

Park Avenue Investment Advisor, LLC d/b/a Met Hotel Detroit/Troy d/b/a Metropolitan Hotel Detroit-Troy d/b/a Metropolitan Hotel Group, Troy, Michigan, and Hotel Management Advisors-Troy, LLC d/b/a The Metropolitan Group d/b/a The Metro Hotel-Troy, and its successor, 5500 Management, LLC, and Quantum Hotels, LLC, Metropolitan Lodging, LLC, Wick Road Hotel Management, LLC, alter egos, d/b/a The Metropolitan Hotel, Romulus, Single Employer and/or Alter Egos and Local 24, UNITE HERE, AFL-CIO. Case 07-CA-060921

April 10, 2014

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA, AND JOHNSON

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

On April 17, 2012, the Board issued a Decision and Order¹ that, among other things, ordered Park Avenue Investment Advisor, LLC d/b/a Met Hotel Detroit/Troy d/b/a Metropolitan Hotel Group (Respondent PAIA), to remit to the Union all dues deducted from employee paychecks and withheld from the Union in violation of Section 8(a)(5) of the Act, and to remit to the bargaining-unit employees all dues deducted from their paychecks in violation of Section 8(a)(1) of the Act. It further ordered Respondent PAIA to remedy its additional violations of Section 8(a)(5) and (1) of the Act by: (1) making delinquent contributions to the employees' retirement, health, vision, dental, and life insurance funds; (2) making employees whole for any expenses resulting from the delinquent contributions; and (3) making employees whole for any losses resulting from the failure to follow seniority in scheduling employees for work. On September 10, 2012, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amount of back-pay, union dues, and contributions due under the terms of the Order, on September 19, 2013, the Regional Director for Region 7 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. Although not parties to the original unfair labor practice litigation, Respondents Hotel Management Advisors-Troy, LLC d/b/a The Metropolitan Group d/b/a The Metro Hotel-Troy (Respondent HMA), 5500 Management, LLC (Respondent 5500), Quantum

Hotels, LLC d/b/a The Metropolitan Hotel, Romulus (Respondent Quantum), Metropolitan Lodging, LLC d/b/a The Metropolitan Hotel, Romulus (Respondent ML), and Wick Road Hotel Management, LLC d/b/a The Metropolitan Hotel, Romulus (Respondent Wick Road) were added to the compliance specification and alleged to be jointly and severally liable for Respondent PAIA's unfair labor practices, as alter egos of Respondent PAIA and a single-integrated enterprise and single employer within the meaning of the Act.

The compliance specification set forth the following allegations regarding the relationships among the Respondents.

Respondents PAIA and HMA: At all material times, Respondent PAIA, a Delaware limited liability company with a registered office located at 30600 Telegraph Road, Suite 2345, Bingham Farms, Michigan, has been engaged in the operation and management of a hotel providing food and lodging located at 5500 Crooks Road, Troy, Michigan. At all material times, Respondent HMA, a Delaware limited liability company with a registered office located at 30600 Telegraph Road, Suite 2345, Bingham Farms, Michigan, has been engaged in the operation and management of a hotel providing food and lodging located at 5500 Crooks Road, Troy, Michigan. On June 13, 2013, the Board issued a Decision and Order, reported at 359 NLRB No. 134 (not reported in Board volumes), finding Respondent PAIA and Respondent HMA to be a single employer (Respondents PAIA-HMA).³

Respondent 5500 and Respondents PAIA-HMA: At all material times since January 1, 2013, Respondent 5500, a Michigan limited liability company with a registered office located at 55 East Long Lake Road, Suite 204, Troy, Michigan, has been engaged in the operation and management of a hotel providing food and lodging located at 5500 Crooks Road, Troy, Michigan. About January 1, 2013, Respondent 5500 took over the business of Respondents PAIA-HMA, and since then has continued to operate the business of Respondents PAIA-HMA in basically unchanged form, and at all material times since January 1, 2013, has been a successor of Respondents PAIA-HMA. At all material times, Respondents PAIA-HMA and Respondent 5500 have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; have

¹ 358 NLRB No. 30 (not reported in Board volumes).

² No. 12-1787.

