

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: September 09, 2019

Mr. Daniel Brasil Becker
Mr. Michael Dean Berkheimer
Ms. Linda Dreeben
Mr. Ethan R. Holtz
Mr. William Gerard Mascioli
Ms. Terry A. Morgan
Mr. David Hitoshi Mori
Mr. Dalford Dean Owens Jr.

Re: Case No. 14-1669/12-1787/12-2613/13-2089/13-2491/14-1282, *NLRB v. Park Avenue
Investment Advisor, et al*
Originating Case No. : 7-CA-060921

Dear Counsel,

The Court issued the enclosed Order today in this case. Enclosed please also find a copy of the Board's 09/05/18 petition for adjudication in civil contempt.

Sincerely yours,

s/Bryant L. Crutcher
Case Manager
Direct Dial No. 513-564-7013

Enclosure

Nos. 12-1787, 12-2613; 13-2089; 13-2491; 14-1282; 14-1669

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 09, 2019
DEBORAH S. HUNT, Clerk

NATIONAL LABOR RELATIONS BOARD,)
)
 Petitioner,)
)
 v.)
)
 PARK AVENUE INVESTMENT ADVISOR,)
 LLC; HOTEL MANAGEMENT ADVISORS-)
 TROY, LLC; 5500 MANAGEMENT, LLC;)
 QUANTUM HOTELS, LLC; METROPOLITAN)
 LODGING, LLC; and WICK ROAD HOTEL)
 MANAGEMENT, LLC; as a single employer and)
 alter egos,)
)
 Respondents,)
)
 REMO POLSELLI; HANNA KARCHO,)
)
 Individual Respondents.)

ORDER

Before: SILER, GILMAN, and WHITE, Circuit Judges.

The National Labor Relations Board petitions to adjudicate the respondents in civil contempt for disobeying this court’s July 20, 2018 order. The order incorporated by reference the parties’ stipulation for entry of a consent order, and required the respondents to take certain actions, including making a payment of \$150,000 to the Board. The payments were to be made in installments, with the last payment due on or before August 30, 2018. According to the Board,

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the respondents paid only \$70,000, and owe a remaining balance of \$80,000. A civil contempt proceeding before this court is initiated by issuing an order to show cause.

For good cause shown, it is **ORDERED** that within twenty one (21) days from the date this order is entered, corporate respondents Park Avenue Investment Advisor, LLC; Hotel Management Advisors-Troy LLC; 5500 Management, LLC; Quantum Hotels, LLC; Metropolitan Lodging, LLC; Wick Road Hotel Management, LLC, and individual respondents Remo Poselli and Hanna Karcho shall show cause why they should not be adjudged in civil contempt for disobeying this court's July 20, 2018 order. They shall serve and file answers specifically admitting or denying or meeting by affirmative defense every allegation in the Board's petition. It is further **ORDERED** that the Clerk shall serve the respondents with a copy of the Board's petition and this show-cause order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,	:
	:
Petitioner,	:
	:
v.	: No. 14-1669; 14-1282;
	: 13-2491; 13-2089;
PARK AVENUE INVESTMENT	: 12-2613; 12-1787
ADVISOR, LLC, HOTEL MANAGEMENT	:
ADVISORS-TROY, LLC, 5500	:
MANAGEMENT, LLC, QUANTUM	:
HOTELS, LLC, METROPOLITAN	:
LODGING, LLC, and WICK ROAD	:
HOTEL MANAGEMENT, LLC,	:
a Single-Integrated Enterprise, a Single	:
Employer, and Alter Egos,	:
	:
Respondents,	:
	:
and	:
	:
REMO POLSELLI, and	:
HANNA KARCHO,	:
	:
Individual Respondents	:
	:

**PETITION OF THE NATIONAL LABOR RELATIONS BOARD
FOR ADJUDICATION IN CIVIL CONTEMPT
AND FOR OTHER CIVIL RELIEF**

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

The National Labor Relations Board (the “Board”) respectfully petitions the Court to adjudge the following parties in civil contempt for violating a judgment entered by this Court on July 20, 2018, by failing and refusing to pay the total amount of \$150,000 to the Board: Park Avenue Investment Advisor, LLC; Hotel Management Advisors-Troy, LLC; 5500 Management, LLC; Quantum Hotels, LLC; Metropolitan Lodging, LLC; and, Wick Road Hotel Management, LLC (collectively “Respondent LLCs”); and Individual Respondents Remo Polselli and Hanna Karcho.

