



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

May 13, 2020

Clerk of Court
United States Court of Appeals
for the Eleventh Circuit
56 Forsyth Street, NW
Atlanta, GA 30303-3147

*Re: NLRB v. Coral Reef Operating Systems,
LLC d/b/a Coral Reef Nursing and
Rehabilitation Center, LLC, Board Case No.
12-CA-238299*

Dear Clerk:

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 also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me.

Very truly yours,

/s/ David Habenstreit

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

cc: Service List

SERVICE LIST

RESPONDENT:

Ingrid Perdomo, Administrator
Coral Reef Nursing &
Rehabilitation Center LLC
9869 SW 152nd St
Miami, FL 33157-1703

Phone: (305) 255-3220

Fax: (305) 255-1778

Email: iperdomo@coralreefnursing.com

RESPONDENT:

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Rehabilitation Center LLC
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Fax: (305) 255-1778

Email: jhorna@coralreefnursing.com

CHARGING PARTY:

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Workers East
2881 Corporate Way
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Mobile: (786) 417-3252

Email: denisea@1199.org

REGIONAL DIRECTOR:

David Cohen, Regional Director
National Labor Relations Board
201 East Kennedy Blvd, Ste 530
Tampa, FL 33602-5824

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:
	:
Petitioner	: No.
v.	:
	: Board Case No.
CORAL REEF OPERATING SYSTEMS, LLC D/B/A CORAL REEF NURSING AND REHABILITATION CENTER, LLC	: 12-CA-238299
	:
	:
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 Eleventh 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 March 25, 2020 Order against Coral Reef Operating Systems, LLC d/b/a Coral Reef Nursing and Rehabilitation Center, LLC (“Respondent”). The Board is entitled to summary enforcement of its Order in full because Respondent did not file with the Board exceptions to the administrative law judge’s decision, nor did Respondent object to exceptions filed by the General Counsel. 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 Florida. The Board's final order issued on March 25, 2020, and is reported at 369 NLRB No. 47.

B. Proceedings Before the Board

1. On May 24, 2019, a complaint and notice of hearing issued in Case No. 12-CA-238299, charging Respondent with certain violations of the Act.

Respondent filed an answer and the case was tried on August 20, 2019.

2. Following the hearing before Administrative Law Judge Donna N. Dawson, the judge issued a decision on November 1, 2019, finding that Respondent had violated the Act and recommending that an order be issued requiring that the Respondent cease and desist from the unfair labor practices found, and take certain affirmative action to remedy those unfair labor practices, including posting an appropriate notice.

3. On November 1, 2019, the Board issued an order transferring the proceeding to the Board and notifying the Respondent that the Board must receive exceptions to the administrative law judge's decision by November 29, 2019.

4. Section 10(c) of the Act (29 U.S.C. § 160(c)) provides that "if no exceptions are filed [with the Board] within twenty days after service [of the

administrative law judge's decision] upon the parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed." Section 102.46 and 102.48 of the Board's Rules and Regulations (29 C.F.R. 102.46 and 102.48) implement this provision and provide that, in the event no exceptions are filed within 28 days, the decision of the administrative law judge shall be adopted by the Board and all objections and exceptions thereto are waived for all purposes.

5. Respondent did not file exceptions with the Board.

6. The General Counsel filed exceptions.¹

7. Respondent did not file objections to the General Counsel's exceptions.

8. In the absence of any exceptions to the administrative law judge's decision being filed by respondent and in the absence of any objections to the General Counsel's exceptions being filed with the Board, on March 25, 2020, the Board issued an Order adopting the administrative law judge's findings and conclusions as modified, and directing the Respondent to take the action set forth in the Order.

C. The Board Is Entitled to Summary Enforcement of Its Order

The Board is entitled to summary entry of a judgment enforcing its order

¹ The General Counsel's exceptions requested amending the remedy section of the judge's decision and modifying the judge's recommended Order to supply several standard remedies the judge omitted.

because, by failing to file exceptions with the Board challenging the administrative law judge's decision, and by failing to file objections with the Board to the General Counsel's limited exceptions, 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. *Purolator Armored, Inc. v. NLRB*, 764 F.2d 1423, 1431-32 (11th Cir. 1985). *Accord, e.g., NLRB v. Mooney Aircraft*, 310 F.2d 565, 565 (5th Cir. 1962); *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 take jurisdiction of the proceedings, serve notice of the filing of this application upon

Respondent, and enter judgment summarily enforcing the Board's order in full. A proposed judgment is attached.

