

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**SAMEH H. AKNOUK DENTAL
SERVICES, P.C.,**

and

Case 02-CA-263564

**LOCAL 553, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

**ACTING GENERAL COUNSEL’S OPPOSITION TO
RESPONDENT’S MOTION FOR RECONSIDERATION**

Pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board (the Board), Counsel for the Acting General Counsel (Acting General Counsel) herein opposes Respondent’s Request for Reconsideration and Hearing (Request)¹ dated March 2, 2021. By its Request, Respondent asks that the Board reverse its grant of default judgment in *Sameh H. Aknouk Dental Services, P.C.*, 370 NLRB No. 78 (Feb. 2, 2021) (Board Decision). For the reasons set forth below, that Request must be denied in its entirety.

The Board’s Rules provide that “[a] party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order. Board’s Rules Sec. 102.48(c). In a motion for reconsideration, the movant “must state with particularity the material error claimed and with respect to any finding of material fact, must specify the page of the record relied on.” Board’s Rules Sec. 102.48(c)(1). Therefore, a motion for reconsideration must be denied when the moving party “has not identified

¹ The Acting General Counsel herein considers Respondent’s Request as a motion for reconsideration pursuant to Section 102.48(c) of the Board’s Rules.

any material error or demonstrated extraordinary circumstances warranting reconsideration”
BFI Newby Island Recyclery, 370 NLRB No. 86, slip op. (Feb. 11, 2021).

Respondent’s argument for reconsideration is found in the following portion of the Request:

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.

Request at 2.²

Respondent’s assertion that Respondent’s principal “Dr. Aknouk received no correspondence from the Board or Region until he received the default decision” is belied by the evidence showing that, in full accord with the Board’s Rules, Respondent was properly served with all the relevant and necessary documents preceding the Board Decision.

The Complaint, the default warning letter, and the Default Motion were each served by email as authorized by the Sec. 102.4 of the Board’s Rules:

§102.4 Methods of service of process and papers by the Agency; proof of service.

(a) *Method of service for certain Agency-issued documents.*
Complaints . . . (including accompanying notices of hearing) . . . must be served upon all parties . . . by email as appropriate

² The remainder of the Request sets forth what appear to be some of Respondent’s defenses to the Complaint. However, the caselaw is clear that the Board must not consider this portion of the Request because Respondent has not shown good cause for failing to file an answer. *See, e.g., Local 307 Nat’l Postal Mailhandlers Union*, 367 NLRB No. 144, slip op. at 2, and cases cited therein.

* * *

(c) *Service of other Agency-issued documents.* Other documents may be served by the Agency by . . . email.

The Board has also consistently held that a Board agent’s affidavit of service “constitutes proof of service” and, as long as the method of service was authorized, it is “immaterial” that there is no evidence that the documents were “actually received.” See *CCY New Worktech, Inc.*, 329 NLRB 194, 194 (1999) (Board rejecting respondent’s argument that it did not receive a complaint because there were Board agent affidavits of service and the certified mail method of service was authorized); *Best Western City View Motor Inn*, 327 NLRB 468, 469 (1999) (holding that affidavit of service of subpoena is sufficient to prove service, and that service of subpoena “is effective when the document is mailed.”);³ *Joy Luck Palace Inc.*, 368 NLRB No. 108 (Oct. 30, 2019), slip op. at 1, n. 1 (granting default motion, noting that “[t]here is also no indication that the Region’s emails to the Respondent’s officials were undeliverable”). See also Board’s Rules Sec. 102.3 (“[w]here service is made by . . . email, the date of service is the day when the document served . . . is sent by email”).

Attached hereto as Exhibit A are the affidavits of service of the Complaint and the Default Motion, as well as a copy of the email sent by the undersigned attaching the default warning letter.⁴ Attached hereto as Exhibit B is email correspondence received by the Region during the investigation of the underlying charge; that correspondence includes the email address for Dr.

³ Citing *National Automatic Sprinkler*, 307 NLRB 481 n. 1 (1992) (upholding service of compliance specification) and Fed. Rule Civ. Proc. 5(b) (“service by mail is effective upon mailing”).

⁴ All the exhibit documents attached to this Opposition were included in the Default Motion and are submitted here again for ease of reference.

