

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Laguardia Associates, LLP d/b/a Crowne Plaza Laguardia and Laguardia Associates, L.P. a/k/a Laguardia Plaza Hotel f/k/a Laguardia Crowne Plaza Hotel, Debtor-in-Possession and New York Hotel & Motel Trades Council, AFL—CIO. Case 29—CA—029347

December 10, 2012

**SUPPLEMENTAL DECISION AND ORDER
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 second amended compliance specification.

On September 30, 2011, the National Labor Relations Board issued a Decision and Order,¹ that, among other things, ordered LaGuardia Associates, LLP d/b/a Crowne Plaza LaGuardia (Respondent LaGuardia), to make whole discriminatees Esmeralda Lopez, Orfa-Nelly Fernandez, Marie Lajeunesse, Santiago Mejia, Gladys Rossi, and Chan Juan Sun, for any loss of earnings and other benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(1) of the Act. On June 13, 2012, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amount of back-pay due the discriminatees, on October 3, 2012, the Regional Director issued a second amended compliance specification and notice of hearing to Respondent LaGuardia and LaGuardia Associates, L.P. a/k/a LaGuardia Plaza Hotel f/k/a LaGuardia Crowne Plaza Hotel, debtor-in-possession (Respondent Debtor) (collectively, the Respondents),³ alleging the amount due under the Board's

¹ 357 NLRB No. 95.

² Nos. 11-4608(L), 11-4833(XAP).

³ The second amended compliance specification alleges that since December 6, 2011, Respondent Debtor has been a debtor-in-possession with full authority to continue the Respondents' operations and to exercise all powers necessary to administer the Respondents' business, and that as debtor-in-possession, Respondent Debtor is responsible for satisfying the remedial obligations of Respondent LaGuardia under the judgment. Although the Respondents are in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933, 933 fn. 2 (1989), and cases cited therein. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or

Order and notifying the Respondents that they should file an answer by October 24, 2012, complying with the Board's Rules and Regulations. Although properly served with a copy of the second amended compliance specification,⁴ the Respondents failed to file an answer.

By letter dated October 24, 2012, the Region advised the Respondents that no answer to the second amended compliance specification had been received and that unless an answer was filed by October 26, 2012, the Board may find, pursuant to a motion for default judgment, that the allegations in the second amended compliance specification are true. To date, the Respondents have not filed an answer.

On November 7, 2012, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached. On November 9, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents again filed no response. The allegations in the motion and in the second 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 specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the second amended compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the second amended compliance specification to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment. Accordingly,

regulatory powers. See *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336 (2d Cir. 1992); *Cardinal Services*, 295 NLRB at 933 fn. 2; accord: *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

⁴ On August 30, 2012, the Regional Director issued and served a compliance specification on Respondent LaGuardia. On September 11, 2012, the Regional Director issued and served an amended compliance specification on Respondent LaGuardia and Respondent Debtor. There is no indication that any answer was filed in response to either of these pleadings.

we conclude that the backpay due the discriminatees is as stated in the second amended compliance specification, and we will order the Respondents to pay those amounts, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondents, LaGuardia Associates, LLP d/b/a Crowne Plaza LaGuardia and LaGuardia Associates, L.P. a/k/a LaGuardia Plaza Hotel f/k/a LaGuardia Crowne Plaza Hotel, debtor-in-possession, East Elmhurst, New York, their officers, agents, successors, and assigns, shall make whole discriminatees Esmeralda Lopez, Orfa-Nelly Fernandez, Marie Lajeunesse, Santiago Mejia, Gladys Rossi, and Chan Juan Sun by paying them the amounts following their names, plus interest accrued to the date of payment, 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), and minus tax withholdings required by Federal and State laws:

Esmeralda Lopez	\$29,146.00
Orfa-Nelly Fernandez	334.95
Marie Lajeunesse	303.03
Santiago Mejia	214.20
Gladys Rossi	229.32
Chan Juan Sun	214.20
Total Backpay Due	\$30,441.70

Dated, Washington, D.C. December 10, 2012

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD