UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

SPCA IN CATTARAUGUS COUNTY, INC.

and **Case 03-CA-090311**

LINDA VANE, An Individual

MOTION TO TRANSFER PROCEEDINGS TO BOARD AND FOR DEFAULT JUDGMENT AND ISSUANCE OF BOARD'S DECISION AND ORDER

PLEASE TAKE NOTICE that pursuant to Sections 102.24 and 102.50 of the National Labor Relations Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, herein called the Board's Rules and Regulations, the undersigned Counsel for the Acting General Counsel hereby moves that the National Labor Relations Board, herein called the Board, (1) transfer this case and continue the proceedings before the Board; (2) deem the allegations set forth in the Complaint and Notice of Hearing issued in the above-captioned matter on November 30, 2012, as admitted to be true without the taking of evidence supporting the allegations in the Complaint; and (3) issue a Decision and Order granting Default Judgment and ordering SPCA in Cattaraugus County, Inc., herein called Respondent, to appropriately remedy the unfair labor practices found; and grant such other, further and different relief as may be proper under the circumstances. In support of this motion, Counsel for the Acting General Counsel shows and alleges that:

1. The charge in Case 03-CA-090311 was filed by Linda Vane, an individual, on October 1, 2012, and a copy was served by regular mail on Respondent on the same date. Copies of the charge and affidavit of service are attached hereto as Exhibit 1.

2. On November 30, 2012, a Complaint and Notice of Hearing issued in this proceeding and copies were served upon Respondent by certified mail on the same date. Copies of the Complaint and affidavit of service are attached hereto as Exhibit 2.

3. The answer to the Complaint was due on December 14, 2012. Respondent failed to file an answer.

4. On December 18, 2012, by letter, the Region notified Respondent that it had not received an answer to the Complaint. The letter advised Respondent that if an answer was not received by close of business December 26, 2012, a motion for default judgment would be filed with the Board. The letter included a true copy of the Complaint and affidavit of service. A copy of the letter without attachments is attached hereto as Exhibit 3.

5. On December 18, 2012, during several e-mail and telephone conversations, Respondent, by one of its sitting board member's, asserted that it had not received the Complaint. In response, a true copy of the Complaint and affidavit of service was sent via e-mail to Respondent. The December 18, 2012, e-mails advised Respondent that the Complaint and affidavit of service had been sent by certified mail to Respondent's last known address on November 30, 2012, and was not refused or returned to the Regional Office. Respondent was further advised that if no answer was filed by December 26, 2012, the Region would file a motion for default judgment. Copies of the correspondence are attached hereto as Exhibit 4.

6. On December 22, 2012, Respondent accepted delivery of the Complaint that had been sent by certified mail on November 30, 2012. A copy of the return receipt from the United States Postal Service is attached hereto as Exhibit 5.

7. The extended due date to file an answer to the Complaint was December 26, 2012. Respondent failed to file an answer by the extended due date.

8. Respondent failed to file an answer to the Complaint in accordance with Sections 102.20, 102.21 and 102.56 of the Board's Rules and Regulations, although it has been given every opportunity to do so. The required time for such adequate filing has now expired.

WHEREFORE, Counsel for the Acting General Counsel respectfully requests that, in accordance with Sections 102.24 and 102.50 of the Board's Rules and Regulations, the Board deem all matters alleged in the Complaint to be admitted to be true, and be so found, and that forthwith, a Board Decision and Order be issued containing findings of fact, conclusions of law, and an appropriate remedial order for the violations alleged in the Complaint.

DATED at, Buffalo, New York this 31st day of December, 2012.

