

**Sky High Services, LLC and Margaret Frances Dodson.** Case 05–CA–123647

October 24, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA  
AND JOHNSON

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charge filed by Margaret Frances Dodson (the Charging Party) on March 4 and 21, 2014, respectively, the General Counsel issued a complaint and notice of hearing on May 29, 2014, alleging that the Respondent has violated Section 8(a)(1) and (4) of the Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

By letter dated June 17, 2014, the Respondent was advised that, absent receipt of an answer to the complaint by close of business June 26, 2014, a motion for default judgment would be filed. On July 2, 2014, the General Counsel filed a Motion for Default Judgment with the Board, contending that the Respondent failed to file an answer to the complaint. On July 7, 2014, 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 Respondent thereafter sent two letters in response to the Notice to Show Cause, and the General Counsel filed a response to the Respondent's letters.

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

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer was received by June 12, 2014, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, as set forth above, the Respondent was subsequently advised that unless an answer was received by June 26, 2014, a motion for default judgment would be filed. Despite this, the Respondent failed to file an answer.

At the outset, we recognize that the Respondent is acting pro se. Although the Board has shown some leniency toward respondents who proceed without the benefit of counsel, the Board has consistently held that pro se status alone does not establish good cause for failing to file a timely answer. *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153 (2003); *Sage Professional Painting Co.*, 338 NLRB 1068, 1068 (2003).

In its response to the Notice to Show Cause, the Respondent submitted two letters<sup>1</sup> claiming that it misunderstood that it was required to file an answer to the complaint. Specifically, the Respondent states that in its telephone conversations with the Region it was led to believe that, because the Respondent disagreed with substance of the complaint allegations, "we would simply go to court."

We find that the Respondent's argument fails to establish good cause. First, even assuming the Respondent was told—by someone from the Region—that if it disagreed with the complaint allegations "we would simply go to court," any such statement does not reasonably suggest that the Respondent would be excused from filing an answer to the complaint. At most, the statement might reasonably convey the circumstances in which the case could proceed to a hearing before an administrative law judge; it does not, however, address the answer requirement. Further, to the extent that the Respondent's failure to file an answer was due to a mistaken belief about that requirement, the mistaken belief does not establish good cause when it runs contrary to the clear written statements, both in the complaint and in the Region's subsequent letter, that the Respondent was required to file an answer. See generally *Nu-Temp Associates Heating & Cooling*, 338 NLRB 790, 790 (2003) (good cause for failing to file an answer not established by the pro se respondent's belief that the union would be seeking the withdrawal of the complaint, noting that the Region's followup letter clearly demonstrated otherwise). Moreover, the Respondent has not even requested an extension of time to file an answer. This too "is a factor demonstrating lack of good cause." *Dong-A Daily North America*, 332 NLRB 15, 16 (2000), quoting *Day & Zimmerman Services*, 325 NLRB 1046, 1047 (1998). Finally, although the Respondent's letters essentially deny the allegations of the complaint, the Board has found that such a late filing cannot overcome the Respondent's failure to file a timely answer or a timely request for an extension of time in which to file an answer. *Kenco Electric & Signs*, 325 NLRB 1118, 1118 (1998).

Accordingly, in the absence of good cause being shown for the Respondent's failure to file an answer, we deem the allegations to be admitted as true and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

<sup>1</sup> The Respondent's two letters in response to the Notice to Show Cause, received on July 21 and August 5, 2014, respectively, contained virtually identical language.

## FINDINGS OF FACT

## I. JURISDICTION

At all material times, the Respondent, a limited liability company with an office and place of business in Sterling, Virginia, has been engaged in the business of providing heating, ventilation, air conditioning, plumbing, and general contracting services. During the calendar year ending December 31, 2013, a representative period, the Respondent provided services valued in excess of \$50,000 to McAllister Retail Services, a Georgia company that is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Charles Wayne Hackney held the position of the Respondent's owner, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

About March 12, 2014, Respondent discharged its employee Margaret Frances Dodson because Dodson filed a charge with the Board in Case 05-CA-123647.

## CONCLUSION OF LAW

By the conduct described above, the Respondent has discriminated against an employee for filing charges under the Act, in violation of Section 8(a)(1) and (4) of the Act. The Respondent's unfair labor practice described above affects commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) and (4) of the Act by discharging employee Margaret Frances Dodson, we shall order the Respondent to offer Dodson full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed, and to make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, we shall order the Respondent to compensate Dodson for any adverse

tax consequences of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

Further, the Respondent shall be required to expunge from its files any and all references to the unlawful discharge of Margaret Frances Dodson and to notify Dodson in writing that this has been done and that the discharge will not be used against her in any way.

## ORDER

The National Labor Relations Board orders that the Respondent, Sky High Services, LLC, Sterling, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they file charges under the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Margaret Frances Dodson full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Margaret Frances Dodson whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(c) Compensate Margaret Frances Dodson for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Margaret Frances Dodson and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, 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 backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Sterling, Virginia, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 12, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against you because you file charges under the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Margaret Frances Dodson full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Margaret Frances Dodson whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL compensate Margaret Frances Dodson for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Margaret Frances Dodson, and WE WILL within 3 days thereafter, notify her in writing that we have done so and that we will not use the discharge against her in any way.

SKY HIGH SERVICES, LLC

The Board's decision can be found at [www.nlr.gov/case/05-CA-123647](http://www.nlr.gov/case/05-CA-123647) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th St., N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

