



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

September 10, 2020

Clerk, United States Court of
Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 1702
New York, NY 10007

Re: *NLRB v. Five Corner Produce LLC*
d/b/a Cross Island Fruits, Board Case No.
29-CA-257298

Dear Ms. Wolfe:

I am emailing to the Court at newcases@ca2.uscourts.gov a copy of 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 application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses 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:

Joseph Rossi
Five Corner Produce LLC
d/b/a Cross Island Fruits
246 Hempstead Ave.
Lynbrook, NY 11563-1615

THE BOARD IS NOT AWARE
OF A COUNSEL
FOR RESPONDENT

Phone: (516) 340-9487
Fax: (516) 599-1600
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CHARGING PARTY:

Local 2013 of the United Food and
Commercial Workers Union
9235 4th Ave.
Brooklyn, NY 11209

Phone: (800) 393-1135

CHARGING PARTY COUNSEL:

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REGIONAL DIRECTOR:

Kathy Drew-King, Regional Dir.
100 Myrtle Ave., Ste. 5100
Brooklyn, NY 11201-4201

Tel: (718) 330-7713

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
FIVE CORNER PRODUCE LLC	:	Board Case No.:
D/B/A CROSS ISLAND FRUITS	:	29-CA-257298
	:	
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 Second 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 Five Corner Produce LLC d/b/a Cross Island Fruits (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 the State of New York. The Board's final order issued on July 16, 2020, and is reported at 369 NLRB No. 122.

B. Proceedings Before the Board

1. On May 4, 2020, the General Counsel issued a complaint and notice of hearing in Case No. 29-CA-257298, 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 May 18, 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, the regional office, on May 20, 2020, sent the Respondent an email and a letter advising that if no answer was received by May 27, 2020, a Motion for Default Judgment may be filed with the Board.

3. The Respondent did not file an answer.

4. On June 4, 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 8, 2020, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until June 22, 2020, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

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

7. The Board, on July 16, 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. 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." 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., KBI Security Service, Inc. v. NLRB*, 91 F.3d 291, 295 (2d Cir. 1996); *NLRB v. Ferguson Electric Co.*, 242 F.3d 426, 435 (2d Cir. 2001); *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984); *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 St., S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 10th day of September, 2020

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
FIVE CORNER PRODUCE LLC	:	Board Case No.:
D/B/A CROSS ISLAND FRUITS	:	29-CA-257298
	:	
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, Five Corner Produce LLC d/b/a Cross Island Fruits, its officers, agents, successors, and assigns, enforcing its order dated July 16, 2020, in Case No. 29-CA-257298, reported at 369 NLRB No. 122, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Five Corner Produce LLC d/b/a Cross Island Fruits, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith

FOR THE COURT:

NATIONAL LABOR RELATIONS BOARD

v.

FIVE CORNER PRODUCE LLC D/B/A CROSS ISLAND FRUITS

ORDER

Five Corner Produce LLC d/b/a Cross Island Fruits, Lynbrook, New York, its officers, agents, successors, and assigns shall:

1. Cease and desist from:
 - (a) Failing and refusing to bargain collectively and in good faith with Local 2013, United Food and Commercial Workers, AFL–CIO (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.
 - (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) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All of its employees in all of its present and future locations within the New York Metropolitan area, excluding employees continuously working less than thirty (30) hours a week, supervisors, and guards as defined in the National Labor Relations Act.
 - (b) Post at its facility in Lynbrook, New York, copies of the attached notice marked “Appendix.”¹ Copies of the notice, on forms provided by the

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 pandemic, the notices must be posted within 14 days after the facility

Regional Director for Region 29, 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 about December 18, 2019.

- (i) Within 21 days after service by the Region, file with the Regional Director for Region 29 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.

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 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 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 bargain collectively and in good faith with Local 2013, United Food and Commercial Workers, AFL–CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

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, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement:

All of our employees in all of our present and future locations within the New York Metropolitan area, excluding employees continuously working less than thirty (30) hours a week, supervisors, and guards as defined in the National Labor Relations Act.

FIVE CORNER PRODUCE LLC D/B/A CROSS ISLAND FRUITS

The Board's decision can be found at www.nlr.gov/case/29-CA-257298 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 SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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D/B/A CROSS ISLAND FRUITS	:	29-CA-257298
	:	
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 party at the address listed below:

Joseph Rossi
Five Corner Produce LLC
d/b/a Cross Island Fruits
246 Hempstead Ave
Lynbrook, NY 11563-1615

/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 10th day of September, 2020