³ The Board also found that Respondent PAIA and Respondent HMA were alter egos within the meaning of the Act. *Id.*, slip op. at 2.

engaged in common purchasing; have a lack of arm's length transactions; have integrated finances; and have held themselves out to the public as a single, integrated business enterprise. Based on these operations, Respondents PAIA-HMA and Respondent 5500 (Respondents PAIA-HMA-5500) constitute a single, integrated business enterprise and a single employer within the meaning of the Act.

Moreover, about October 15, 2012, Respondent 5500 was established by Respondents PAIA-HMA as a continuation of Respondents PAIA-HMA. At all material times, Respondents PAIA-HMA and Respondent 5500 have had substantially identical management, business purposes, operations, equipment, purchases, premises, facilities, customers, supervision, and ownership. Thus, Respondents PAIA-HMA and Respondent 5500 (Respondents PAIA-HMA-5500) have been, at all material times, alter egos within the meaning of the Act.

Respondents Quantum, ML, and Wick Road: At all material times, Respondent Quantum, a Michigan limited liability company with a registered office located at 40800 Woodward Avenue, Bloomfield Hills, Michigan, has been engaged in the operation and management of a hotel providing food and lodging located at 31500 Wick Road, Romulus, Michigan. At all material times, Respondent ML, a Michigan limited liability company with a registered office located at 55 East Long Lake Road, Suite 204, Troy, Michigan, has been engaged in the operation and management of a hotel providing food and lodging located at 31500 Wick Road, Romulus, Michigan. At all material times, Respondent Wick Road, a Michigan limited liability company with a registered office located at 55 East Long Lake Road, Suite 204, Troy, Michigan, has been engaged in the operation and management of a hotel providing food and lodging located at 31500 Wick Road, Romulus, Michigan. On September 7, 2012, and June 11, 2013, the Board issued Decisions and Orders, reported at 358 NLRB No. 122 (not reported in Board volumes) and 359 NLRB No. 132 (not reported in Board volumes), respectively, finding Respondent Quantum, Respondent ML, and Respondent Wick Road (Respondents Quantum-ML-Wick Road) to be alter egos within the meaning of the Act. On June 4, 2013, the United States Court of Appeals for the Sixth Circuit entered a judgment enforcing the Board's Decision and Order reported at 358 NLRB No. 122.⁴

Respondents PAIA-HMA-5500 and Respondents Quantum-ML-Wick Road: At all material times, Respondents PAIA-HMA-5500 and Respondents Quantum-ML-Wick Road have been affiliated business enterprises

with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; have engaged in common purchasing; have a lack of arm's-length transactions; have integrated finances; and have held themselves out to the public as a single, integrated business enterprise. Based on these operations, Respondents PAIA-HMA-5500 and Respondents Quantum-ML-Wick Road constitute a single, integrated business enterprise and a single employer within the meaning of the Act.

Moreover, about June 9, 2011, Respondent Wick Road was established by Respondents PAIA-HMA and Quantum as a continuance of Respondents PAIA-HMA and Quantum. About mid or late 2011, Respondent ML was established by Respondents PAIA-HMA, Quantum, and Wick Road, as a continuance of Respondents PAIA-HMA, Quantum, and Wick Road. At all material times, Respondents PAIA-HMA-5500 and Respondents Quantum-ML-Wick Road have had substantially identical management, business purposes, operations, equipment, purchases, premises, facilities, customers, supervision, and ownership. Based on these operations, Respondents PAIA-HMA-5500 and Respondents Quantum-ML-Wick Road are, and have been at all material times, alter egos within the meaning of the Act.

Based on the foregoing single-employer and alter-ego relationships, the compliance specification alleged that the Respondents are jointly and severally liable for the backpay calculated as due under the Board's court-enforced Order against Respondent PAIA.⁵

The compliance specification notified the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondents failed to file an answer.

By letter dated October 30, 2013, the Region advised the Respondents that no answer to the compliance specification had been received and that unless an appropriate answer was filed by November 6, 2013, a motion for default judgment would be filed. To date, the Respondents have failed to file an answer.

On November 7, 2013, the General Counsel filed with the Board motions to transfer case to and continue pro-

⁴ No. 12-2613.