Aknouk that was used by the Region and Acting General Counsel in serving the Complaint, the warning letter and the Default Motion.⁵ The same email address – “aknouksameh@gmail.com” – is shown as the service address in the each of the proofs of service in Exhibit A. The undersigned represents that “[t]here is no indication that the Region’s emails to the Respondent’s officials were undeliverable.” *See Joy Luck Palace Inc.*, supra., at 1 n.1. What is more, as late as January 22, 2021, Dr. Aknouk provided this very same email address to Regional personnel when he called the Region and requested a copy of the Complaint. Attached hereto as Exhibit C is the Region’s email to Dr. Aknouk pursuant to his request using the address provided by Dr. Aknouk. *See Chinchilla Theatrical Scenic, LLC*, 367 NLRB No. 65, slip op. at 1 n.1 (proper to use as email address for service the same address contained in respondent’s communications with the Region).

Respondent also claims that it did not receive the Board’s Order to Show Cause before it received the Board’s Decision. However, upon information and belief, the Office of the Executive Secretary served the Order to Show Cause by the same authorized method (certified and regular mail) as was the Board Decision, and to the same street address where Respondent admits to receiving the Board Decision.⁶

Respondent does not contest the accuracy of the email and street addresses used to serve the documents preceding the Board Decision. And in contrast to the firm evidence of proper

⁵ The email chain in Exhibit B took place among Field Attorney Jamie Rucker, Respondent’s former counsel Martin Gringer, and an apparent financial advisor of the Respondent, Ayman Ibrahim. In the chain, Rucker acknowledged the confirmation from Respondent’s former attorney Gringer that he no longer represented Respondent, and Rucker thanked Gringer for offering to put him in touch with Ibrahim as an associate of the Respondent who might discuss resolution of the unfair labor practices on Respondent’s behalf. In order to effectuate the contact between Rucker and Ibrahim, Gringer copied Rucker on an email sent to Ibrahim. Ultimately, Gringer forwarded to Rucker an exchange that occurred among Gringer, Ibrahim and Dr. Aknouk himself at the email address “aknouksameh@gmail.com.”

⁶ The undisputed street address is: Sameh H Aknouk, Principal, Sameh H. Aknouk Dental Services, P.C., 1473 West Avenue, Bronx, NY 10462.

service, Respondent's assertion that it did not receive the pre-Decision documents is completely unsupported by any evidence whatsoever, nor it is supported by any word of explanation as to why Respondent did not receive the emails and mailings.⁷ As shown above, and made plain by the Board's Rules and caselaw, the relevant documents predicative to the Board's Decision were served on the Respondent in a manner authorized by the Board's Rules and were effective on their dates of service. This full compliance with the Board's Rules and caselaw thus renders Respondent's bare and unexplained assertion of non-receipt meritless. *See CCY New Worktech, Inc.* 329 NLRB at 194; *Best Western City View Motor Inn*, 327 NLRB at 469 (1999). *Joy Luck Palace Inc.*, 368 NLRB No. 108, slip op. at 1, n. 1.

Based on all of the foregoing reasons, the Respondent's Request should be denied in its entirety.

Dated: New York, New York
March 10, 2021



Allen M. Rose
Counsel for the General Counsel
National Labor Relations Board, Region 2
26 Federal Plaza, Suite 3614
New York, NY 10278
Telephone (212) 264-0300
Facsimile (212) 264-2450

Attachments

⁷ When discussing the pre-Complaint time period, the Request mentions that Respondent's dental office was closed for a certain time and then re-opened. But the Complaint was issued on October 30, 2020, when the office was not closed; however, whether or not the office was fully open to patients does not does logically suggest a problem with receiving either mail service or electronic mail. In any event, the Board has long held that a failure to file an answer is not excused by business exigencies or personal circumstances unaffecteding the conduct of business activities (which presumably includes the activity of receiving mail). *See, e.g., Dong-A Daily North America, Inc.*, 332 NLRB 15, 16 (2000) (Board "reject[ing] the [r]espondent's argument that the closing of its office and company turmoil constitute good cause for the failure to file a timely answer"). *See also Carmody, Inc.*, 327 NLRB 1230, 1231 n. 7 (1999) and cases cited therein.

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

SAMEH H. AKNOUK DENTAL SERVICES, P.C.

and

Case No. 02-CA-263564

**LOCAL 553 INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, Lisa Coleman the undersigned employee of the National Labor Relations Board, being duly sworn, say that on 10/30/20, I served the above-entitled document(s) by **e-issue**, as noted below, upon the following persons, addressed to them at the following addresses:

Sameh H Aknouk , Principal **E Issuance**
Sameh H. Aknouk Dental Services, P.C.
1473 West Avenue
Bronx, NY 10462

Email: aknouksameh@gmail.com

Stephen Malone **E Issuance**
Local 553 IBT
265 West 14th Street
New York, NY 10011