In support of its petition, the Board, upon information and belief, alleges as follows:

I. On August 21, 2015, the Board filed a Petition for Adjudication in Civil Contempt and for Other Civil Relief against the aforementioned Respondent LLCs. The petition alleged their failure to comply with judgments issued by this Court on September 10, 2012 (No. 12-1787), June 4, 2013 (No. 12-2613), January 2, 2014 (No. 13-2089), April 9, 2014 (No. 13-2491), June 24, 2014 (14-1282), and September 29, 2014 (14-1669), respectively. (Doc. 11.) The judgments required, among other things, that Respondent LLCs, their officers, agents, successors,

and assigns, remedy violations of the National Labor Relations Act, 29 U.S.C. §§ 151-169, by making whole their employees, two unions (UNITE HERE, Local 24, AFL-CIO, and International Operating Engineers, Local 324), and various employee insurance funds for monetary losses suffered due to those violations.

II. On February 10, 2016, Respondent LLCs filed their answer to the Board's contempt petition. (Doc. 16.)

III. On March 15, 2016, the Board filed its motion requesting that the contempt case be referred to a Special Master for hearing and report. (Doc. 20.) On May 11, 2016, this Court issued its order appointing United States Magistrate Judge Stephanie Dawkins Davis as Special Master. (Doc. 22.) The parties commenced discovery shortly thereafter.

IV. In February 2018, while still engaged in discovery, the parties reached a settlement of the contempt allegations. On February 24, 2018, the Board filed with this Court a Stipulation for Entry of Consent Order, which was signed by the parties, along with their proposed Consent Order. The Board also filed a joint motion, which was signed by the parties, requesting that Judge Stephanie Dawkins Davis

recommend to this Court that it approve the parties' Stipulation for Entry of Consent Order and enter their proposed Consent Order.¹ (Doc. 62.)

V. On March 30, 2018, Judge Davis recommended to this Court that it approve the parties' Stipulation for Entry of Consent Order, as well as their proposed Consent Order. (Doc. 65.)

VI. On July 20, 2018, this Court issued its order approving the parties' Stipulation dated February 24, 2018. (Doc. 67.) In relevant part, the Court ordered Respondent LLCs, along with Individual Respondents Remo Polselli and Hanna Karcho, jointly and severally, to:

- Pay to the Board the total amount of \$150,000, with \$30,000 to be paid to the Board within five days of entry of this Consent Order; and
- Pay to the Board the remaining \$120,000 in six consecutive monthly installment payments on or before the 30th day of each month, commencing March 30, 2018, with the final installment payment to be made on or before August 30, 2018.

(Exhibit A, attached hereto.)

¹ A corrected version of the parties' joint motion was filed by the Board on February 26, 2018. (Doc. 63). Moreover, a corrected version of the parties' proposed consent order was filed by the Board on March 29, 2018. (Doc. 64.)

VII. The July 20, 2018 order has been in full force and effect since its entry and at all materials times Respondent LLCs, Remo Polselli, and Hanna Karcho have had notice and actual knowledge of its terms.

VIII. To date, the Board has received \$70,000 under the July 20, 2018 order. In this regard, Respondent LLCs, Remo Polselli, and Hanna Karcho have remitted the following amounts to the Board on the corresponding dates:

\$30,000 – February 28, 2018

\$20,000 – April 19, 2018

\$20,000 – June 20, 2018.

IX. As of the date of this filing, the Board has not received the \$80,000 still owing under the July 20, 2018 order.

X. By the acts described in Paragraph IX above, Respondent LLCs, Remo Polselli, and Hanna Karcho have, jointly and severally, violated and disobeyed, and continues to violate and disobey this Court's July 20, 2018 order, and accordingly is, and continues to be, in civil contempt of this Court.

PRAYER FOR RELIEF

WHEREFORE, the Board respectfully requests:

I. That this Court enter an order that requires Respondent LLCs, Remo Polselli, and Hanna Karcho to show cause why they should not be adjudged in civil contempt for disobeying and failing and refusing to comply with this Court's July 20, 2018 order, and requiring them to serve and file answers to the allegations of this petition in which it shall admit or deny each allegation of said petition.

II. That following appropriate proceedings, Respondent LLCs, Remo Polselli in his personal capacity, and Hanna Karcho in her personal capacity be adjudged in civil contempt.

