

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

<b>In the Matter of:</b>	X	
	:	<b>CASE #22-RC-087792</b>
<b>Benjamin H. Realty Corp.</b>	:	
	:	
<b>Employer,</b>	:	
	:	
<b>And</b>	:	
	:	<b>SUPPLEMENTAL MOTION IN</b>
<b>Residential Construction and General</b>	:	<b>OPPOSITION TO GENERAL</b>
<b>Service Workers, Laborers, Local 55,</b>	:	<b>COUNSEL’S MOTION FOR</b>
	:	<b><u>SUMMARY JUDGMENT</u></b>
<b>Petitioner.</b>	X	

COMES NOW, Benjamin H. Realty, the Employer/Movant herein, and pursuant to the Decision by this Board dated November 13, 2014, files this Motion in Opposition to General Counsel’s Motion for Summary Judgment.

In said November 13, 2014 Decision, this Board stated as follows:

“Having duly considered the matter,

1. The General Counsel is granted a leave to amend the complaint on or before November 24, 2014, to conform with the current state of the evidence.
2. The Respondent’s answer to the amended complaint is due on or before December 8, 2014.
3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before December 29, 2014 (with affidavit of service on the parties to this proceeding) as to why the Board should not the grant the General Counsel’s motion for summary judgment. Any briefs or statements in support of the motion shall be filed by the same date.”

Prior to the issuance of this Decision, on October 15, 2014, the Employer filed a “Motion to Reopen the Record,” which requested that the deciding “challenged” vote in the underlying election held on November 8, 2012, be set aside based on the fact that that individual, Pastor

Perea, had recently filed a lawsuit at the Superior Court of Union County, State of New Jersey, in which he admitted that at the time of the election, he was still acting as a Section 2(11) Supervisor. This allegation completely contradicts his testimony provided at the hearing conducted at Region 22 in December 2012 that he was not a supervisor at the time of the election.

Thereafter, on December 10, 2014, the Employer filed its Motion for Reconsideration of the November 13, 2014 Decision based on the fact that the November 13, 2014 Decision was issued while the Motion to Reopen filed by the Employer on October 15, 2014 was pending with the Board.

Counsel for General Counsel then also failed to file any form of Amended Complaint on or before November 24, 2014 as per the Board's mandate in the November 13<sup>th</sup> Decision in this matter. Therefore, the Respondent did not file any additional Answer on or before December 8, 2014 per the above.

Based on the foregoing, this Board has two (2) pending Motions before it, which need to be resolved before General Counsel's Motion for Summary Judgment be ruled upon. In light of the substantial evidence put forth by the Employer, which in turn calls into question the true status of the sole/determinative challenged voter from the 2012 election, the National Labor Relations Board should hold in abeyance any further Decisions until such time as these Motions have been resolved. The substantial issues of fraud and perjury which have been alleged in the Employer's pending Motions, if relied upon by this Board, completely renders the results of the election as *void ab initio*. At a minimum, this Board should hold that the hearing into the supervisory status of Mr. Perea be reopened and reevaluated in light of the Complaint which he

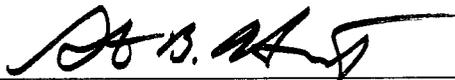
filed in the Superior Court of the State of New Jersey, which, as of the date of the filing of this Motion, has still not been amended in any way, shape or form by the Plaintiff/Pastor Perea.

**CONCLUSION**

Based on the foregoing, it is respectfully requested that Counsel for General Counsel's Motion for Summary Judgment not be granted until such time as both the Employer's Motion to Reopen and Motion for Reconsideration are decided upon by this Board.

Respectfully submitted this 29<sup>th</sup> day of December, 2014.

**HOROWITZ LAW GROUP, LLC**

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Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I certify that this day I served the foregoing Opposition to General Counsel's Motion for Summary Judgment on the following persons by electronic mail:

Raymond G. Heineman, Jr.  
Kroll Heineman Carton, LLC  
99 Wood Avenue South  
Iselin, New Jersey 08830  
(via overnight mail)

David E. Leach, III, Regional Director  
National Labor Relations Board  
Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102-3127  
(via regular mail)

Dated this 29 day of December 2014.

By:   
Steven B. Horowitz, Esq.