



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

February 27, 2017

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. SK USA Cleaners, Inc. a/k/a
SK USA Shirts, Inc.*, Board Case Nos. 22-
CA-026959 and 22-CA-087198

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 address appears 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
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

RESPONDENT:

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David E. Leach, Regional Director
National Labor Relations Board
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CHARGING PARTY:

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Clifton, NJ 07011-2003

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
SK USA CLEANERS, INC.	:	Board Case Nos.:
A/K/A SK USA SHIRTS, INC.	:	22-CA-026959
	:	22-CA-087198
Respondents	:	

APPLICATION FOR SUMMARY ENTRY OF A
JUDGMENT ENFORCING A SUPPLEMENTAL 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 (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 Supplemental Order against SK USA Cleaners, Inc. a/k/a SK USA Shirts, Inc. (Respondents). The Board is entitled to summary enforcement of its Supplemental Order because Respondents failed to file an appropriate answer to the Board’s compliance specification 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 January 25, 2017, and is reported at 365 NLRB No. 20.

B. Proceedings Before the Board

1. The Board's January 25, 2017, Supplemental Decision and Order is the result of two cases, 22-CA-026959 and 22-CA-087198, that were consolidated on January 11, 2016.

Board Order No. 22-CA-026959

2. The Board applied to this Court for enforcement of its Order issued March 22, 2006, in case no. 22-CA-026959. That order directed Respondents, in part, to make whole certain employees for any loss of earnings or benefits they may have suffered by reason of the discrimination against them. The Court entered its judgment enforcing the Board's Order in its entirety in docket no. 06-2585, on June 28, 2006.

3. A controversy arose over the amount of backpay due discriminatees under the terms of the Board's order. On October 30, 2006, the Regional Director issued and served on Respondents a compliance specification and notice of hearing, alleging the amount of due under the Board's 2006 Order. Following a hearing before an administrative law judge, the judge issued a supplemental

decision on February 26, 2007, (JD(ATL) - 6 - 07), fixing the amount the amount of backpay due under the Board's initial Order.

4. On January 30, 2009, Respondent SK USA Cleaners and its president, Yi Jae Cho, signed a stipulated compliance agreement requiring Respondent SK USA Cleaners to pay \$105,105.39 to make the discharged employees whole. Cho agreed that in case of noncompliance he would be jointly and severally liable for the total unpaid balance of the amounts owed.

5. On April 1, 2015, the Regional Director issued a supplemental compliance specification in Case 22-CA-026959 against Respondent SK USA Cleaners and Respondent Yi Jae Cho, alleging that pursuant to the stipulated compliance agreement and by Respondent Cho's failure to adhere to corporate formalities, Respondent Cho is jointly and severally liable with Respondent SK USA Cleaners for the remedial obligations of the Board's 2006 Order, the amount due under the Board's 2006 Order, the amount due in the administrative law judge's 2007 decision (JD(ATL) - 6 - 07), and the 2009 stipulated compliance agreement.

Board Order No. 22-CA-087198

6. The March 8, 2013, the Board issued a Decision and Order in case no. 22-CA-087198. That order directed Respondents, in part, to remit to Local 947, International Union of Journeymen and Allied Trades, all dues since February

2012 that had not been remitted as required by the parties' 2007-2013 collective-bargaining agreement. The Court entered its judgment enforcing the Board's Order in full in No. 13-2359, on December 5, 2013.

7. A controversy having arisen over the terms of the Board's order, the Regional Director issued and served on Respondents a compliance specification and notice of hearing on February 27, 2015, alleging the amount due and alleging that Yi Jae Cho is jointly and severally liable with Respondent SK USA Shirts to fulfill the remedial obligations of the Board's Order. The specification advised Respondents that, under the Board's Rules (29 C.F.R. 102.56), it was required to file an answer March 13, 2015, and that if it failed to file an answer, the allegations of the specification would be deemed to be true and Respondents would be precluded from introducing any evidence controverting them.

8. On April 1, 2015, the Regional Director issued an amended compliance specification in Case 22-CA-087198 against Respondent SK USA Shirts and Respondent Yi Jae Cho, alleging that pursuant to Cho's failure to adhere to corporate formalities, he is jointly and severally liable with Respondent SK USA Shirts for the remedial obligations of the Board's 2013 Order.