III. That upon such adjudication in contempt, this Court enter an order requiring Respondent LLCs, their officers, agents, successors, and assigns, Remo Polselli, and Hanna Karcho to purge themselves of such contempt. Specifically, the Board requests that Respondent LLCs, their officers, agents, successors, and assigns, Remo Polselli, and Hanna Karcho be ordered to:

A. Within fourteen (14) days after entry of this contempt adjudication, pay the remaining \$80,000 to the Board still owing under the July 20, 2018 order, plus interest accruing to the date of payment. Said interest shall be computed at the rate prescribed in *New Horizons*,

283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

C. Within fourteen (14) days of receipt of a written demand for payment of costs and expenses from the Board, pay to the Board all such costs and expenses, including reasonable attorneys' fees calculated at the prevailing market rate in Washington, D.C., that it incurred in the investigation, preparation, presentation, and final disposition of this proceeding. Respondent LLCs, Remo Polselli, and Hanna Karcho, jointly and severally, shall also pay any costs relative to a special master should this Court appoint one. All of said costs, unless agreed to by the parties, shall be fixed by further order of this Court upon submission by the Board of a certified statement of such costs and expenses. Should any dispute arise respecting the Board's submission as to which this Court may determine that a hearing is desirable, this Court, in its discretion, may refer such dispute to a special master, upon such terms as this Court shall determine, for a report and recommendation.

IV. That in order to assure against violations of this contempt adjudication, this Court impose a prospective non-compliance fine of

\$10,000 against Respondent LLCs, Remo Polselli, and Hanna Karcho, jointly and severally, for each violation of this contempt adjudication, and a further fine of \$500 per day for each day this Court finds the violations have continued.

V. That this Court grant such other relief, including, but not limited to, issuance of writs of body attachment, as may be just, reasonable and proper to assure compliance with this contempt adjudication.

Respectfully submitted,

NATIONAL LABOR RELATIONS BOARD

WILLIAM MASCIOLI
Assistant General Counsel
(202) 273-3746
William.Mascioli@nlrb.gov

/s/ Dean Owens
Trial Attorney
(202) 273-2934
dean.owens@nlrb.gov.

Pia Winston
Trial Attorney
(202) 273-0111
pia.winston@nlrb.gov

David H. Mori
Supervisory Attorney
202-273-3743
david.mori@nlrb.gov

Contempt, Compliance, &
Special Litigation Branch
1015 Half Street, S.E., Fourth Floor
Washington, D.C. 20003

Dated at Washington, D.C.,
this 5th day of September, 2018.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court's CM/ECF system this 5th day of September 2018, which will send an electronic notice to all registered parties and counsel. All parties are represented by counsel and may access the filing through the Court's CM/ECF system. On this date, I also served a copy of the aforementioned document to Attorney Ethan R. Holtz, Esq. by email at eholtz@jaffelaw.com.

s/ Dean Owens

Dalford D. Owens Jr., Trial Attorney
National Labor Relations Board
Contempt, Compliance, & Special Litigation Branch
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
dean.owens@nlrb.gov
T: (202) 273-2934
F: (202) 273-4244

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
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100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: July 20, 2018

Mr. Daniel Brasil Becker
National Labor Relations Board
Appellate and Supreme Court Litigation Branch
1015 Half Street, S.E.
4044A
Washington, DC 20570

Mr. Michael Dean Berkheimer
National Labor Relations Board
Appellate and Supreme Court Litigation Branch
1015 Half Street, S.E.
Washington, DC 20570

Ms. Linda Dreeben
National Labor Relations Board
Appellate and Supreme Court Litigation Branch
1015 Half Street, S.E.
Washington, DC 20570

Mr. Ethan R. Holtz
Jaffe, Raitt, Heuer & Weiss
27777 Franklin Road
Suite 2500
Southfield, MI 48034

Mr. William Gerard Mascioli
National Labor Relations Board
Appellate and Supreme Court Litigation Branch
1015 Half Street, S.E.
Washington, DC 20570

Ms. Terry A. Morgan
National Labor Relations Board

EXHIBIT A

Region Seven
477 Michigan Avenue
Suite 300
Detroit, MI 48226

Mr. David Hitoshi Mori
National Labor Relations Board
Appellate and Supreme Court Litigation Branch
1015 Half Street, S.E.
4011
Washington, DC 20570

Mr. Dalford Dean Owens Jr.
National Labor Relations Board
1099 14th Street, N.W.
10700
Washington, DC 20570

Re: Case No. 14-1669/12-1787/12-2613/13-2089/13-2491/14-1282, *NLRB v. Park Avenue
Investment Advisor, et al*
Originating Case No. : 7-CA-060921

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Bryant L. Crutcher
Case Manager
Direct Dial No. 513-564-7013

Enclosure

Nos. 12-1787; 12-2613; 13-2089; 13-2491; 14-1282; 14-1669

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,)

Petitioner,)

v.)

