

SPCA in Cattaraugus County, Inc. and Linda Vane.
Case 03–CA–090311

April 30, 2014

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND JOHNSON

On February 22, 2013, the National Labor Relations Board issued a Decision and Order¹ that, among other things, ordered the Respondent, SPCA in Cattaraugus County, Inc., to make whole employee Linda Vane for any loss of earnings and other benefits suffered as a result of the Respondent's discrimination against her. On May 15, 2013, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen as to the amount of back-pay due Vane under the terms of the Board's Order, on July 12, 2013,³ the Regional Director for Region 3 issued a compliance specification and notice of hearing, setting forth the amounts due under the Board's Order and notifying the Respondent that it was required to file an answer in conformity 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 August 8, the Respondent was advised that no answer to the compliance specification had been received and that unless it filed an answer by close of business August 15, a motion for default judgment would be filed. On August 20, the General Counsel filed with the Board a Motion for Default Judgment, contending that the Respondent failed to file an answer to the compliance specification. On September 13, 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 September 25, the Respondent filed an opposition to the motion.

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

Ruling on Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the 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 any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allega-

tions of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate."

The Respondent does not dispute that, despite having been advised of the filing requirements, it failed to file an answer to the compliance specification. Rather, it asserts in its opposition that its prior agents mismanaged the organization and its prior board of directors left many issues unresolved. The Respondent further asserts that it is unable to provide any information as to why an answer was not filed, as it contacted four members of the Respondent's former board of directors, and two did not respond and the other two did not provide a reason for failing to file an answer.⁴ With that explanation, and because it now has a new board of directors, the Respondent asserts that it deserves a second chance to file an answer.

We find that the Respondent has not shown good cause for its failure to file an answer. By its own admission, the Respondent offers no specific reason for not filing an answer, and instead offers a more general explanation that the failure to file was attributable to individuals no longer associated with the Respondent. "Good cause, however, is not established by the absence of a respondent's agents or by the departure of key employees." *Carwash on Sunset*, 355 NLRB 1259, 1260 (2010). Therefore, without more, the circumstances described in the Respondent's opposition are insufficient to establish good cause. See *Klein's Park Manor*, 235 NLRB 64, 65 (1978) (good cause not established by assertion that employer delegated preparing an answer to its accountant who failed to do so).⁵

⁴ The Respondent also contends in its opposition that the Board lacks jurisdiction over the Respondent, that the calculation of the back-pay period and the gross payroll computation are erroneous, and that it does not have the resources to pay a backpay award. Because, as explained herein, we find that the Respondent has not shown good cause for its failure to file an answer, we find it unnecessary to address these other contentions. See e.g., *Dong-A Daily North America, Inc.*, 332 NLRB 15, 16 (2000), "The Board . . . will not address a respondent's assertion that it has a meritorious defense if good cause has not otherwise been demonstrated."

⁵ Member Johnson would hold the General Counsel's Motion for Default Judgment in abeyance for 14 days. The Respondent has filed an opposition to the General Counsel's motion to transfer proceeding to the Board and for default judgment and issuance of a supplemental Board decision and order. Citing various factors, the Respondent requests an opportunity to file its answer out of time. In *Unitec Elevator Services Co.*, 337 NLRB 426, 428 (2002), the Board announced that in cases under Sec. 102.111(c) of the Board's Rules and Regulations, the Board would "strictly adhere to our rule that the specific facts relied on to support the motion to accept a late filing shall be set forth in affidavit form and sworn to by individuals with personal knowledge of the facts." Here, the Respondent's request to file an answer is not supported by any affidavit. Member Johnson would give the Respondent fourteen (14) calendar days from the date of this order to explain, with

¹ 359 NLRB No. 68 (2013) (not reported in Board volumes).

² No. 13–1124 (unpublished decision).

³ All dates are in 2013, unless otherwise indicated.

Accordingly, in the absence of good cause shown for its failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment. We conclude that the Respondent is liable for the net backpay due Linda Vane as stated in the compliance specification. We shall order the Respondent to pay that amount to Linda Vane, plus interest accrued to the date of payment.

supporting affidavits, why an answer to the compliance specification was not timely filed. Member Johnson would not entertain any arguments that the prior default judgment should be set aside.

Chairman Pearce and Member Hirozawa note that the Respondent provided an explanation that does not demonstrate good cause for its failure to file a timely answer. In these circumstances, they find, contrary to their colleague, that giving the Respondent an additional 14 days to repeat that explanation, with supporting affidavits, is not warranted.

ORDER

The National Labor Relations Board orders that the Respondent, SPCA in Cattaraugus County, Olean, New York, its officers, agents, successors, and assigns, shall make Linda Vane whole by paying her \$16,756, plus interest accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws.⁶

⁶ As set forth in the Board's Decision and Order, the Respondent is also liable for any adverse tax consequences of Vane receiving a lump-sum backpay award. Although the compliance specification calculated the adverse tax consequences, that amount will be updated to reflect the actual date of payment.