



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

October 28, 2019

Clerk, United States Court of  
Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square, Room 1702  
New York, NY 10007

Re: *NLRB v. Spectrum Mechanical Services  
LLC*, Board Case No. 03-CA-234490

Dear Ms. Wolfe:

I am emailing to the Court at [newcases@ca2.uscourts.gov](mailto:newcases@ca2.uscourts.gov) a copy of 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 addresses appear on the service list. I have served a copy of the 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/ David Habenstreit

David Habenstreit  
Acting Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half St., S.E.  
Washington, D.C. 20570  
(202) 273-2960

cc: Service List

SERVICE LIST

RESPONDENT:

Louis Caruso, Owner  
Spectrum Mechanical Services LLC  
23360 N 61st Dr.  
Glendale, AZ 85310-5748

Tel: (716) 240-9474

E-mail: louie@spectrumms.net  
lcaruso@carusosublime.com

RESPONDENT ADDITIONAL SERVICE:

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CHARGING PARTY:

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REGIONAL DIRECTOR:

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Niagara Center Building  
130 S. Elmwood Ave., Ste 630  
Buffalo, NY 14202-2465

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
SPECTRUM MECHANICAL SERVICES LLC	:	03-CA-234490
	:	
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 Second 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 Spectrum Mechanical Services LLC (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 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 New York. The Board's final order issued on September 30, 2019, and is reported at 368 NLRB No. 85.

### **B. Proceedings Before the Board**

1. On March 29, 2019, a Complaint and Notice of Hearing was issued in Case No. 03-CA-234490, 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 on or before April 11, 2019, and that if the Respondent failed to file an answer, the allegations of the complaint may be deemed to be true.

2. Having not received an answer, on April 25, 2019, the Region sent the Respondent a letter extending the deadline for an answer to May 2, 2019, and advised that if an answer was not received the region may pursue a default judgment in the case.

3. The Respondent did not file an answer nor request an extension of time.

4. On May 22, 2019, 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 May 23, 2019, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until June 6, 2019, 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 September 30, 2019, 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 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" for the delay, deem the complaint's allegations admitted and then may enter an order, essentially by default, against the respondent.

The Board is entitled to summary entry of a judgment enforcing its order because, by failing to file exceptions with the Board challenging the administrative law judge's decision, the Respondent failed to raise any issues before the Board. Section 10(e) of the Act (29 U.S.C. § 160(e)) provides that "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 circumstances." This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting

this requirement, this Court and other circuits have consistently held that a respondent's failure to file any 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). *Accord, e.g., NLRB v. Tri-State Warehouse & Distrib.*, 677 F.2d 31, 31 (6th Cir. 1982); *NLRB v. Int'l Union of Operating Eng'rs, Local 86*, 357 F.2d 841, 846-47 (3d Cir. 1966); *NLRB v. Pugh & Barr, Inc.*, 194 F.2d 217, 218-21 (4th Cir. 1952). No extraordinary circumstances are present 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/ David Habenstreit

David Habenstreit  
Acting Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half St., S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 28th day of October, 2019

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
SPECTRUM MECHANICAL SERVICES LLC	:	03-CA-234490
	:	
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, Spectrum Mechanical Services LLC, its officers, agents, successors, and assigns, enforcing its order dated September 30, 2019, in Case No. 03-CA-234490, reported at 368 NLRB No. 85, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Spectrum Mechanical Services LLC, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith

FOR THE COURT:

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NATIONAL LABOR RELATIONS BOARD

v.