Consolidation of Board Orders 22-CA-026959 and 22-CA-087198

9. On August 20, 2015, the Regional Director issued an Order Amending and Consolidating Cases, Consolidated Amended Compliance Specification and

Notice of Hearing. He ordered that Cases 22-CA-026959 and 22-CA-087198 be consolidated and alleged the amount due under the Board's 2006 Decision, the administrative law judge's decision and the Stipulated Compliance Agreement, all in Case 22-CA-026959, as well as the amount due under the Board's 2013 Decision in Case 22-CA-087198.

10. On January 11, 2016, the Regional Director issued a second Order amending and consolidating the cases, a consolidated amended compliance specification and a notice of hearing (the consolidated amended compliance specification). The consolidated amended compliance specification alleged that Respondent Cho is jointly and severally liable with Respondent SK USA Cleaners and Respondent SK USA Shirts for fulfilling the obligations of the Board's Orders in Cases 22-CA-026959 and 22-CA-087198.

10. Respondents provided the Region with an answer to the consolidated amended compliance specification.

11. By letter dated February 10, 2016, the Regional Director informed Respondents that their answer did not satisfy the specificity requirements set forth in Section 102.56(b) of the Board's Rules and Regulations and that the time to file an answer would be extended to February 17, 2016. The letter cautioned that failure to file an appropriate answer by February 17, 2016, would result in a motion for default judgment being filed with the Board.

12. Respondents did not file an amended answer.

13. On October 28, 2016, the General Counsel filed with the Board a Motion for Default Judgment based on Respondents' failure to file a legally sufficient answer to the compliance specification.

14. On November 2, 2016, the Board issued an order transferring the proceeding to itself and a Notice to Show Cause, giving Respondent until November 16, 2016, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

15. Respondents did not file a response.

16. On January 25, 2017, the Board granted the Motion for Default Judgment and issued its Supplemental Decision and Order. The order directed Respondents to make whole the discriminatees and to remit to the Union dues that have not been remitted since February 2012.

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 a legally sufficient 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." 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
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 27th day of February, 2017

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
SK USA CLEANERS, INC.	:	Board Case Nos.:
A/K/A SK USA SHIRTS, INC.	:	22-CA-026959
	:	22-CA-087198
Respondents	:	

JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

Before:

This Court having on June 28, 2006, and December 5, 2013, in nos. 06-2585 and 13-2359, respectively, entered its judgment enforcing in full the Orders of the National Relations Board in Board in case nos. 22-CA-026959 and 22-CA-087198, and the Board having consolidated said cases and issued on January 25, 2017, its Supplemental Decision and Order fixing the amounts due, and having thereafter applied to this Court for summary entry of a judgment specifying the amounts due:

IT IS HEREBY ORDERED AND ADJUDGED by the Court that the Respondents, SK USA Cleaners, Inc. a/k/a SK USA Shirts, Inc., Garfield, New Jersey, their officers, agents, successors, and assigns, and the Respondent Yi Jae Cho, his agents, successors, and assigns, shall make whole the discriminatees by paying them the remaining principal, interest, and surcharge still owed to each under the stipulated compliance agreement, as specified in the consolidated

amended compliance specification, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws. Respondents shall also remit to the Union the dues that have not been remitted since February 2012, as specified in the consolidated amended compliance specification, plus interest accrued to the date of payment, as prescribed in *New Horizons*, supra, compounded daily as set forth in *Kentucky River Medical Center*, supra.

TOTAL AMOUNT OF BACKPAY DUE TO DISCRIMINATEES:	\$51,656.07
TOTAL AMOUNT OF DUES TO BE REMITTED TO UNION:	\$28,224.00

Mandate shall issue forthwith.

BY THE COURT

Circuit Judge

ENTERED:

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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v.	:	
	:	
SK USA CLEANERS, INC.	:	Board Case Nos.:
A/K/A SK USA SHIRTS, INC.	:	22-CA-026959
	:	22-CA-087198
Respondents	:	

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 party at the addresses listed below:

Yi Jae Cho, Owner & Pres.
SK USA Cleaners, Inc.
162 Prospect St.
Garfield, NJ 07026-2560

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 27th day of February, 2017