Valladares Landscaping Artists, LLC *and* Cristian Martinez[1] and Efren Velasquez. Cases 15–CA–306672 and 15–CA–306769

March 6, 2024

ORDER DENYING MOTION AND REMANDING

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND WILCOX

The General Counsel has moved for default judgment in this case based on her assertion that the Respondent, Valladares Landscaping Artists, LLC, failed to file an appropriate answer to the complaint. Upon charges filed by Charging Parties Cristian Martinez and Efren Velasquez between November 4, 2022, and May 11, 2023, the General Counsel issued a consolidated complaint and notice of hearing on July 27, 2023, alleging that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act).[2] Copies of the charges and complaint were properly served on the Respondent by E-Issuance or certified mail. The Respondent did not file an answer to the consolidated complaint within the 14-day period set forth in Section 102.20 of the Board's Rules and Regulations. On August 14, the Regional Director for Region 15 notified the Respondent that it had failed to file an answer to the complaint by the specified deadline and that, unless the Respondent filed an appropriate answer by August 21, a Motion for Default Judgment would be filed. By letter dated August 18, and received by the Region on August 22, the Respondent, acting pro se, denied that it had violated the Act and requested "more time to acquire a lawyer." On August 28, the Acting Regional Director for Region 15 notified the Respondent that the Respondent's request for additional time was granted and that it had until September 13 to file a proper answer to the consolidated complaint or a Motion for Default Judgment would be filed. The Acting Regional Director also advised the Respondent that its August 18 letter did not constitute a proper answer to the consolidated complaint. The Respondent did not file an answer or send any additional letters.

On September 27, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On September 28, the Board issued an order transferring the proceeding from the Region to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response to the Motion for Default Judgment or the Notice to Show Cause.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that a respondent "must specifically admit, deny, or explain each of the facts alleged in the complaint, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial." It also provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint here alleges, at subparagraphs VI(a)-(j), that the Respondent: repeatedly invited employees to quit their jobs because of their protected activities; threatened to discharge employees because of, and if they failed to refrain from, their protected activities; threatened employees with unspecified reprisals because they engaged in protected activities and because they considered filing a Board charge; threatened employees with a gun and strangled them because they engaged in protected activities; threatened to shoot employees and physically assaulted them because they engaged in protected activities; threatened to have employees deported because they filed a Board charge; threatened to take legal action against employees because they filed a Board charge; and threatened employees with unspecified reprisals because they filed a Board charge.

The complaint further alleges, at subparagraphs VII(a)-(e), that the Charging Parties repeatedly and concertedly complained to the Respondent regarding the wages, hours, and working conditions of employees by complaining that the Respondent's paychecks to employees were not cashable and that they were not being paid for work. The complaint also alleges, at subparagraphs VII(f)-(g), that on November 2, 2022, the Charging Parties engaged in concerted activities with other employees for the purpose of mutual aid and protection by discussing their work-related concerns with an outside organization, and that the Respondent discharged the Charging Parties that same day for engaging in these activities and to discourage others from engaging in these activities.

Complaint paragraph VIII alleges that, by this conduct described above, the "Respondent has been interfering with, restraining, and coercing employees in the exercise

[1] The General Counsel's Motion for Default Judgment and the Board's corresponding Notice to Show Cause why the motion should not be granted misspelled the Charging Party's name as "Christian Martinez." The caption here, as in the consolidated complaint, reflects the correct spelling of his name.

[2] All dates hereinafter refer to 2023, unless otherwise indicated.

of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act."

The Respondent's one-page letter to the Region was typed with the Respondent's letterhead at the top and dated August 18. It stated in full[3]:

Dear Sirs;

> I currently do not have a lawyer to represent me but would like to request more time to acquire a lawyer. My son had to have kidney operation and he had complications so was in the hospital for six weeks. My mother in law was also in the hospital twice and is in rehab, therefore I did not have time to get a counselor to represent me. Due to the timing of this petition and the time constraint to answer this petition, I am writing this on by own.
>
> I do not agree with the charges against me and my company. It is unfair and unjust. Christian and Efren quit on their own. We did not discharged them or threaten to discharge them. I even have a text when I asked Christian if he's coming back to work, but he said he was in North Carolina. We didn't even know about any "protected activities" (?) Juan or Milton has no authority to discharge or hire anyone; they are just employees too.
>
> The only aspect of the complaint I do admit to is that Christian check had bounced. However I told him I will take responsibility, I gave him half of the bounce check in cash and I told him to give me back the bounce check or the bank copy of the return check I will give him the other half to avoid redepositing the check.
>
> I wish to get a lawyer and resolve this unjust complaints in court. Therefore, I am requesting more time. Thank you for your time.

The bottom of the letter was signed by Josett Valladares[4] and listed the two case numbers from the consolidated complaint.

In her Motion for Default Judgment, the General Counsel asserts that the "Respondent has not filed any document purporting to be a proper answer to the Consolidated Complaint." The General Counsel's Motion for Default Judgment does not acknowledge any case law regarding or make any arguments about how the Board should view this letter in light of the fact that the Respondent is apparently acting pro se.

