

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 20-1129

Caption [use short title]

Motion for: Default Judgment

Set forth below precise, complete statement of relief sought:
Petitioner, National Labor Relations Board, respectfully
requests an entry of default judgment against Respondent,
Atlanticare Management LLC d/b/a Putnam Ridge Nursing
Home, enforcing the Board's unfair-labor-practice order.

NLRB v. Atlanticare Management LLC

MOVING PARTY: National Labor Relations Board

OPPOSING PARTY: Atlanticare Management LLC

- Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: David Habenstreit

OPPOSING ATTORNEY: David F. Jasinski

[name of attorney, with firm, address, phone number and e-mail]

National Labor Relations Board
1015 Half Street SE, Washington DC 20570
(202) 273-2960; appellatecourt@nrlrb.gov

Jasinski PC
60 Park Place, 8th Floor, Newark NJ 07102
(973) 824-9700; djasinski@jplawfirm.com

Court- Judge/ Agency appealed from: National Labor Relations Board

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Yes No
Has this relief been previously sought in this court? Yes No
Requested return date and explanation of emergency:

Opposing counsel's position on motion:
Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney:

/s/ David Habenstreit Date: 06/08/2020 Service by: CM/ECF Other [Attach proof of service]

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

NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner	)	No. 20-1129
	)	
and	)	Board Case Nos.
	)	02-CA-177329 et al.
1199 SEIU UNITED HEALTHCARE	)	
WORKERS EAST	)	
	)	
Intervenor	)	
	)	
v.	)	
	)	
ATLANTICARE MANAGEMENT LLC d/b/a	)	
PUTNAM RIDGE NURSING HOME	)	
	)	
Respondent	)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD  
FOR AN ENTRY OF DEFAULT JUDGMENT AGAINST THE EMPLOYER**

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 Assistant General Counsel, respectfully moves the Court for an entry of default judgment against respondent Atlanticare Management LLC d/b/a Putnam Ridge Nursing Home (“the Employer”) based on the latter’s failure to file a timely answer to the Board’s application for enforcement or to file a timely brief contesting the merits of the underlying Board order. In support of its motion, the Board shows as follows:

1. On February 11, 2020, the Board issued a Decision and Order against the Employer, reported at 369 NLRB No. 28. The Board found that the Employer committed numerous unfair labor practices in violation of Section 8(a)(5), (3), and (1) of the National Labor Relations Act, as amended, 29 U.S.C. §§ 151 et seq., (“the Act”). 29 U.S.C. § 158(a)(5), (3), (1). The Board’s Order requires the Employer to remedy those unfair labor practices.

2. On April 2, 2020, the Board filed with the Court an application for enforcement of its Order in accordance with Section 10(e) of the Act, 29 U.S.C. § 160(e), and Federal Rule of Appellate Procedure 15(b), Fed. R. App. P. 15(b). Counsel for the Employer, David F. Jasinski, filed an acknowledgment and notice of appearance on behalf of the respondent. The Court granted a motion to intervene in support of the Board filed by the charging party below, 1199 SEIU United Healthcare Workers East (“the Union”).

3. Pursuant to Federal Rule of Appellate Procedure 15(b)(2), a respondent is required to serve an answer to an application for enforcement “[w]ithin 21 days after the application for enforcement is filed.” Fed. R. App. P. 15(b)(2). If a respondent fails to answer in time, “the court will enter judgment for the relief requested.” *Id.* The Employer’s answer in the present case was due on April 23, 2020. The Employer has failed to file an answer to the Board’s application for enforcement.

4. On April 21, 2020, the Board filed the certified list of the contents of the agency record with the Court.

5. Pursuant to Local Rule 31.2(a)(1)(A), a party is required to notify the Clerk in writing of the deadline it requests for its opening brief “[w]ithin 14 days after . . . the date the record is filed in [Fed. R. App. P. 15] proceedings.” 2d Cir. Local R. 31.2(a)(1)(A).<sup>1</sup> If a party fails to submit a scheduling request, “the deadline for its brief is 40 days after [the date the record is filed].” *Id.* The Employer failed to submit a scheduling request in the present case and its opening brief was therefore due on June 2, 2020. The Employer has failed to file an opening brief or to move for an extension of time to file an opening brief.

6. Accordingly, the Employer is in default of its obligations to file an answer to the Board’s application for enforcement and to file an opening brief contesting the merits of the Board’s Decision and Order. The Employer’s failure to file either document entitles the Board to a judgment enforcing its Order. *See, e.g., NLRB v. 15th Ave. Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992) (granting motion for default judgment based on failure to file timely answer).

7. A proposed judgment enforcing the Board’s Order is attached.

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<sup>1</sup> In cases involving review or enforcement of a Board order, the party adverse to the Board “proceeds first on briefing” regardless of whether the case was initiated by a Board application for enforcement. *See* Fed. R. App. P. 15.1.

WHEREFORE, the Board respectfully requests that the Court enter a judgment enforcing the Board's Order.