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

Dated in Washington, D.C.
this 13th day of May 2020

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:
	:
Petitioner	: No.
v.	:
	: Board Case No.:
CORAL REEF OPERATING SYSTEMS, LLC D/B/A CORAL REEF NURSING AND REHABILITATION CENTER, LLC	: 12-CA-238299
	:
	:
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 Coral Reef Operating Systems, LLC d/b/a Coral Reef Nursing and Rehabilitation Center, LLC, its officers, agents, successors, and assigns, enforcing its order dated March 25, 2020, in Case No. 12-CA-238299, reported at 369 NLRB No. 47, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Coral Reef Operating Systems, LLC d/b/a Coral Reef Nursing and Rehabilitation Center, LLC, its officers, agents, successors, and assigns, shall abide by said order (See attached Order and Appendix).

Mandate shall issue forthwith.

ENTERED:

NATIONAL LABOR RELATIONS BOARD

v.

CORAL REEF OPERATING SYSTEMS, LLC D/B/A
CORAL REEF NURSING AND REHABILITATION CENTER, LLC

ORDER

Coral Reef Operating Systems, LLC d/b/a Coral Reef Nursing and Rehabilitation Center, LLC, Miami, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Failing and refusing to execute a collective-bargaining agreement the Respondent reached with the Union on January 9, 2019.
 - (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) Execute and adhere to the collective-bargaining agreement reached with the Union on January 9, 2019, and give retroactive effect to the terms of that agreement to March 1, 2017, in accordance with its terms, covering the Respondent's employees in the following appropriate bargaining unit:

All full-time and regular part-time CNAs, laundry employees, maintenance employees, dietary employees and housekeeping employees; excluding all registered nurses, licensed practical nurses, confidential employees, office clerical employees, guards and supervisors as defined by the Act.
 - (b) Make unit employees whole for any loss of earnings and other benefits suffered as a result of its unlawful conduct, in the manner set forth in the remedy section of the judge's decision as amended in this decision.
 - (c) Compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 12, 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.

- (d) 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.
- (e) Within 14 days after service by the Region, post at its facility in Miami, Florida, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 12, 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, the 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. In the event that, during the pendency of these proceedings, 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 January 9, 2019.
- (f) Within 21 days after service by the Region, file with the Regional Director for Region 12 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 execute the collective-bargaining agreement we reached with the Union on January 9, 2019.

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 execute and adhere to the collective-bargaining agreement we reached with the Union on January 9, 2019, giving retroactive effect to the terms of that agreement to March 1, 2017, in accordance with its terms, covering our employees in the following appropriate bargaining unit:

All full-time and regular part-time CNAs, laundry employees, maintenance employees, dietary employees and housekeeping employees; excluding all registered nurses, licensed practical nurses, confidential employees, office clerical employees, guards and supervisors as defined by the Act.

WE WILL make our unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, plus interest.

WE WILL compensate 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 12, 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.

**CORAL REEF OPERATING SYSTEMS, LLC D/B/A CORAL
REEF NURSING & REHABILITATION CENTER, LLC**

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-238299 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 ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
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 Petitioner : No.
 v. :
 : Board Case No.:
 CORAL REEF OPERATING SYSTEMS, LLC D/B/A CORAL : 12-CA-238299
 REEF NURSING AND REHABILITATION CENTER, LLC :
 :
 Respondent :

CERTIFICATE OF INTERESTED PERSONS

The Board certifies that the following persons have an interest in the outcome of this case, as defined by 11th Cir. R. 26.1-1.

Ring, John F.	Chairman, NLRB
Kaplan, Marvin E.	Member, NLRB
Emanuel, William J.	Member, NLRB
Robb, Peter	General Counsel, NLRB
Habenstreit, David	Assistant General Counsel, NLRB
David Cohen	Regional Director, Region 12, NLRB
Chastity Pabon-Lockley	Compliance Officer, Region 12, NLRB
Caroline Leonard	Counsel, Region 12, NLRB
Ingrid Perdomo	Administrator, Coral Reef Nursing
Joyce Horna	Asst. Admin., Coral Reef Nursing
Denise Allegretti	Director, 1199/SEIU United Healthcare Workers East

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

Dated at Washington, D.C.
this 13th day of May 2020

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
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 Petitioner : No.
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 REEF NURSING AND REHABILITATION CENTER, LLC :
 :
 Respondent :

CERTIFICATE OF SERVICE

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

Ingrid Perdomo, Administrator
Coral Reef Nursing &
Rehabilitation Center LLC
9869 SW 152nd St
Miami, FL 33157-1703

Joyce Horna
Coral Reef Nursing &
Rehabilitation Center LLC
9869 SW 152nd St
Miami, FL 33157-1703

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

Dated at Washington, D.C.
this 13th day of May 2020