

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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August 19, 2019

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

CIVIL PENALTY PROCEEDINGS

Docket No. VA 2019-86
A.C. No. 44-03088-482802

Docket No. VA 2019-105
A.C. No. 44-03088-486702

Docket No. VA 2019-121
A.C. No. 44-03088-490733

Mine: P-7 Pigeon Creek

Docket No. VA 2019-87
A.C. No. 44-07052-482807

Docket No. VA 2019-88
A.C. No. 44-07052-482807

Mine: D-10 Dorchester

Docket No. VA 2019-97
A.C. No. 44-07220-484725

Docket No. VA 2019-116
A.C. No. 44-07220-486712

Docket No. VA 2019-117
A.C. No. 44-07220-486712

Docket No. VA 2019-124
A.C. No. 44-07220-490741

Mine: D-17

v.

Docket No. VA 2019-96
A.C. No. 44-07142-484723

Docket No. VA 2019-113
A.C. No. 44-07142-486710

Mine: P-12 Flat Rock

Docket No. KENT 2019-227
A.C. No. 15-18647-486602

Mine: D-30 Clover Fork

BLACKJEWEL LLC,
Respondent.

ORDER OF DEFAULT AND ORDER TO PAY

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d).

These dockets involve 97 alleged violations and total proposed penalties of \$125,543.00. On July 29, 2019, these dockets were consolidated for a hearing that was to occur on August 20-22, 2019. When each docket was assigned to me, I issued a prehearing order directing the parties to submit prehearing reports no less than 20 days before the commencement of the hearing. The parties were further advised that failure to comply with the terms of the order could result in sanctions. The deadline for submitting a prehearing report for these dockets was July 31, 2019. Respondent failed to submit a prehearing report.

On August 12, 2019, I issued an Amended Order to Show Cause directing Respondent to explain why an order of default should not be issued against it given its failure to comply with my prehearing order. I held a conference call with the parties on August 13, 2019 to discuss Respondent's proposed course of action regarding the Amended Order to Show Cause. Respondent's counsel relayed that in light of pending bankruptcy proceedings, no response to the Amended Order to Show Cause would be forthcoming, unless he was directed to do so, and that Respondent would expect the court to do what is expected based upon an unanswered show cause order (dockets would be defaulted). Based on this representation, the consolidated hearing was vacated on August 14, 2019.

On August 15, 2019, the deadline for the Amended Order to Show Cause, Respondent's counsel informed my law clerk that Respondent would in fact be filing a response to that order. Respondent's response to the Amended Order to Show Cause did not address the reason for its failure to submit a prehearing report by the deadline. Instead, Respondent noted the complexity of the pending bankruptcy proceedings and asked for the case to be stayed. There is no mention of how the complexity of the separate and distinct bankruptcy proceeding prevented the filing of the prehearing statement. There was no request for an extension of the due date for the

prehearing order which this Court often grants.¹ In fact, it is the distinct impression of this Court that the Respondent has no intention of proceeding to hearing on these dockets.

Respondent has failed to comply with my Amended Order to Show Cause. The Commission's procedural rules permit a finding of default and summary disposition of a case after issuance of a show cause order when a party has failed to comply with a judge's orders. 29 C.F.R. § 2700.66.

WHEREFORE, I find Respondent to be **IN DEFAULT**.

Respondent's notice of contest and request for hearing are **DISMISSED**. Respondent is hereby **ORDERED** to pay a total penalty of \$125,543.00 within thirty (30) days of the date of this Order.²



Priscilla M. Rae
Administrative Law Judge

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¹ Respondent has also requested a stay of all dockets during the bankruptcy proceedings. There are currently 679 violations totaling \$1,028,754.00 pending before the judges of this Commission.

² Checks or money orders should be sent to: Mine Safety & Health Administration, U.S. Department of Labor, P.O. Box 790390, St. Louis, MO 63179-0390.