Respectfully submitted,

/s/ David Habenstreit

David Habenstreit  
Assistant General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570  
(202) 273-2960

Dated at Washington, D.C.  
this 8th day of June, 2020

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

NATIONAL LABOR RELATIONS BOARD	)	
	)	
	)	Petitioner
and	)	
	)	No. 20-1129
1199 SEIU UNITED HEALTHCARE	)	
WORKERS EAST	)	
	)	Board Case Nos.
	)	02-CA-177329 et al.
	)	
v.	)	
	)	
ATLANTICARE MANAGEMENT LLC d/b/a	)	
PUTNAM RIDGE NURSING HOME	)	
	)	
	)	Respondent

**JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD**

Before:

This cause was submitted upon the motion of the National Labor Relations Board for entry of a default judgment enforcing its Order against Respondent Atlanticare Management LLC d/b/a Putnam Ridge Nursing Home, its officers, agents, successors, and assigns, dated February 11, 2020, in Case Nos. 02-CA-177329, 02-CA-193189, 02-CA-198370, 02-CA-206253, and 02-CA-210245, reported at 369 NLRB No. 28, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Second Circuit that that the Respondent, Atlanticare Management LLC d/b/a Putnam Ridge Nursing Home, its officers, agents, successors, and assigns, shall abide by and perform the directions of the Board set forth in its Order. (See attached Order and Appendix.)

FOR THE COURT:

Circuit Judge

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

ATLANTICARE MANAGEMENT LLC  
D/B/A PUTNAM RIDGE NURSING HOME

**ORDER**

Respondent, Atlanticare Management LLC d/b/a Putnam Ridge Nursing Home, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Discharging, reducing the merit wage increases provided to, or otherwise discriminating against employees for supporting 1199 SEIU United Healthcare Workers East (the Union) or any other labor organization.
  - (b) Changing the terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain.
  - (c) Failing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Respondent's unit employees by refusing to meet with the Union at reasonable times to engage in collective bargaining.
  - (d) Refusing to bargain collectively with the Union by failing and refusing to furnish, and failing to furnish in a timely manner, requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.
  - (e) Promulgating and maintaining an overly broad rule that prohibits employees from engaging in union business on company property or during work hours.
  - (f) 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) Within 14 days from the date of this Order, offer Catherine Thomas full reinstatement to her former job or, if that job no longer exists, to a

substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

- (b) Make Catherine Thomas whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of the Board's decision reported at 369 NLRB No. 28.
- (c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter, notify the employee in writing that this has been done and that the discharge will not be used against her in any way.
- (d) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:
  - Included: All full-time and regular part-time employees, including LPNs, CNAs, receptionists, unit secretaries, dietary aides, housekeeping aides, rehab aides, rehab techs, restorative aides, laundry aides, maintenance workers, activities leads/aides, and hospitality aides, including those per diem employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election
  - Excluded: All other employees, all employees in the therapy department, RNs, cooks, professional employees, office clerical employees, guards and supervisors as defined in the Act
- (e) Rescind the reduction of unit employees' annual merit wage increases.
- (f) Make affected employees whole for any loss of earnings and other benefits suffered as a result of the unilateral and discriminatory reduction of their annual merit wage increases, in the manner set forth in the remedy section of the Board's decision reported at 369 NLRB No. 28.
- (g) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 2, 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.
- (h) Furnish to the Union in a timely manner the information requested by the Union in paragraphs 1, 2(i), 3, 6, 7, 8, 9, 10, 12, and 17(b)-(k) of its

January 6, 2016 information request and in its April 19, 2016 information request.

- (i) Rescind the memorandum issued on April 15, 2016, which prohibits employees from engaging in union business on company property or during work hours.
- (j) 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.
- (k) Within 14 days after service by the Region, post at its Brewster, New York facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 2, 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 December 4, 2015.
- (l) Within 21 days after service by the Region, file with the Regional Director for Region 2 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.

IT IS FURTHER ORDERED that the certification of the Union issued by the Board on December 14, 2015, is extended for a period of 1 year commencing from the date on which the Respondent begins to bargain in good faith with the Union.

## 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 discharge you, reduce your merit wage increases, or otherwise discriminate against you for supporting 1199 SEIU United Healthcare Workers East (the Union) or any other labor organization.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT fail to bargain in good faith with the Union as the exclusive collective-bargaining representative of our unit employees by refusing to meet with the Union at reasonable times to engage in collective bargaining.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish or failing to furnish in a timely manner requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT promulgate and maintain an overly broad rule that prohibits you from engaging in union business on company property or during work hours.

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, within 14 days from the date of the Board's Order, offer Catherine Thomas full reinstatement to her former job or, if that job no longer exists, to a

substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Catherine Thomas whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest, and WE WILL also make her whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Catherine Thomas, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

Included: All full-time and regular part-time employees, including LPNs, CNAs, receptionists, unit secretaries, dietary aides, housekeeping aides, rehab aides, rehab techs, restorative aides, laundry aides, maintenance workers, activities leads/aides, and hospitality aides, including those per diem employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election

Excluded: All other employees, all employees in the therapy department, RNs, cooks, professional employees, office clerical employees, guards and supervisors as defined in the Act

WE WILL rescind the reduction of your annual merit wage increases.

WE WILL make affected employees whole for any loss of earnings and other benefits suffered as a result of the unilateral and discriminatory reduction of their annual merit wage increases, with interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 2, 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.

WE WILL furnish to the Union in a timely manner the information requested by the Union in paragraphs 1, 2(i), 3, 6, 7, 8, 9, 10, 12, and 17(b)-(k) of its January 6, 2016 information request and in its April 19, 2016 information request.

WE WILL rescind the memorandum issued on April 15, 2016, which prohibits you from engaging in union business on company property or during work hours.

ATLANTICARE MANAGEMENT LLC D/B/A PUTNAM RIDGE NURSING HOME

The Board's decision can be found at [www.nlr.gov/case/02-CA-177329](http://www.nlr.gov/case/02-CA-177329) 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.