PARK AVENUE INVESTMENT ADVISOR,)

LLC; HOTEL MANAGEMENT ADVISORS-)

TROY, LLC; 5500 MANAGEMENT, LLC;)

QUANTUM HOTELS, LLC; METROPOLITAN)

LODGING, LLC; and WICK ROAD HOTEL)

MANAGEMENT, LLC, as a single employer and)

alter egos,)

Respondents,)

REMO POLSELLI; HANNA KARCHO,)

Individual Respondents.)

ORDER

Before: SILER, GILMAN, and WHITE, Circuit Judges.

The National Labor Relations Board petitioned to have the respondents and individual respondents adjudicated in civil contempt for disobeying the judgments of this court entered on September 10, 2012 (No. 12-1787); June 4, 2013 (No. 12-2613); January 2, 2014 (No. 13-2089); April 9, 2014 (No. 13-2491); June 24, 2014 (No. 14-1282); and September 29, 2014 (No. 14-1669). A show-cause order was entered on January 22, 2016, directing the respondents and individual respondents to answer the Board’s allegations. A timely answer was filed, asking that

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the Board's petition be denied and that the individual respondents be dismissed as parties. The Board moved to appoint a Special Master to hold hearings and make recommendations. *See Fed. R. App. P. 48(a)*. We granted the Board's motion on May 11, 2016.

Following a period of discovery overseen by the Special Master, the parties reached a compromise and agreed to a February 24, 2018 Stipulation for Entry of Consent Order and a proposed Consent Order. The Special Master found that the Stipulation and Consent Order fully resolved all issues raised by the Board's petition for an adjudication in civil contempt, and recommends that they be approved. Upon review of the materials submitted,

1. It is **ORDERED** that the parties' Stipulation dated February 24, 2018, is incorporated herein by reference, and the same is **APPROVED** and shall be filed in Case Nos. 12-1787, 12-2613, 13-2089, 13-2491, 14-1282, and 14-1669.

2. It is further **ORDERED and ADJUDGED** that Respondents Park Avenue Investment Advisor, LLC, Hotel Management Advisors-Troy, LLC, 5500 Management, LLC, Quantum Hotels, LLC, Metropolitan Lodging, LLC, and Wick Road Hotel Management, LLC, alter egos, a single employer, and a single-integrated enterprise, their officers, agents, successors, and assigns, and Individual Respondents Remo Polselli, and Hanna Karcho, are jointly and severally liable for taking the following actions ordered herein, and they shall:

A. Fully comply with this Consent Order and the judgments entered by this Court on September 10, 2012 (No. 12-1787), June 4, 2013 (No. 12-2613), January 2, 2014 (No. 13-2089), April 9, 2014 (No. 13-2491), June 24, 2014 (No. 14-1282), and September 29, 2014 (No. 14-1669), as modified by this Order, and not in any way, by action or inaction, engage in, induce, encourage, permit or condone any violation of said Consent Order or judgments; and in any like

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or related manner refrain from interfering with, restraining, or coercing employees in the rights guaranteed them by Section 7 of the National Labor Relations Act, 29 U.S.C. § 157.

B. Pay to the Board the total amount of \$150,000.00, in accordance with the payment schedule set forth in paragraph 2.C, for the purposes of satisfying the judgment debts described in the stipulation.

C. If they have not done so already, within five days of entry of this Consent Order, remit \$30,000.00 to the Board, and thereafter remit six (6) additional payments in the amount of \$20,000.00 on or before the 30th day of each month, commencing March 30, 2018, with the final installment payment to be made on or before August 30, 2018.

D. Upon payment of the foregoing amounts, the Judgments referenced herein shall be deemed fully satisfied.

3. This Order shall not preclude the Board from requesting such other remedies as it deems appropriate to remedy any future contumacious conduct.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk