

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	
v.	:	No. 19-2534
	:	
ADT LLC, D/B/A ADT SECURITY SERVICES	:	
	:	
Respondent	:	

REPLY OF THE NATIONAL LABOR RELATIONS BOARD
TO THE COMPANY’S ANSWER TO THE BOARD’S APPLICATION
FOR SUMMARY ENFORCEMENT OF ITS ORDER

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

The National Labor Relations Board (the “Board”), by its Acting Deputy Associate General Counsel, files this reply to the answer of ADT LLC, d/b/a ADT Security Services (“the Company”), to the Board’s application for summary enforcement of its order. For the following reasons, the Company’s answer presents no basis to deny the Board’s application.

1. In its answer, the Company admits that it failed to file exceptions with the Board after the administrative law judge issued a decision on June 17, 2019, finding that it violated the Act in certain respects. (Answer to Section B.) Thereafter, in accordance with the Board’s Rules and Regulations, the Board adopted the judge’s decision and recommended order *pro forma* and all objections

to that decision and order were deemed waived. 29 C.F.R. § 102.46(f), and 29 C.F.R. § 102.48.

As a consequence of the Company not having filed exceptions, there are no issues before the Court. As Section 10(e) of the Act states: “No objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused by extraordinary circumstance.” 29 U.S.C. § 160(e). This limitation is jurisdictional and its application is mandatory. *See Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665 (1982); *NLRB v. Consol. Bus Transit, Inc.*, 577 F.3d 467, 474 (2d Cir. 2009) (the Court lacks jurisdiction to review objections not urged before the Board). As this Court has consistently held, a respondent’s failure to file exceptions before the Board entitles the Board, absent extraordinary circumstances, to summary entry of a judgment enforcing its order. *See, e.g., NLRB v. Ferguson Electric Co.*, 242 F.3d 426, 435 (2d Cir. 2001).

3. In its answer, the only defense the Company attempts to assert is a claim that it “continues to work diligently and communicate as necessary to comply with the Board’s order.” (Answer at p. 3.) Although the Board encourages and supports efforts to achieve compliance, compliance is no defense to enforcement. It has long been settled by the Supreme Court, and recognized by this Court, that even full compliance with the terms of a Board order is no barrier to enforcement

of a Board order. *NLRB v. Mexia Textile Mills, Inc.*, 339 U.S. 564, 567-68 (1950);
see, e.g., NLRB v. Bagel Bakers Council of Greater New York, 434 F.2d 884, 889
(2d Cir. 1970).¹

WHEREFORE, the Board respectfully requests that the Court grant its
application and enter judgment summarily enforcing the Board's order in full.

Respectfully Submitted,

/s/ David Habenstreit
David Habenstreit
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National Labor Relations Board
1015 Half St. S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 11th day of September, 2019

¹ The Company's unsupported self-assessment that it is "work[ing] diligently" to comply with the Board's order is questionable. Indeed, Board counsel has been informed by the Regional Office that the Company has failed to initiate compliance, despite having been provided with multiple extended deadlines, the latest being on August 12, 2019.

