



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

August 31, 2020

Clerk, United States Court of
Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

*Re: NLRB v. Silver Healthcare Center, a
subsidiary of MIMA Health Management
Corp. d/b/a MIMA Healthcare, Board Case
No. 04-CA-252062*

Dear Clerk:

I am enclosing the Board's application for summary entry of a judgment enforcing the Board's order in the subject 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 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 Street, S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

RESPONDENT:

Marshall Klahr, HR Representative
Silver Healthcare Center
1417 Brace Rd.
Cherry Hill, NJ 08034

Phone: (856) 795-3131
Fax: (856) 616-7328
Email: mklahr@mimahealth.com

CHARGING PARTY:

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National Union of Hospital and Health
Care Employees District 1199C
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NLRB REGIONAL DIRECTOR:

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RESPONDENT COIUNSEL:

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
SILVER HEALTHCARE CENTER, A SUBSIDIARY	:	Board Case No.:
OF MIMA HEALTH MANAGEMENT CORP.	:	04-CA-252062
D/B/A MIMA HEALTHCARE	:	
	:	
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 Third 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 Silver Healthcare Center, a subsidiary of MIMA Health Management Corp. d/b/a MIMA Healthcare (Respondent). The Board is entitled to summary enforcement of its order because Respondent did not respond to the Board’s Notice to Show Cause 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 Jersey. The Board's final order issued on July 29, 2020, and is reported at 369 NLRB No. 144.

B. Proceedings Before the Board

1. On April 16, 2020, the General Counsel issued a complaint and notice of hearing in Case No. 04-CA-252062, 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 April 30, 2020, 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 Complaint are true..

2. Having not received an answer, on May 5, 2020, the regional attorney sent the Respondent a letter extending the time to file an answer and advising that if no answer was received by May 12, 2020, the Regional Office would recommend that a Motion for Default Judgment be filed with the Board.

3. Respondent did not file an answer or request an extension of time to file an answer.

4. Consequently, on June 9, 2020, 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.

5. By order dated June 11, 2020, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until June 25, 2020, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

6. Respondent did not file a response. The allegations in the motion were therefore undisputed.

7. On July 29, 2020, the Board 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 an 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. No cause for Respondent's failure to file an answer was alleged or shown here.

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 any defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984). *See also Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973). 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 Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 31st day of August 2020

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
SILVER HEALTHCARE CENTER, A SUBSIDIARY	:	Board Case No.:
OF MIMA HEALTH MANAGEMENT CORP.	:	04-CA-252062
D/B/A MIMA HEALTHCARE	:	
	:	
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, Silver Healthcare Center, a subsidiary of MIMA Health Management Corp. d/b/a MIMA Healthcare, its officers, agents, successors, and assigns, enforcing its order dated July 29, 2020, in Case No. 04-CA-252062, reported at 369 NLRB No. 144, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent Silver Healthcare Center, a subsidiary of MIMA Health Management Corp. d/b/a MIMA Healthcare, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

BY THE COURT

Circuit Judge

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

SILVER HEALTHCARE CENTER, A SUBSIDIARY OF MIMA HEALTH
MANAGEMENT CORP. D/B/A MIMA HEALTHCARE

ORDER

Silver Healthcare Center, a subsidiary of MIMA Health Management Corp. d/b/a MIMA Healthcare, Cherry Hill, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from
 - (a) Refusing to bargain collectively with District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (the Union) by failing and refusing to furnish it with 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.
 - (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) Furnish to the Union in a timely manner the information requested by the Union on July 8, August 6, August 8, September 18, and October 2, 2019, to the extent that it has not already done so.
 - (b) Post at its Cherry Hill, New Jersey facility copies of the attached notice marked “Appendix.”¹ Copies of the notice, on forms

¹ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned

provided by the Regional Director for Region 4, 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 July 8, 2019.

- (c) Within 21 days after service by the Region, file with the Regional Director for Region 4 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.

to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means.

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 a representative 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 bargain collectively with District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (the Union) by failing and refusing to furnish it with 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 in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on July 8, August 6, August 8, September 18, and October 2, 2019, to the extent that we have not already done so.

SILVER HEALTHCARE CENTER,
A SUBSIDIARY OF MIMA HEALTH MANAGEMENT CORP.
D/B/A MIMA HEALTHCARE

The Board’s decision can be found at www.nlr.gov/case/04-CA-252062 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 THIRD CIRCUIT

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Petitioner	:	No.
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SILVER HEALTHCARE CENTER, A SUBSIDIARY	:	Board Case No.:
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D/B/A MIMA HEALTHCARE	:	
	:	
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:

Marshall Klahr, HR Rep.
Silver Healthcare Center
1417 Brace Rd.
Cherry Hill, NJ 08034

David F. Jasinski, Esquire
Jasinski, P.C.
60 Park Place, 8th Floor
Newark, NJ 07102

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

Dated at Washington, D.C.
this 31st day of August 2020