⁵ The compliance specification noted that the Respondents failed to fully comply with an investigative subpoena issued by the Region for purposes of calculating backpay. Given the resulting lack of certain records, and the Region's ongoing subpoena-enforcement efforts, the Region has reserved the right to amend the backpay claims in the compliance specification if and when it receives the subpoenaed employer records.

ceedings before the Board and for default judgment, with exhibits attached. On November 12, 2013, the Board issued an order transferring the proceedings 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 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 Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the Respondents are alter egos and a single employer under the Act, and are jointly and severally liable to make whole the bargaining-unit employees, the Union, and the employee insurance funds by paying them the amounts set out in the compliance specification. We will order the Respondents to jointly and severally pay the amounts specified therein, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondents, Park Avenue Investment Advisor, LLC d/b/a Met Hotel Detroit/Troy d/b/a Metropolitan Hotel Detroit-Troy d/b/a Metropolitan Hotel Group, Troy, Michigan, and Hotel Management Advisors-Troy, LLC d/b/a The Metropolitan Group d/b/a The Metro Hotel-Troy, and its successor, 5500 Management, LLC, and Quantum Hotels, LLC, Metropolitan Lodging, LLC, Wick Road Hotel Management, LLC, alter egos, d/b/a The Metropolitan Hotel, Romulus, a single employer and alter egos, their officers, agents, successors, and assigns, shall jointly and severally make whole the bargaining-unit employees, the Union, and the employee insurance funds by paying them the amounts specified after their names below, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173

(1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by Federal and State laws.⁶

Name	Amount
Blazo, Kristopher	\$161.00
Castillo, Megan	113.00
Huang, Jainmin	483.00
Jones, Sabrina	92.00
Fisher, Hugh	276.00
Fisher, Hugh—Out of Pocket Medical	254.38
Fisher, Hugh—Out of Pocket Welfare	287.15
Karas, Jackie	253.00
Karas, Jackie—Out of Pocket Medical	90.85
Karas, Jackie—Out of Pocket Welfare	229.72
Kuchta, Artur	46.00
Kuchta, Artur—Out of Pocket Medical	59.76
Zhang, Qian	874.00
Berger, Christine	553.02
Bey, Jerry	652.03
Bey, Jerry—Out of Pocket Medical	266.08
Bey, Jerry—Out of Pocket Welfare	287.15
Dong, Lilin	368.00
Hussain, Shabbir	506.00
Kellam, Linda	989.00
Kellam, Linda—Out of Pocket Medical	1,290.07
Kellam, Linda—Out of Pocket Welfare	1,722.90
Koskiewicz, Krystyna	966.00
Koskiewicz, Krystyna—Out of Pocket Medical	1,452.07
Koskiewicz, Krystyna—Out of Pocket Welfare	1,493.18
Edge, Ryan	966.00
Liu, Liz	69.00
Pasamba, Nancy	69.00
Ruhig, Mary Ann	989.00
Ruhig, Mary Ann—Out of Pocket Medical	3,633.66
Ruhig, Mary Ann—Out of Pocket Welfare	873.18

⁶ As noted in the compliance specification, backpay will continue to accrue until the unfair labor practices are remedied.

Name	Amount
Syed, Ismail	506.00
Syed, Ismail—Out of Pocket Medical	436.08
Syed, Ismail—Out of Pocket Welfare	689.16
Xie, Ping	115.00
Zhang, Hui Qing	644.00
Zhang, Hui Qing—Out of Pocket Medical	4,037.57
Zhang, Hui Qing—Out of Pocket Welfare	918.88
Zhong, Jihong	989.00
Zhong, Jihong—Out of Pocket Medical	13,489.67

Name	Amount
Zhong, Jihong—Out of Pocket Welfare	1,724.70
Holly, Sharonda	159.00
Mackie, Mark—Out of Pocket Medical	403.74
Wright, Margrethe—Out of Pocket Medical	403.74
Wayne County Health Choice	15,236.13
National Retirement Fund	84,654.24
UNITE HERE Culinary Fund	1,017.95
Local 24, UNITE HERE—Dues	805.00
Total Amount due:	\$146,595.06