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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

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

Civil Penalty Proceeding  
Docket No. BARB 79-113-P  
A/O No. 15-10780-03002 R

v.

Mary Beth No. 2 Mine

MARY BETH COAL CO., INC.,  
RESPONDENT

DEFAULT DECISION

Appearances: Eddie Jenkins, Esq., Office of the Solicitor,  
Department of Labor, for Petitioner;  
Lindell Begley, Safety Director, Mary Beth Coal  
Co., Inc., Bulan, Kentucky, for Respondent.

Before: Judge Cook

On November 20, 1978, the Mine Safety and Health Administration filed a petition for the assessment of civil penalty in the above-captioned case. An answer was filed by Respondent Mary Beth Coal Co., Inc., on December 19, 1978. A notice of hearing was issued on January 25, 1979, setting the hearing for 9:30 a.m., March 13, 1979. A copy of the notice was sent by certified mail to the Respondent. A return mail receipt indicated that it was delivered on February 1, 1979.

On March 13, 1979, the hearing commenced. Counsel for MSHA appeared. No one appeared to represent the Respondent (Tr. 4-5). Following this determination, a brief recess was taken. Following this recess, counsel for MSHA indicated that he had spoken by telephone to Mr. Begley, the representative of the Respondent during the recess. The result of that conversation was that Mr. Begley stated he would not be appearing at the hearing (Tr. 6).

Thereupon, it was noted on the record that title 29, section 2700.26, subsection (c) states: "Where the respondent fails to appear at a hearing, the Judge shall have the authority to conclude that respondent has waived its right for hearing and contest of the proposed penalties and may find respondent in default" (Tr. 7). The respondent was then found in default (Tr. 7).

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It was also noted that the above section continues as follows:  
"Where the Judge determines to hold respondent in default, the Judge shall enter a summary order imposing the proposed penalties as final and directing such penalties be paid" (Tr. 7). Counsel for MSHA then filed Exhibits M-1(a) and M-1(b) which were the proposed assessments of September 5, 1978, concerning Mary Beth Coal Co., Inc., and the Mary Beth No. 2 Mine. Payment was then ordered to be made in the amount of the proposed penalties as set forth in Exhibit M-1(b) within 30 days of the issuance of that order.

ORDER

Accordingly, the order is reaffirmed and Respondent is directed to pay the penalty assessed in the amount of \$784 within 30 days of the date of this decision.

John F. Cook  
Administrative Law Judge