Email: smalone553@verizon.net

Jae W Chun , Counsel **E Issuance**
Friedman & Anspach
1500 Broadway
23rd Floor
New York, NY 10036

Email: jchun@friedmananspach.com

10/30/20

Date

Lisa Coleman, Designated Agent of NLRB

Name

Lisa Coleman

Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAMEH H. AKNOUK DENTAL
SERVICES, P.C.,

and

Case 02-CA-263564

LOCAL 553, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Date of Mailing: December 3, 2020

**AFFIDAVIT OF SERVICE OF: MOTION TO TRANSFER PROCEEDINGS TO THE BOARD AND MOTION
FOR DEFAULT JUDGMENT**

I, the undersigned employee of the National Labor Relations Board, state under oath that, on the date indicated above, I served the above-entitled document(s) by electronic mail (Email), as indicated below, upon the following persons, addressed to them at the following addresses:

By eFiling

National Labor Relations Board
Office of the Executive Secretary
Roxanne Rothschild, Executive Secretary
1015 Half Street SE
Washington, DC 20570

By Email

Sameh H Aknouk, Owner
Sameh H. Aknouk Dental Services, P.C.
1473 West Avenue
Bronx, NY 10462
Email: aknouksameh@gmail.com

By Email

Jae W. Chun, Esq.
Friedman & Anspach
1500 Broadway, Suite 2300
New York, New York 10036
Email: jchun@friedmananspach.com

December 3, 2020

Date

Allen M. Rose

Board Agent

Print Name

Title



Signature

Rose, Allen

From: Rose, Allen
Sent: Wednesday, November 18, 2020 1:31 PM
To: aknouksameh@gmail.com
Subject: Sameh H. Aknouk Dental Services, P.C., Case 02-CA-263564
Attachments: LTR.02-CA-263564.Aknouk.11 18 2020.With Enclosures.pdf

Categories: NxGen Uploaded

Dear Dr. Aknouk,

Please see the attached.

Sincerely,

Allen M. Rose
Counsel for the General Counsel
NLRB Region 2

EXHIBIT B

Rose, Allen

From: Martin Gringer <MGringer@franklingringer.com>
Sent: Wednesday, September 23, 2020 11:00 AM
To: Rucker, Jamie
Subject: RE: Dr. Sameh H. Aknouk Dental Services, P.C., Case No. 02-CA-263564

Jamie,

Thanks for the report.

Martin Gringer
Franklin, Gringer & Cohen, PC
666 Old Country Road
Garden City, NY 11530
Phone: 516-228-3131
Cell: 516-448-2831
mgringer@franklingringer.com

From: Rucker, Jamie <Jamie.Rucker@nlrb.gov>
Sent: Wednesday, September 23, 2020 10:57 AM
To: Martin Gringer <MGringer@franklingringer.com>
Subject: RE: Dr. Sameh H. Aknouk Dental Services, P.C., Case No. 02-CA-263564

Dear Mr. Gringer:

Thank you for your efforts. I spoke to Dr. Aknouk yesterday; he called me. I would not characterize the discussion as productive.

Yours truly,

Jamie Rucker

From: Martin Gringer <MGringer@franklingringer.com>
Sent: Wednesday, September 23, 2020 10:55 AM
To: Rucker, Jamie <Jamie.Rucker@nlrb.gov>
Subject: FW: Dr. Sameh H. Aknouk Dental Services, P.C., Case No. 02-CA-263564

Please see below.

Martin Gringer
Franklin, Gringer & Cohen, PC
666 Old Country Road
Garden City, NY 11530
Phone: 516-228-3131
Cell: 516-448-2831
mgringer@franklingringer.com

From: Ayman Ibrahim <aibrahim@aikcpa.com>
Sent: Monday, September 21, 2020 5:51 PM
To: Martin Gringer <MGringer@franklingringer.com>
Cc: 'aknouksameh@gmail.com' <aknouksameh@gmail.com>
Subject: FW: Dr. Sameh H. Aknouk Dental Services, P.C., Case No. 02-CA-263564

Hi Martin,

As per our conversation today, please have Jamie from NLRB call Dr. Aknouk directly at 516 808-0828.

Thank you

Ayman Ibrahim, CPA
Financial Advisor

Avantax
Investment Services™

Tel: 516-827-9412
Cel: 516-428-8872
Fax: 516-977-8873
E-mail: aibrahim@aikcpa.com
Address: 515 Broadhollow Rd, Suite 100, Melville, NY 11747
(EVO Parking Lot by Route 110)

Securities offered through Avantax Investment ServicesSM, Member [FINRA](#), [SIPC](#) Investment advisory services offered through Avantax Advisory ServicesSM. Insurance services offered through Avantax Insurance AgencySM. 6333 N. State Highway 161, Fourth Floor, Irving, TX 75038, 972-870-6000.

