

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 27, 2017

SECRETARY OF LABOR, MINE
SAFETY AND HEALTH
ADMINISTRATION, (MSHA),
Petitioner,

v.

VERIS GOLD USA, INC., and its
Successors,
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. WEST 2015-909-M

Mine: Jerritt Canyon Mill
Mine ID: 26-01621

ORDER OF DISMISSAL

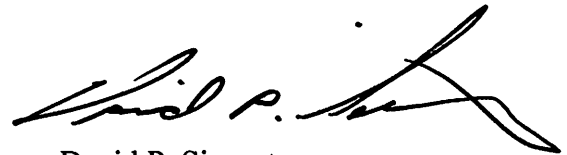
This case is before me upon a petition for assessment of Civil Penalty pursuant to the Federal Mine Safety and Health Act, 30 U.S.C. §§ 801 *et seq.* and 29 C.F.R. § 2700.28. Daniel Lowe and Matthew Varady (“Complainants”) filed discrimination complaints against Veris Gold (“Veris”) pursuant to section 105(c) (3). In an order dated September 2, 2015, the presiding ALJ found Veris Gold liable for discrimination against Varady. The ALJ noted that Veris had previously filed a petition for Bankruptcy, but nonetheless instructed the Secretary to assess a civil penalty against Veris. The Secretary filed its position on September 11, 2015. The presiding ALJ then issued a decision on October 15, 2015, finding Veris Gold liable for discrimination against Lowe and instructed the Secretary to assess a civil penalty in that docket as well. On December 23, 2015, however, the Secretary withdrew the petition for civil penalty in Varady’s case and filed a Motion to Dismiss the Dockets.¹

On March 20, 2017, this court entered an Order granting JCG’s motion to dismiss the Complainants’ successorship claims and denied the Complainants’ motion to add other affiliates of Veris as successors. The court explained that although the Complainants established their claims against Veris Gold, the Sale and Enforcement Orders issued by the Bankruptcy Court foreclosed their pursuit of successorship liability against Jerritt Canyon Gold, LLC, (“JCG”) the purchaser of certain Veris Gold assets, and its other affiliates. The Order also instructed the Complainants that, should they wish to enter a claim against Veris Gold, they were to resubmit their claims for personal relief. On March 21, 2017, the Complainants informed the court via email that they did not wish to obtain orders against Veris because the company had been liquidated and no longer had assets to pay their claims. Pursuant to the terms of that Order, this court dismissed the cases in a separate order dated today.

¹ Both Varady and Lowe are in the same position regarding the bankruptcy issue in that findings of discrimination were made after the bankruptcy sale order had been issued. Therefore, my order dismissing any penalty docket or a potential for one shall apply to Lowe’s case. Specifically, I find the Secretary’s motion to dismiss the Varady case applicable to the Lowe docket as well.

In light of the March 20, 2017 Order, the Secretary's pursuit of a civil penalty against Veris is also futile. Veris Gold has been liquidated and no longer possesses assets to pay off its creditors, and the Bankruptcy Court's Sale Order expressly prohibits pursuit of successorship liability claims.

Accordingly, the Secretary's Motion for dismissal in the Varady case is hereby **GRANTED** and applied to the Lowe case as well. **IT IS ORDERED** that this penalty docket be **DISMISSED**.

A handwritten signature in black ink, appearing to read "David P. Simonton", with a stylized flourish at the end.

David P. Simonton
Administrative Law Judge

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