



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

March 6, 2015

Marcia M. Waldron, Esquire
Clerk, United States Court of
Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: *NLRB v. Altura Concrete Corp.*, Board
Case No. 22-CA-075740

Dear Ms. Waldron:

I am enclosing an original and six copies of the Board's application for summary entry of a judgment enforcing the Board's order in this case, and copies of a proposed judgment.

Please serve a copy of the application on Respondent, whose addresses appear on the service list. Additional copies are provided for service on the Respondent. I have served a copy of the Board's application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of all correspondence the Court sends to counsel in this case, and a copy of the judgment issued.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE

RESPONDENT:

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PO Box 58
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REGIONAL DIRECTOR:

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National Labor Relations Board
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Newark, New Jersey 07102-3110

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
ALTURA CONCRETE CORPORATION	:	22-CA-075740
	:	
Respondent	:	

APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT
ENFORCING AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Third Circuit:

The National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for summary entry of a judgment enforcing its order against Altura Concrete Corporation (“Respondent”). The Board is entitled to summary enforcement of its order because Respondents did not respond to the Board’s Notice to Show Cause and the Board entered an order by default. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor

practices occurred in New Jersey. The Board's final order issued on November 19, 2014, and is reported at 361 NLRB No. 108.

B. Proceedings Before the Board

1. On May 10, 2012, the Board's General Counsel issued a complaint and notice of hearing in Case No. 22-CA-075740, alleging that Respondent violated Sections 8(a)(1) and (3) of the National Labor Relations Act. The Respondent filed an answer to the complaint.

2. Subsequently the parties entered into an informal settlement agreement which was approved by the Regional Director for Region 22 on August 1, 2012.

The settlement agreement contained the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on May 10, 2012 in the instant case. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon

Charged Party/Respondent at the last address provided to the General Counsel.

3. On August 30, 2012, by regular mail and fax transmittal, the Regional Director notified Respondent that it was in non-compliance with the informal settlement agreement and reminded the Respondent of its obligations under the agreement. The letter also stated that a failure to comply by September 13, 2012, would result in the Regional Director setting aside the settlement agreement, reissuing the complaint, and filing a motion for default judgment.

4. The Respondent did not comply.

5. Pursuant to the noncompliance provisions of the settlement agreement the complaint was reissued on December 17, 2012. Additionally, on December 17, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board.

6. By order dated December 26, 2012, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until January 9, 2013, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment

7. Respondent did not file a response. Accordingly, the allegations in the motion were undisputed.

8. In the absence of a response and pursuant to the noncompliance provisions of the settlement agreement, on January 30, 2013, the Board issued its

Decision and Order granting the Motion for Default Judgment and entering an order against Respondent.

9. On April 26, 2013, the Board filed with the Third Circuit an application for enforcement of that Order (Docket No. 13-2201). Subsequently, in light of the Supreme Court's holding in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (June 26, 2014) (holding that three Board members who received recess appointments in January 2012 were not validly appointed), the Board filed with the Court on August 21, 2014, a motion to vacate the Board's order and remand the case to the Board.

10. By order dated September 17, 2014, the United States Court of Appeals for the Third Circuit granted the National Labor Relations Board's motion to vacate the Board's order and remand the case.

11. With a full complement of five Senate-confirmed members in place, the Board considered de novo the General Counsel's Motion for Default Judgment. According to the uncontroverted allegations in the motion for default judgment, on November 19, 2014, the Board found that the Respondent had failed to comply with the terms of the settlement agreement and entered an appropriate order against the Respondent.

C. The Board Is Entitled to Summary Enforcement of Its Order

On these facts, the Board is entitled to summary enforcement of its order against Respondent. Respondent did not dispute before the Board that it had breached its settlement agreement. Therefore Respondent cannot dispute before this Court the Board's finding that it had breached the settlement agreement. Under Section 10(e) of the Act (29 U.S.C. § 160(e)), no objection that has not been urged before the Board shall be considered by a court of appeals "unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting that requirement, courts have consistently held that a respondent's failure to assert any defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984). *See also Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973). No such circumstances have been alleged or shown here.

WHEREFORE, the Board respectfully requests that the Court, after serving notice of the filing of this application on Respondent, enter judgment summarily enforcing the Board's order in full. A proposed judgment is attached.

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

National Labor Relations Board

1099 14th Street, N.W.

Washington, D.C. 20570

Dated in Washington, D.C.
this 6th day of March, 2015

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
ALTURA CONCRETE CORPORATION	:	22-CA-075740
	:	
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Altura Concrete Corporation, its officers, agents, and representatives, enforcing its order dated November 19, 2014, in Case No. 22-CA-075740, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Altura Concrete Corporation, its officers, agents, and representatives, shall abide by said order (see attached order and appendix).

Mandate shall issue forthwith.

BY THE COURT

Circuit Judge

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

ALTURA CONCRETE CORPORATION

ORDER

Altura Concrete Corporation, Little Ferry, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging or otherwise discriminating against employees for supporting Local 455, Ironworkers, or any other union.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in 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 George Patunas full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
 - (b) Make George Patunas whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.
 - (c) Compensate George Patunas 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 George Patunas, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him 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 Little Ferry, New Jersey facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22, 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 an 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, 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 February 29, 2012.
- (g) Within 21 days after service by the Region, file with the Regional Director 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 PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN 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

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against employees for supporting Local 455, Ironworkers, or any other union.

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 George Patunas full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make George Patunas whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL compensate George Patunas 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 George Patunas, and WE WILL, within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

ALTURA CONCRETE CORP.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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Petitioner	:	No.
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ALTURA CONCRETE CORPORATION	:	22-CA-075740
	:	
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment, appearance of counsel form, docketing statement, and proposed judgment, in the above-captioned case, has this day been served by first class mail upon the following parties at the addresses listed below:

Carleen Thessen
Altura Concrete, Inc.
PO Box 58
Little Ferry, NJ 07643-0058

Tyrone McDonnell
Tyrone McDonnell & Associates
302 Dixon Ave.
Paterson, NJ 07501

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dated at Washington, D.C.
this 6th day of March, 2015