

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

MIDWESTERN VIDEO PERSONNEL, INC.

Respondent

and

CASE 07-CA-148107

MICHAEL TATOMIR, an Individual

Charging Party

**MOTIONS OF COUNSEL FOR THE GENERAL COUNSEL TO
TRANSFER CASE TO AND CONTINUE PROCEEDINGS BEFORE
THE BOARD
AND FOR DEFAULT JUDGMENT**

Counsel for the General Counsel, pursuant to Sections 102.24, and 102.50 of the Board's Rules and Regulations, files these Motions to Transfer Case to and Continue Proceedings Before the Board and for Default Judgment because Respondent has failed to comply with the terms of the bilateral informal Settlement Agreement approved by the Regional Director for Region Seven on October 9, 2015. In support, Counsel for the General Counsel states as follows:

1. The charge in this proceeding was filed by the Charging Party on March 12, 2015, and served by regular mail on Respondent on March 13, 2015. A copy of the charge is attached as Exhibit A, and the Region's docketing letter and affidavit of service are attached as Exhibit B.

2. On July 31, 2015, the Regional Director for Region Seven issued and served on Respondent by certified mail a Complaint and Notice of Hearing (Complaint). A copy of the Complaint is attached as Exhibit C, and a copy of the affidavit of service and certified mail return receipt are attached as Exhibit D.

3. On October 2, 2015, Respondent entered into a bilateral Settlement Agreement with the Charging Party, which was approved the by the Regional Director on October 9, 2015. Pursuant to the terms of Settlement Agreement, Respondent agreed to comply with the terms and provisions of an incorporated Notice, which provided that Respondent would offer the Charging Party immediate and 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 and/or privileges previously enjoyed; pay the Charging Party \$5,000.00 at the time of signing the Settlement Agreement, and the balance of \$9,350.00 within 7 days from the approval of the Settlement Agreement by the Regional Director, for the wages and other benefits he lost because Respondent fired him, and also pay \$110.53 in interest to the Charging Party; remove from its' files all references to the discharge of the Charging Party and notify him in writing that this has been done and that the discharge will not be used against him in any way; and notify Fox Sports Detroit in writing of Respondent's reinstatement of the Charging Party. A copy of the Settlement Agreement is attached as Exhibit E, and a copy of the Notice to Employees is attached as Exhibit F.

4. Under the terms of the "Performance" section of the Settlement Agreement, upon approval by the Regional Director:

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 7 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 July 31, 2015, in the instant case(s). 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.

5. By letter dated October 14, 2015, the Compliance Officer for Region Seven sent Respondent a copy of the conformed Settlement Agreement along with a cover letter, advising Respondent to take the steps necessary to comply with the Settlement Agreement. A copy of the cover letter is attached as Exhibit G.

6. By letter dated October 22, 2015, the Compliance Officer for Region Seven, under the direction of the Regional Director, notified Respondent that it had not complied with the terms of the Settlement Agreement by not paying the balance of \$9,350.00 in wages and \$110.53 in interest owed to the Charging Party by October 16, 2015 (seven days after approval of the Settlement Agreement by the Regional Director), advised Respondent of its obligation to pay the total amount owed within seven days of the issuance of the October 22, 2015, letter, and warned Respondent that its failure to do so may result in the reissuance of the July 31, 2015, complaint and the filing of a motion for default judgment.

A copy of the October 22 letter is attached as Exhibit H, and a copy of the facsimile transmission receipt is attached as Exhibit I.

7. On October 26, 2015, via telephone, in a conversation with the Compliance Officer for Region 7, Respondent, by its owner Charlyn Scroggins, orally responded to the Region's October 22 correspondence. In summary, Respondent asserted that it was shutdown and could not afford to pay the Charging Party anything; that neither she nor anyone else would submit anything further in this matter on behalf of Respondent; nor will anyone with Respondent "show up" to contest anything in dispute in this matter. The Compliance Officer warned Respondent that its failure to pay the balance owed to the Charging Party might result in the reissuance of a Complaint and the filing of a Motion for Default Judgment. In response, Respondent stated that it "cannot and will not" pay anything more to the Charging Party.

8. Having received no further response from Respondent to the October 22 letter, on December 1, 2015, the Regional Director for Region Seven reissued and served on Respondent by certified mail a Complaint Based on Breach of Affirmative Provisions of Settlement Agreement (Reissued Complaint). A copy of the Reissued Complaint is attached as Exhibit J, and a copy of the affidavit of service and certified mail return receipt are attached as Exhibit K.

9. Under the Performance provision of the Settlement Agreement, and by virtue of Respondent's non-compliance with its terms:

- a. the allegations of the Reissued Complaint should be deemed admitted as true;
- b. no hearing is necessary on the Reissued Complaint; and
- c. the motions to transfer this proceeding to the Board and for default judgment should be granted. See *Farr Furnishings, Inc., d/b/a Interiors for Today*, 338 NLRB 784 (2003); *In Re SAE Young Westmont-Chicago, LLC*, 333 NLRB No. 59 (March 9, 2001) (not reported in Board volumes); *Ernest Lee Tile Contractors, Inc.*, 330 NLRB No. 61 (Jan. 5, 2000) (not reported in Board volumes).

CONCLUSION

The undersigned respectfully moves that the Board grant the motions and order the relief described above in paragraph 9, and order that Respondent is responsible for the backpay balance owed of \$9,350.00, and interest in the amount of \$110.53, as well as such other relief deemed appropriate and necessary.

Dated this 1st day of December 2015

/s/ Judith A. Champa

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