Respectfully submitted,

NICOLE ROBERTS,
Counsel for the Acting General Counsel
National Labor Relations Board
Third Region
Niagara Center Building, Suite 630
130 South Elmwood Avenue
Buffalo, New York 14202-2387
Tel.: 716 551-4942
Fax: 716 551-4972
Email: nicole.roberts@nlrb.gov

MOTION DEFAULT JUDGMENT

EXHIBIT 1

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 03-CA-090311	Date Filed 10/1/2012

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
The SPCA in Cattaraugus County, Inc.

b. Tel. No. 716-372-8492
c. Cell No.
f. Fax No. 716-806-0130
g. e-Mail

d. Address *(Street, city, state, and ZIP code)*
2944 Rt. 16
Olean, NY 14760

e. Employer Representative
Kristin McDonald, Bd.Mem.
Regina DeFeo, Bd. Member
Co-Chairs of Hum. Resources

h. Number of workers employed 10

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
animal shelter

j. Identify principal product or service
palities (Olean,NY) providing animal control services to munici-

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* 8(a) (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
On or about June 15, 2012, the Employer discharged Linda Vane and continuously thereafter has refused to employ her, has issued warnings, and has otherwise discriminated against her because she engaged in protected, concerted activities with and on behalf of other employees.
At all times material herein to date, the Employer has maintained in effect a "confidentiality policy" which forbids its employees from engaging in protected, concerted activities and from sharing information about the Employer and its practices with outside agencies, groups or other employees, under threat of discharge.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Linda Vane, An Individual

4a. Address *(Street and number, city, state, and ZIP code)*
3142 Morgan Hollow Rd.
Allegany, NY 14706

4b. Tel. No. 716-378-1078
4c. Cell No. 716-378-1078
4d. Fax No.
4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Linda Vane *(signature of representative or person making charge)* Linda Vane, An Individual *(Print/type name and title or office, if any)*

Address 3142 Morgan Hollow Rd., Allegany, NY 14706 9/29/12 *(date)*

Tel. No.
Office, if any, Cell No.
Fax No.
e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT
Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses [illegible]

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE SPCA IN CATTARAUGIS COUNTY, INC. Charged Party and **LINDA VANE** Charging Party	**Case 03-CA-090311**

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on October 1, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

KRISTIN MCDONALD
THE SPCA IN CATTARAUGIS COUNTY, INC.
2944 ROUTE 16 N
OLEAN, NY 14760-9713

October 1, 2012
Date

LOUIS F. PORTO, Designated Agent of NLRB
Name

/s/LOUIS F. PORTO
Signature

MOTION DEFAULT JUDGMENT

EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

SPCA IN CATTARAUGUS COUNTY, INC.

and **Case 03-CA-090311**

LINDA VANE, An Individual

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Linda Vane, an Individual. It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that the SPCA in Cattaraugus County, Inc. (Respondent) has violated the Act as described below:

I

The charge in this proceeding was filed by Linda Vane on October 1, 2012, and a copy was served by regular mail on Respondent on the same date.

II

(a) At all material times, Respondent, a not-for-profit corporation with an office and place of business at 2944 Route 16, Olean, New York (Respondent's facility), operates an animal shelter and provides animal control to municipalities.

(b) In conducting its operations during the calendar year ending December 31, 2011, Respondent derived gross revenues in excess of $250,000.

(c) During the calendar year ending December 31, 2011, Respondent, in conducting its business operations described above in paragraph II(a), provided services valued in excess of $5,000 for the City of Olean, New York, and the Town of Olean, New York, enterprises directly engaged in interstate commerce.

III

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

IV

(a) At all material times, Kelly Chaffee has been a member of Respondent's board of directors, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act, and an agent of Respondent within the meaning of Section 2(13) of the Act.

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

Kristen McDonald	-	Chair, Board of Directors
Regina DeFeo	-	Vice Chair, Board of Directors
Tina Wedge	-	Member, Board of Directors (From May 2012 to about August 2012)

V

Since a date about April 7, 2012, the exact date being unknown to the Acting General Counsel, but being within Respondent's knowledge, Respondent has maintained a confidentiality policy that provides, in part that:

> It is crucial to the Organization that Employees and Board Members do not publicly criticize, condemn or degrade other SPCA Board Members, other SPCA Employees, or SPCA policies.

VI

(a) About June 9, 2012, Respondent's employee, Linda Vane, concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees by demanding that employees receive their paychecks.

(b) About June 9, 10 and 15, 2012, by electronic mail, Respondent's employee Linda Vane concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees by demanding that employees receive their paychecks.