ANALYSIS

We recognize that the Respondent does not appear to have legal representation in this proceeding.[5] In determining whether to grant a Motion for Default Judgment on the basis of a respondent's failure to file a sufficient answer, the Board typically shows "some leniency toward respondents who proceed without benefit of counsel." *Clearwater Sprinkler System*, 340 NLRB 435, 435 (2003). Indeed, "the Board will generally not preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer, which can reasonably be construed as denying the substance of the complaint allegations." Id. (citation omitted); see also *Carpentry Contractors*, 314 NLRB 824, 825 (1994).[6]

Having duly considered this matter, we find that, given the Respondent's pro se status, default judgment is not appropriate here. The Respondent's August 18 letter, which was dated after the 14-day deadline for an answer but before the extended deadline that the Region had set, expressly denies complaint subparagraphs VII(g)-(h) by stating that it did not discharge or threaten to discharge the Charging Parties and claiming that they quit on their own. The Respondent's letter also effectively denies complaint paragraphs VI and VII by denying knowledge of any alleged protected activities and the general substance of most of the unfair labor practice allegations.[7] See *Acme Building Maintenance*, 307 NLRB 358, 359 (1992)

[3] All typographical, grammatical, and spelling errors are in original.

[4] We note that the consolidated complaint refers to "Josette Valladares," but we will defer to the spelling used in the letter's signature (Josett Valladares), presuming that both spellings refer to the same person.

[5] Although the Respondent's letter requested "more time to acquire a lawyer," there is no indication that the Respondent has actually done so, and no notice of appearance has been filed on the Respondent's behalf. The Respondent also expressly acknowledged that it wrote the August 18 letter without an attorney.

[6] In *Carpentry Contractors*, the complaint alleged that the respondent had failed to pay wages as required by the union contract and failed to make fringe-benefit contributions. In letters sent pro se to the Region, the respondent asserted that it had "[paid] employees wages according [to] their job sites" and that it had paid "some fringes" but was late on others. Id. at 824. The Board found that these letters constituted a sufficient answer because even though the letters did not "address most of the facts alleged in the complaint[,] . . . even if those unaddressed facts were deemed to be admitted to be true, the Respondent's effective denials of the substance of the complaint allegation of failure to pay contractual wages has raised substantial and material issues of fact warranting a hearing before an administrative law judge." Id. at 825. Accord *Sam Kiva Management*, 329 NLRB 387, 387 (1999) (finding a pro se respondent's letter stating that parties were currently bargaining to be a sufficient answer where the complaint alleged a refusal-to-bargain with the newly certified union).

[7] Although the Respondent's letter admits that one of the Charging Party's paychecks bounced, it still effectively denies the operative facts of the unfair labor practice allegations related to any bounced checks.

The Respondent's statement that it did not know of any protected activities effectively denied all but one of the allegations in paragraph VI, which maintain that the Respondent threatened or otherwise coerced employees because they engaged in protected activities. The Respondent effectively denied the other allegation—that it threatened to discharge employees if they failed to refrain from engaging in protected

(denying the General Counsel's motion because "[a]lthough the letters did not respond to each and every allegation of the complaints, they did respond to *most* of the allegations." (emphasis added)).

In our view, the Respondent's letter can reasonably be construed as a denial of the substance of the complaint's 8(a)(1) allegations and as an affirmative identification of material facts in dispute. Although the Respondent's letter does not respond to each and every allegation in the complaint and is not in a form that comports with the Board's Rules and Regulations, we find that it adequately denies the unfair labor practice allegations. Also, the Respondent expressly denied that Milton Argelio and Juan Garcia were supervisors within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act. In this respect, the Respondent wrote, "Juan or Milton has no authority to discharge or hire anyone; they are just employees too." All other complaint allegations, including jurisdiction, agency, and service, are deemed admitted.[8] See *Prompt Medical Transportation, Inc. d/b/a Prompt Ambulance Service, Prompt Central, Inc., and GSM Group*, 366 NLRB No. 50, slip op. at 3 (2018) (citing Section 102.20 of the Board's Rules and Regulations) (denying the motion for default judgment because the pro se respondent's letter effectively denied the substance of the 8(a)(5) and (1) allegation, but finding that all other complaint allegations—such as jurisdiction, agency, and service—were deemed admitted). Further, because the Respondent's letter was filed without the benefit of counsel, we will not preclude a hearing on the merits simply because of the Respondent's failure to comply with all our procedural rules.[9]

For these reasons, we disagree with the Acting Regional Director's conclusion, as stated in her August 28 letter, that the pro se letter filed by the Respondent did not constitute a sufficient answer to the consolidated complaint. Accordingly, we deny the General Counsel's Motion for Default Judgment.

ORDER

IT IS ORDERED that the General Counsel's Motion for Default Judgment is denied and the proceeding is remanded to the Regional Director for Region 15 for further appropriate action.

Dated, Washington, D.C. March 6, 2024

Lauren McFerran, Chairman

Marvin E. Kaplan, Member

Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

activities—by stating that Juan Garcia, who made the alleged threat, was an employee without authority to hire or discharge.

[8] Because the letter only disputed the supervisory status and agency of Milton Argelio and Juan Garcia, the Respondent is deemed to have admitted that August Cruz, Josett Valladares, and Mario Valladares are supervisors within the meaning of Sec. 2(11) of the Act and agents of the Respondent within the meaning of Sec. 2(13) of the Act.

[9] Although it does not appear that the Respondent's letter was served on the Charging Parties as required by Sec. 102.21 of the Board's Rules and Regulations, we note the pro se basis on which the Respondent was proceeding. See *Dismantlement Consultants*, 312 NLRB 650, 651 fn. 6 (1993) (citing *Acme Building Maintenance*, 307 NLRB at 359 fn. 6).