

# ABRAMS FENSTERMAN

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March 2, 2021

National Labor Relations Board  
VIA E-File

Re: Request for Reconsideration and Hearing  
Case No. 02-CA-263564

Dear Chairman McFerran, and Members Kaplan and Emmanuel:

I write on behalf of our client, Dr. Sameh Aknouk, the principal of the Employer in the above-referenced action. Pursuant to Rule 102.48(c) of the NLRB Rules and Regulations, we respectfully request that the Board reconsider its Decision and Order dated February 2, 2021, re-open this matter, and give Dr. Aknouk the opportunity to be heard on the merits regarding the allegations brought against his Practice.

This case was decided in default because the Employer admittedly failed to respond. There are, however, facts and circumstances which we submit demonstrate good cause to give Dr. Aknouk another opportunity to make his case before you, including that the first communication that he received from the Board, was its default decision.

There was No Malice nor Intent to Violate the NLRA

Based upon the Union's representations in its Complaint, the Board determined that, beginning in May 2020, this Employer committed a series of unfair labor practices. The allegations include everything from a reduction of hours and failure to remit contributions to benefit plans, to actual threats. The acts alleged to be "violations," however, were in fact either dictated by circumstances beyond Dr. Aknouk's control or were an apparent miscommunication that should be explained to the Board.

First, Dr. Aknouk denies that any of the conversations he or other management had with staff was threatening or even about the union at all. Communication with his staff regarding the oft-changing scheduling requirements dictated by government closures and scaled-back working hours were not meant to be threats but were simply the result of having to communicate with

employees. In addition to the daily-changing regulations governing this workplace, these communications were necessary because the union stopped responding to Dr. Aknouk's office after the union closed due to the pandemic. Despite efforts to notify the union of the Practice's need to close and reduce hours, the union did not get back to them, and therefore they communicated with the employees directly. Dr. Aknouk did not actually hear back from the union until after he re-opened, and then it was regarding the split in the union discussed more below.

Second, the Practice was either closed by government order or working on reduced hours. Any reduction in hours was the result of these closures beyond the Practices' control. Similarly, if this Employer failed to make required contributions, it was because those contributions were reduced as a result of the reduced hours.

This Employer's practice has 2 locations – one in the Bronx and one in Manhattan. Both were closed due to COVID. When they returned 3 months later, it was to reduced capacity and hours. As a result, every employee was reduced by one day to part-time status. To this day, the Practice is still not operating at full capacity and everyone is working only part time. It is worth noting that there was significant push-back by the employees to return at all. They did not want to due to safety concerns and only responded when they were sent letters demanding they do so.

Dr. Aknouk had no intention to flout the NLRA. He tried to meet his obligations to the union and his employees but was a victim of COVID circumstances. Please afford him the chance to present his case to you.

#### Dr. Aknouk was Not Represented by Counsel and did Not Receive the Region's Communications

The Decision in this matter includes, at footnote 2, recognition that the Region twice reached out to counsel that formerly represented Dr. Aknouk and the Practice before the Board. The Decision notes that former counsel was contacted twice, two months apart, once by phone and once by email. It further notes that the Region confirmed that counsel no longer represented Dr. Aknouk and the Practice. There is no indication, however, that the Employer itself ever responded or was actually contacted. In fact, Dr. Aknouk received no correspondence from the Board or Region until he received the default decision, and even then it was received past the deadline for timely response.

Finally, two points should be added. First, the former counsel discussed above was hired to represent the Practice in a union election that occurred in August of 2020, in the midst of the timeframe alleged by the Union (he subsequently retired and did not take this case on). That election was precipitated by a split into two factions of the union representing the Practice's employees, requiring the employees to engage in a heated competition between the two groups and leaving the Practice uncertain as to its status because it was contacted and threatened by both.

Further, the last time there was a union contract or dispute, it was handled by a manager who subsequently left his position without warning or explanation. In the absence of counsel or

their in-house expert, Dr. Aknouk's wife stepped in to help when the election issue arose. While she tried to fill in for those whose expertise they lost, she had no background, experience, or files to go on, and was trying to navigate the COVID regulations and closures. In short, any action or inaction on behalf of the Practice was inadvertent, not meant to fly in the face of the NLRA.

Plea for Relief

We hope the Board agrees that the aforementioned sequence of events warrants another opportunity for this Employer to plead its case before you and look forward to hearing your decision. Thank you for your consideration of this application.

Sincerely,

*/s Rachel Demarest Gold*  
Rachel Demarest Gold