



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

June 22, 2020

Deborah S. Hunt
Clerk, United States Court of
Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202-3988

Re: *NLRB v. Edward Hotel Michigan, LLC d/b/a Edward Hotel & Convention Center d/b/a Edward Hotel, Edward Hotel Detroit, LLC, Edward Hotel Management, LLC, and Edward Hotel Holdings, Inc.*, No. 07-CA-240810

Dear Ms. Hunt:

I am enclosing the Board's application for summary entry of a judgment enforcing the Board's order in this case, and a copy of a proposed judgment.

Please serve a copy of the application on Respondent, whose addresses appear on the service list. Additional copies are provided for service on the Respondent. 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

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RESPONDENT:

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Mark Smith, Resident Agent
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CHARGING PARTY:

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REGIONAL DIRECTOR:

Terry A. Morgan, Rgnl. Dir.
National Labor Relations Board
477 Michigan Ave., Rm. 05-200
Detroit, MI 48226-2569

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	
v.	:	
	:	No.
EDWARD HOTEL MICHIGAN, LLC D/B/A	:	
EDWARD HOTEL & CONVENTION CENTER D/B/A	:	Board Case No.:
EDWARD HOTEL, EDWARD HOTEL DETROIT, LLC,	:	07-CA-240810
EDWARD HOTEL MANAGEMENT, LLC, AND	:	
EDWARD HOTEL HOLDINGS, INC.	:	
	:	
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 Sixth Circuit:

The National Labor Relations 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 Edward Hotel Michigan, LLC d/b/a Edward Hotel & Convention Center d/b/a Edward Hotel, Edward Hotel Detroit, LLC, Edward Hotel Management, LLC, and Edward Hotel Holdings, Inc. (“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 Michigan. The Board's final order issued on May 19, 2020, and is reported at 369 NLRB No. 86.

B. Proceedings Before the Board

1. On July 30, 2019, the Regional Director for Region Seven issued a (amended?) Complaint and Notice of Hearing in Case No. 07-CA-240810, 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 by August 13, 2019, and that if the Respondent failed to file an answer, the Board may find, pursuant to a motion for default judgment, that the allegations in the amended complaint are true.

2. Having not received an answer, counsel for the General Counsel, on August 13, 2019, sent Respondent a letter advising that if no answer was received by August 22, 2019, a Motion for Default Judgment would be filed with the Board.

3. On August 23, 2019, counsel for the General Counsel filed with the Board a Motion for Default Judgment based upon the Respondent's failure to file an answer to the complaint.

4. By order dated August 28, 2019, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until September 11, 2019, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

5. On September 11, 2019, the Respondents filed a response opposing the Board's Notice to Show Cause. The General Counsel filed a reply noting that the response did not include an answer to the complaint allegations, it did not refute the allegations in the complaint, and it did not request an extension to file an answer under Section 102.22 of the Board's Rules and Regulations.

6. Respondent did not file a clarification or an amended response. The allegations in the Motion for Default Judgment remained undisputed.

7. The Board, on May 19, 2020, issued its Decision and Order, granting the Motion for Default Judgment in the absence of good cause being shown for Respondent's failure to file a timely answer, and entering 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 appropriate 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,"

deem the complaint's allegations admitted, and then may enter an order, essentially by default, against the respondent.

It is settled that the Board is entitled to have that default judgment summarily enforced. Under Section 10(e) of the Act (29 U.S.C. § 160(e)), no objection that has not been urged before the Board shall be considered by a court of appeals "unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting that requirement, courts have consistently held that a respondent's failure to assert a defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See e.g., NLRB v. Mays Printing Co.*, 452 F.App'x 593 (6th Cir. 2009). *See also; Mt. Clemens Gen. Hosp. v. NLRB*, 328 F.3d 837, 843 (6th Cir. 2003); *Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973); *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984). No such circumstances have been alleged or shown 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
Assistant General Counsel
National Labor Relations Board
1015 Half St., S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 22nd day of June, 2020

