

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.

Starrs Group Home, Inc. and Raymond A. Barnes.
Case 05–CA–036537

March 14, 2013

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

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 compliance specification.

On October 14, 2011, the National Labor Relations Board issued a Decision and Order¹ that, among other things, ordered the Respondent to make whole discriminatee Raymond A. Barnes for any loss of earnings and other benefits resulting from his unlawful discharge in violation of Section 8(a)(1) of the Act. On August 30, 2012, the United States Court of Appeals for the Fourth Circuit entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatee, on November 30, 2012, the Regional Director for Region 5 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and alleging that the Respondent has failed to comply with its obligation to expunge from its records any reference to the unlawful actions taken against 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. The compliance specification notified the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated January 11, 2013, the Region advised the Respondent that no answer to the compliance specification had been received and that absent the filing of an answer to the compliance specification by January 18, 2013, a motion for default judgment would be filed. To date, the Respondent has failed to file an answer.

On February 1, 2013, the Acting General Counsel filed with the Board a motion to transfer proceedings to the Board and Motion for Default Judgment, with exhibits attached. On February 4, 2013, the Board issued an order transferring the proceedings to the Board and a No-

tice to Show Cause why the motion should not be granted. On February 11, 2013, the Board received a letter dated February 8, 2013, from Barbara Parker, the Respondent's assistant director, stating that the Respondent's business was officially closed in September 2012. The letter contains no response to the allegations in the Acting General Counsel's Motion for Default Judgment.³ The allegations in the motion and in the compliance specification are therefore undisputed.

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 Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due Barnes is as stated in the compliance specification, and we will order the Respondent to pay that amount, plus interest accrued to the date of payment, and plus the Respondent's share of FICA contributions.⁴

³ It is well established that a respondent's asserted cessation of operations does not excuse it from filing an answer to a complaint or a compliance specification. See, e.g., *OK Toilet & Towel Supply, Inc.*, 339 NLRB 1100, 1100–1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 15–16 (2000); *Holt Plastering, Inc.*, 317 NLRB 451, 451 (1995) (respondent was not excused from filing an answer to compliance specification, even though the respondent notified the Board it had "ceased operations and liquidated the plant facilities").

⁴ As indicated above, the compliance specification alleges that the Respondent has failed to comply with its obligations to expunge from its records any reference to the unlawful actions taken against Barnes, and to notify him in writing that the Respondent has removed the references to its unlawful actions against him and that the unlawful actions will not be used against him in any way. By failing to file an answer, the Respondent has effectively admitted that it has failed to do so. Nevertheless, we find it unnecessary in this proceeding to order the Respondent to take the actions described above, as those actions are included in our previous Order that has been enforced by the court of appeals. See *Bryan Adair Construction Co.*, 341 NLRB 247, 247 fn. 4 (2004). The compliance specification further states that the Respondent made one payment toward its backpay liability. This amount has been credited to the Respondent in the compliance specification calculations.

¹ 357 NLRB No. 100.

² Case No. 12–1912.

ORDER

The National Labor Relations Board orders that the Respondent, Starrs Group Home, Inc., Parkville, Maryland, its officers, agents, successors, and assigns, shall make whole Raymond A. Barnes by paying him \$8,412.80, 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), plus the Respondent's share of FICA contributions, and minus tax withholdings required by Federal and State laws.⁵

Dated, Washington, D.C. March 14, 2013

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁵ In *Latino Express*, 359 NLRB No. 44 (2012), the Board adopted two new remedies: the first requiring respondents to submit appropriate documentation to the Social Security Administration (SSA) allocating backpay, when it is paid, to the appropriate calendar quarters; and the second requiring respondents to reimburse employees for any additional income taxes they owe as a consequence of receiving a lump-sum backpay award covering more than 1 calendar year. The Board decided to apply both remedial policies retroactively, but not to apply the second to cases, such as this one, that already were in the compliance stage on the date *Latino Express* issued. *Id.* at slip op. 4 fn. 36. We note that nothing in *Latino Express* prevents the Acting General Counsel from requesting that the Board modify a previously issued order in a pending case to include an applicable remedy, at least where the Board still has jurisdiction to do so. That is not the case here, however. See *Scepter, Inc. v. NLRB*, 448 F.3d 388, 390–391 (D.C. Cir. 2006) (Board has no authority to modify the remedy in a court-enforced order).