VII

(a) About June 15, 2012, Respondent removed its employee Linda Vane from the position of medical attendant.

(b) About June 17, 2012, Respondent, by letter, threatened its employee Linda Vane with discharge if she engaged in protected, concerted activities.

(c) About June 25, 2012, Respondent discharged its employee Linda Vane.

(d) Respondent engaged in the conduct described above in paragraphs VII(a) through (c) because the named employee engaged in the conduct described above in paragraph VI(a) and (b), and to discourage employees from engaging in these or other concerted activities.

VIII

By the conduct described above in paragraphs V and VII(a) through (d), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

IX

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph VII(a) and (c), the Acting General Counsel seeks an Order requiring that Respondent take the following affirmative action:

> Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of 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 any backpay or other monetary award due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.
>
> Immediately expunge from its files and records any reference that Linda Vane was discharged for cause, or that she quit her employment voluntarily, and prohibit Respondent from using these records against her in any way and to notify Linda Vane in writing, that it has done so.
>
> Reimburse Linda Vane the amount equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.
>
> Submit the appropriate documentation to the Social Security Administration so that when backpay is paid to Linda Vane, it will be allocated to the appropriate periods.

The Acting General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Complaint. The answer must be **received by this office on or before December 14, 2012, or postmarked on or before December 13, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a Complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the

Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on January 30, 2013, at 10:00 a.m., in the Hearing Room at the Niagara Center Building, 130 South Elmwood Avenue, Suite 630, Buffalo, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Buffalo, New York, this 30th day of November, 2012.

/S/MICHAEL J. ISRAEL
MICHAEL J. ISRAEL, Acting Regional Director
National Labor Relations Board
Niagara Center Building – Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202

Attachments

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 03-CA-090311

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

KRISTIN MCDONALD
THE SPCA IN CATTARAUGIS
COUNTY, INC.
2944 ROUTE 16 N
OLEAN, NY 14760-9713

LINDA VANE
3142 MORGAN HOLLOW RD
ALLEGANY, NY 14706-9431

November 30, 2012
Date

JULIO GONZALEZ, Designated Agent of NLRB
/s/JULIO GONZALEZ
Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

SPCA IN CATTARAUGUS COUNTY, INC.

Case 03-CA-090311

and

LINDA VANE, AN INDIVIDUAL

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 30, 2012, I served the above-entitled document(s) by **certified or regular mail,** as noted below, upon the following persons, addressed to them at the following addresses:

KRISTIN MCDONALD
THE SPCA IN CATTARAUGIS
COUNTY, INC.
2944 ROUTE 16 N
OLEAN, NY 14760-9713

CERTIFIED MAIL, RETURN RECEIPT REQUESTED
7011-3500-0000-8314-5200

LINDA VANE
3142 MORGAN HOLLOW RD
ALLEGANY, NY 14706-9431

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

7011-3500-0000-8314-5194

REGULAR MAIL

November 30, 2012
Date

JULIO GONZALEZ Designated Agent of NLRB
Name

/S/JULIO GONZALEZ
Signature

MOTION DEFAULT JUDGMENT

EXHIBIT 3

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 3
Niagara Center Building, Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202

Telephone: 716/551-4931 **Facsimile: 716/551-4972**

December 18, 2012

Kristen McDonald, Chairperson
The SPCA in Cattaragus County
2944 Route 16 N.
Olean NY 14760

Also by e-mail to: spcacattco@myexcel.com

mail4rrd@gmail.com

letsgoriding08@yahoo.com

Also by fax to: (716) 806 - 0130

Re: The SPCA in Cattaragus County, Inc.

Case 03-CA-090311
(Linda Vane, Charging Party)

Dear Ms. McDonald:

On November 30, 2012, the Acting Regional Director issued a Complaint and Notice of Hearing in the above-referenced case. The Complaint notified the Employer that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Employer was required to file an Answer to the Complaint and to serve a copy on the Charging Party, by December 14, 2012. To date, no Answer has been filed.

