Acting General Counsel's Motion for Default Judgment is denied and this proceeding is remanded to the Regional Director for Region 13 for further appropriate action consistent with this decision.

Dated, Washington, D.C. September 26, 2012

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

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³ See, e.g., *Plaza Properties of Michigan, Inc.*, 340 NLRB 983 (2003) (default judgment denied based on insufficient complaint allegations).