Ayman Ibrahim, CPA is not a registered broker/dealer or registered advisory firm.

Please note: Avantax policy requires that all investment-related correspondence be sent or copied to Avantax email address (ibrahima@MyAvantax.com) for archiving and supervisory review.

From: Ayman Ibrahim
Sent: Saturday, September 19, 2020 11:17 AM
To: 'aknouksameh@gmail.com' <aknouksameh@gmail.com>
Subject: FW: Dr. Sameh H. Aknouk Dental Services, P.C., Case No. 02-CA-263564

Hi Sameh & Samia,

Please see below for the lawyer.

Thank you

Ayman Ibrahim, CPA
Financial Advisor

Avantax

Investment Services™

Tel: 516-827-9412

Cel: 516-428-8872

Fax: 516-977-8873

E-mail: aibrahim@aikcpa.com

Address: 515 Broadhollow Rd, Suite 100, Melville, NY 11747
(EVO Parking Lot by Route 110)

Securities offered through Avantax Investment ServicesSM, Member [FINRA](#), [SIPC](#) Investment advisory services offered through Avantax Advisory ServicesSM. Insurance services offered through Avantax Insurance AgencySM. 6333 N. State Highway 161, Fourth Floor, Irving, TX 75038, 972-870-6000.

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Please note: Avantax policy requires that all investment-related correspondence be sent or copied to Avantax email address (ibrahima@MyAvantax.com) for archiving and supervisory review.

From: Martin Gringer <MGringer@franklingringer.com>

Sent: Friday, September 18, 2020 2:07 PM

To: Ayman Ibrahim <aibrahim@aikcpa.com>

Cc: Rucker, Jamie <Jamie.Rucker@nrb.gov>

Subject: FW: Dr. Sameh H. Aknouk Dental Services, P.C., Case No. 02-CA-263564

Ayman,

As you can see from below, Jamie Rucker from the NLRB, who is copied here, wants to speak to you regarding the pending unfair labor practice charge. I have given him your contact information.

Martin Gringer
Franklin, Gringer & Cohen, PC
666 Old Country Road
Garden City, NY 11530
Phone: 516-228-3131
Cell: 516-448-2831
mgringer@franklingringer.com

From: Rucker, Jamie <Jamie.Rucker@nrb.gov>

Sent: Friday, September 18, 2020 1:44 PM

To: Martin Gringer <MGringer@franklingringer.com>

Subject: Dr. Sameh H. Aknouk Dental Services, P.C., Case No. 02-CA-263564

Dear Mr. Gringer:

Thank you for returning my call earlier this afternoon and for confirming you are not currently representing the above-named Employer in this unfair labor practice proceeding (though you noted that may change). Thank you also for offering to put me in touch with someone associated with the Employer who may be able to assist in resolving the alleged unfair labor practices. Please either send that person's contact information to me or forward my information to that person. Thank you.

Yours truly,

Jamie Rucker
Field Attorney

The NLRB now requires electronic filing of documents, including affidavits, correspondence, position statements, and documentary or other evidence. This requirement does not apply to ULP charges, or to petitions and showings of interest in representation cases. This requirement applies to parties with cases before the Agency, as well as to their attorney and non-attorney representatives. Parties who do not have necessary access to the Agency's E-filing system may provide a statement explaining the circumstances or why requiring them to e-file would impose an undue burden.

See GC 20 01: <https://apps.nlr.gov/link/document.aspx/09031d4582dfa410>

E-filing link: <https://www.nlr.gov/cases-decisions/filing>

Written instructions for the Agency's E-Filing System: <https://apps.nlr.gov/myAccount/assets/E-Filing-System-User-Guide.pdf>

Video demonstration with instructions:

https://apps.nlr.gov/myAccount/assets/My%20Account%20Portal%20Overview/story_html5.html

Frequently Asked Questions: <https://apps.nlr.gov/myAccount/#/FileCaseDocument/FAQ>

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EXHIBIT C

Newman, Karen M.

From: Newman, Karen M.
Sent: Friday, January 22, 2021 12:47 PM
To: aknouksameh@gmail.com
Subject: CPT.02-CA-263564.complaint and notice of hearing (2).pdf
Attachments: CPT.02-CA-263564.complaint and notice of hearing (2).pdf

Dr. Aknouk,

As per your request please see attached.

Karen Newman
Supervisory Attorney