Pursuant to Section 102.20, if no Answer is filed, the allegations of the Complaint are deemed to be true and shall be so found by the Board.

Please be advised that if no Answer to the Complaint is filed by the close of business on ***Wednesday, December 26, 2012,*** a motion for default judgment will be made to the Board.

A copy of the Complaint and Notice of Hearing, which was e-mailed to you earlier today, is enclosed.

Very truly yours,

Ron Scott
Attorney

Encl.

MOTION DEFAULT JUDGMENT

EXHIBIT 4

Scott, Ron

From: Scott, Ron
Sent: Tuesday, December 18, 2012 9:58 AM
To: 'Regina DeFeo'; 'letsgoriding08@yahoo.com'; 'spacattco@myexcel.com'
Subject: Case 03-CA-090311

Good morning. I am contacting you because we have not received an answer to the complaint that issued on November 30. An answer was to be filed by December 14. The way it works is, if no answer is filed, we make a motion to the Board for a default judgement. If the Board grants such a motion, everything in the complaint is deemed to be true, and the Board would issue a remedial order that can be enforced by a federal court.

I will be sending a letter out this morning that will more formally advise you of this. I've been directed to say, in this letter, that we will file such a motion if an answer is not received in this office by the close of business on December 26. Also, as I may have mentioned, I won't be handling this matter after December 31, because I am retiring. My colleague Nicole Roberts will be the NLRB's trial attorney, if this matter goes to hearing. Her extension is 716 551 4942.

I realize that there has been little inclination to settle the case, and that reinstatement is a major obstacle for the Employer (as it often is). But I have seen many difficult cases settle, and I have a few ideas that I would be willing to share with you. Not even a proposal, just a conceptual discussion, and nothing that would be binding (the rules of evidence don't allow for settlement discussions to be brought up at trial, with a very few limited exceptions that I don't believe would apply here).

I will be in the office every day from now through the 31st, if you would like to discuss possibilities.

Scott, Ron

From: Scott, Ron
Sent: Tuesday, December 18, 2012 12:34 PM
To: 'Regina DeFeo'
Cc: Roberts, Nicole
Subject: SPCA
Attachments: SVC.03-CA-090311.Aff. of Service CNOH; CPT.03-CA-090311.pdf

Ms. De Feo: If I read your e-mail correctly, you're saying that the Complaint and Notice of Hearing was not received. Please find electronic copies of the Complaint and the Affidavit of Service.

The affidavit of service shows that the Complaint was served by certified mail at the SPCA's Route 16, Olean address. Please note that the Notice of Hearing sets a date of January 30, 2013, for a hearing before an administrative law judge. This mailing has not been returned to us as refused, or because of an incorrect address.

I realize that you are not at the shelter every day. You might want to check with whoever takes in the mail there. And if that is not a correct address, please let me know. Otherwise, I will be sending a hard copy by mail today, along with the letter mentioned in my previous e-mail. As mentioned previously, a motion for default judgment will be filed if the Complaint is not answered by the close of business on December 26.

If you have any questions about the requirements for an answer to the complaint, please contact me. I can explain what is required by the Rules and Regulations, but I am not permitted to give legal advice.

Also, the Regional Director has asked me to find out whether you or a representative of the Employer would be willing to participate in a settlement conference. Such a conference can be done by telephone if that is more convenient than an in-person meeting.

Thank you.

RS

MOTION DEFAULT JUDGMENT

EXHIBIT 5

RS

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) R DeFeo
C. Date of Delivery 12-22-12

ent from item 1? ☐ Yes
dress below: ☐ No

KRISTIN MCDONALD, Chairperson
THE SPCA IN CATTARAUGUS COUNTY, INC
2944 ROUTE 16 N
OLEAN, NY 14760-9713

Case # 3-CA-090311

Date 11/30/12 Agent RS SS JG

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7011 3500 0000 8314 5200

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

REGION 3
NLRB
2012 DEC 26 PM 12:
BUFFALO, NY

National Labor Relations Board
Region 3
Niagara Center Building - Suite 630
130 South Elmwood Avenue
Buffalo, New York 14202-2465