



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

April 18, 2016

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *NLRB v. S.E. Clemons Inc.*, Board Case
Nos. 31-CA-127976 and 31-CA-130804

Dear Ms. Dwyer:

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

Please serve a copy of the application on Respondent, whose address appears on the service list. 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 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: service list

SERVICE LIST

RESPONDENT:

Lisa Clemons
S.E. Clemons Inc.
16176 Beaver Road
Adelanto, CA 92301-3902

Tel: (760) 246-7711
Fax: (760) 246-4760
Mobile: (760) 646-7118
Email: seclemonsinc@gmail.com
Email: seclemons1970@gmail.com

CHARGING PARTY:

Ryan Collins, Organizer
Sheet Metal, Air, Rail & Transportation
Workers
Local Union 105
2120 Auto Center Drive
Glendora, CA 91740-6720

Tel: (909) 305-2800
Mobile: (909) 936-6467
Fax: (909) 305-2040
Email: rcollins@local105.org

REGIONAL DIRECTOR:

Mori Rubin, Regional Director
11500 West Olympic Blvd.
Suite 600
Los Angeles, CA 90064

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case Nos.
S.E. CLEMONS INC.	:	31-CA-127976
	:	31-CA-130804
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 Ninth Circuit:

The National Labor Relations Board (the “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 S.E. Clemons Inc. (“Respondent”). The Board is entitled to summary enforcement of its order because Respondent failed to file an answer to the Board’s unfair labor practice consolidated complaint 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 California. The Board's final order issued on January 12, 2016, and is reported at 363 NLRB No. 94.

B. Proceedings Before the Board

1. On September 30, 2015, the Regional Director for Region 31 issued a consolidated complaint and notice of hearing in Case Nos. 31-CA-127976 and 31-CA-130804 charging Respondent with certain violations of the Act. The complaint, in part, advised the Respondent that under the Board's Rules (29 C.F.R. 102.20 and 102.21), the Respondent was required to file an answer by October 14, 2015, and that if the Respondent failed to file an answer, the allegations of the complaint would be deemed to be true.

2. Having received no answer, counsel for the General Counsel, on October 15, 2015, sent the Respondent a letter advising that if no answer was received by October 19, 2015, the Board's Regional Office would file a Motion for Default Judgment with the Board.

3. The Respondent did not file an answer.

4. On November 2, 2015, counsel for the General Counsel filed a Motion for Default Judgment with the Board based upon the Respondent's failure to file an answer to the complaint.

5. By order dated November 5, 2015, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until November 19, 2015,

to file a response to the Motion for Default Judgment with the Board in Washington, D.C.

6. Respondent did not file a response.

7. On January 12, 2016, the Board issued its Decision and Order. In the absence of good cause being shown for Respondent's failure to file a timely answer, the Board granted the Motion for Default Judgment 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. Where a respondent in a Board proceeding fails to file an appropriate answer to the unfair labor practice complaint in a timely manner, the Board may, pursuant to Board Rule 102.20, absent a showing of "good cause," deem the complaint's allegations admitted, and then may enter an order, essentially by default, against the respondent. No cause for Respondent's failure to file an answer was alleged or shown here.

It is settled that the Board is entitled to have that default judgment summarily enforced. 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." 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., NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984); *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 18th day of April, 2016

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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	:	31-CA-130804
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, S.E. Clemons Inc., its officers, agents, successors, and assigns, enforcing its order dated January 12, 2016, in Case Nos. 31-CA-127976 and 31-CA-130804, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, S.E. Clemons Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer
Molly Dwyer
Clerk

NATIONAL LABOR RELATIONS BOARD

v.

S.E. CLEMONS INC.

ORDER

S.E. Clemons Inc., Adelanto, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Failing and refusing to bargain in good faith with Sheet Metal, Air, Rail, Transportation Workers Local Union 105, AFL–CIO as the exclusive collective-bargaining representative of employees in the bargaining unit.
 - (b) Failing and refusing to provide the Union with requested information that is relevant and necessary to the Union’s performance of its functions as the exclusive collective-bargaining representative of the unit.
 - (c) 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) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All full-time and regular part-time sheet metal workers, HVAC install service technicians employed by the Employer at or from its facility of operation, including, but not limited to, 16276 Koala Road, Adelanto, California.

EXCLUDED: All other employees, office clerical employees, estimators, salesmen, professional employees, guards and supervisors as defined in the Act, as amended.

- (b) Furnish to the Union in a timely manner the information it requested since about May 5, 2014.
- (c) Within 14 days after service by the Region, post at its facility in Adelanto, California, copies of the attached notice marked "Appendix" in both English and Spanish. Copies of the notice, in English and Spanish, on forms provided by the Regional Director for Region 31, 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. If 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 March 27, 2014.
- (d) Within 21 days after service by the Region, file with the Regional Director for Region 31 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 the National Labor Relations Act and has ordered us to post and abide by 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 fail and refuse to recognize and bargain with Sheet Metal, Air, Rail, Transportation Workers Local Union 105, AFL-CIO as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

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, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All full-time and regular part-time sheet metal workers, HVAC install service technicians employed by us at or from our facility of operation, including, but not limited to, 16276 Koala Road, Adelanto, California.

EXCLUDED: All other employees, office clerical employees, estimators, salesmen, professional employees, guards and supervisors as defined in the Act, as amended.

WE WILL furnish to the Union in a timely manner the information requested by the Union since May 5, 2014.

S.E. CLEMONS INC.

The Board's decision can be found at www.nlr.gov/case/31-CA-127976 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS
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	:	31-CA-130804
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CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment, proposed judgment and mediation questionnaire in the above-captioned case, has this day been served by first class mail upon the following party at the address listed below:

Lisa Clemons
S.E. Clemons Inc.
16176 Beaver Road
Adelanto, CA 92301-3902

/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 18th day of April, 2016