SPECTRUM MECHANICAL SERVICES LLC

**ORDER**

Spectrum Mechanical Services LLC, Buffalo, New York, its officers, agents, successors, and assigns shall

1. Cease and desist from

- (a) Failing and refusing to bargain collectively and in good faith with Journeymen Plumbers, Steamfitters, and Apprentices, U.A. Local #22 of Western New York (the Union) as the limited exclusive collective-bargaining representative of employees in the following unit during the term of the parties' Agreement, effective May 1, 2014, to April 30, 2019, by failing and refusing to continue in effect all of the terms and conditions of the 2014–2019 Agreement:

All employees performing work as set forth in Article III, Sections 3.1 through 3.4 within the geographic area as set forth in Article II of the May 1, 2014 through April 30, 2019 collective-bargaining agreement between the Union and Western New York Association of Plumbing and Mechanical Contractors, Inc.

- (b) 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 in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees during the term of the 2014–2019 Agreement.
- (b) Honor and comply with the terms and conditions of the 2014–2019 Agreement and rescind any and all changes to unit employees' terms and conditions of employment that the Respondent implemented by not applying the Agreement to unit employees.
- (c) Make unit employees whole for any loss of earnings or other benefits suffered as a result of the Respondent's failure, between about July 24,

2018, and April 30, 2019, to abide by and apply the terms of the 2014–2019 Agreement to the unit employees, in the manner set forth in the remedy section of this decision.

- (d) Make all contractually required contributions to the unit employees' fringe-benefit funds that it failed to make between about July 24, 2018, and April 30, 2019, if any, including any additional amounts due the funds, as set forth in the remedy section of this decision.
- (e) Reimburse unit employees for any expenses ensuing from the Respondent's failure to make the required payments to the funds, in the manner set forth in the remedy section of this decision.
- (f) Compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 3, within 21 days of the date the amount of backpay pay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.
- (g) 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. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.
- (h) Within 14 days after service by the Region, post at its facility in Buffalo, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 3, 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 about July 24, 2018.

- (i) Within 21 days after service by the Region, file with the Regional Director for Region 3 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 fail and refuse to bargain collectively and in good faith with Journeymen Plumbers, Steamfitters, and Apprentices, U.A. Local #22 of Western New York (the Union) as the limited exclusive collective-bargaining representative of our employees in the following unit during the term of our 2014–2019 Agreement with the Union by failing and refusing to continue in effect all of the terms and conditions of the 2014–2019 Agreement:

All employees performing work as set forth in Article III, Sections 3.1 through 3.4 within the geographic area as set forth in Article II of the May 1, 2014 through April 30, 2019 collective-bargaining agreement between the Union and Western New York Association of Plumbing and Mechanical Contractors, Inc.

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 in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees during the term of the 2014–2019 Agreement (effective May 1, 2014 through April 30, 2019), and WE WILL honor and comply with the terms and conditions of the 2014–2019 Agreement.

WE WILL rescind any and all changes to unit employees' terms and conditions of employment that were implemented by our not applying the 2014–2019 Agreement to the unit employees.

WE WILL make our unit employees whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful failure, between about July 24, 2018, and April 30, 2019, to abide by and apply the terms of the 2014–2019 Agreement to our unit employees, with interest.

WE WILL make all contractually required contributions to our unit employees’ fringe benefit funds that we failed to make between about July 24, 2018, and April 30, 2019, if any, including any additional amounts due the funds, and WE WILL reimburse our unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

#### SPECTRUM MECHANICAL SERVICES LLC

The Board’s decision can be found at [www.nlr.gov/case/03-CA-234490](http://www.nlr.gov/case/03-CA-234490) 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  
FOR THE SECOND CIRCUIT

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	:	Board Case No.:
SPECTRUM MECHANICAL SERVICES LLC	:	03-CA-234490
	:	
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment 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:

Louis Caruso, Owner  
Spectrum Mechanical Services LLC  
23360 N 61st Dr.  
Glendale, AZ 85310-5748

Richard Hundley  
7537 E. McDonald Drive  
Scottsdale, AZ 85250

/s/ David Habenstreit  
David Habenstreit  
Acting Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half St., S.E.  
Washington, D.C. 20570

Dated at Washington, D.C.  
this 28th day of October, 2019