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	
v.	:	
	:	No.
EDWARD HOTEL MICHIGAN, LLC D/B/A	:	
EDWARD HOTEL & CONVENTION CENTER D/B/A	:	Board Case No.:
EDWARD HOTEL, EDWARD HOTEL DETROIT, LLC,	:	07-CA-240810
EDWARD HOTEL MANAGEMENT, LLC, AND	:	
EDWARD HOTEL HOLDINGS, INC.	:	
	:	
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, Edward Hotel Michigan, LLC d/b/a Edward Hotel & Convention Center d/b/a Edward Hotel, Edward Hotel Detroit, LLC, Edward Hotel Management, LLC, and Edward Hotel Holdings, Inc., its officers, agents, successors, and assigns, enforcing its order dated May 19, 2020, in Case No. 07-CA-240810, reported at 369 NLRB No. 86, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Edward Hotel Michigan, LLC d/b/a Edward Hotel & Convention Center d/b/a Edward Hotel, Edward Hotel Detroit, LLC, Edward Hotel Management, LLC, and Edward Hotel Holdings, Inc., its officers, agents, successors, and assigns, shall abide by said order (See attached Order and Appendix).

ENTERED BY ORDER OF THE COURT

Clerk

NATIONAL LABOR RELATIONS BOARD

v.

EDWARD HOTEL MICHIGAN, LLC D/B/A EDWARD HOTEL &
CONVENTION CENTER D/B/A EDWARD HOTEL, EDWARD HOTEL
DETROIT, LLC, EDWARD HOTEL MANAGEMENT, LLC,
AND EDWARD HOTEL HOLDINGS, INC.

ORDER

Edward Hotel Michigan, LLC d/b/a Edward Hotel & Convention Center d/b/a Edward Hotel, Edward Hotel Detroit, LLC, Edward Hotel Management, LLC, and Edward Hotel Holdings, Inc., Dearborn, Michigan, its officers, agents, successors, and assigns shall:

1. Cease and desist from

- (a) Refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the following unit, by failing and refusing to bargain over the effects of its decision to close the Dearborn facility:

All full-time and regular part-time assistant chief engineers—energy managers, shift engineers, skilled maintenance employees, general maintenance employees, general maintenance assistants employed by Respondents at their Dearborn Michigan facility; but excluding professional employees and guards and supervisors as defined by the Act.

- (b) In any like or related manner refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Upon request, bargain collectively and in good faith with the Union with respect to the effects of its decision to close the Dearborn facility, including its permanent layoffs of unit employees.
- (b) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

- (c) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondents' authorized representative, copies of the attached notice marked "Appendix" to the Union and to the skilled maintenance employees, general maintenance employees, and general maintenance assistant employees in the unit who were employed by the Respondents at any time since December 14, 2018, and to the assistant chief engineers, energy managers, and shift engineer employees in the unit who were employed by the Respondents any time since January 9, 2019.
- (d) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

**MAILED 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 refuse to meet and bargain with Local 324, International Union of Operating Engineers, AFL–CIO (the Union), over the effects of our decision to close the Dearborn facility, as the designated Section 9(a) collective-bargaining representative for the following unit employees:

All full-time and regular part-time assistant chief engineers – energy managers, shift engineers, skilled maintenance employees, general maintenance employees, general maintenance assistants employed by Respondents at their Dearborn Michigan facility; but excluding professional employees and guards and supervisors as defined by the Act.

WE WILL, upon request, bargain collectively and in good faith with the Union with respect to the effects of our decision to close the Dearborn facility, including the permanent layoffs of unit employees.

WE WILL pay to the unit employees their normal wages for the period set forth in the Decision and Order of the National Labor Relations Board, with interest.

EDWARD HOTEL MICHIGAN, LLC D/B/A EDWARD HOTEL & CONVENTION
CENTER D/B/A EDWARD HOTEL, EDWARD HOTEL DETROIT, LLC, EDWARD
HOTEL MANAGEMENT, LLC, EDWARD HOTEL HOLDINGS, INC.

The Board's decision can be found at www.nlrb.gov/case/07-CA-2408104 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 SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	
v.	:	
	:	No.
EDWARD HOTEL MICHIGAN, LLC D/B/A	:	
EDWARD HOTEL & CONVENTION CENTER D/B/A	:	Board Case No.:
EDWARD HOTEL, EDWARD HOTEL DETROIT, LLC,	:	07-CA-240810
EDWARD HOTEL MANAGEMENT, LLC, AND	:	
EDWARD HOTEL HOLDINGS, INC.	:	
	:	
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:

Mark Smith, Resident Agent
30800 Telegraph Rd., Ste 2800
Bingham Farms, MI 48025

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Dearborn, MI 48126

/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 22nd day of June, 2020