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SOL (MSHA) V. M & E COAL CO.
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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. PIKE 78-331-P
Assessment Control
No. 05360-02001

v.

M & E COAL COMPANY,
RESPONDENT

No. 1 Mine

DEFAULT DECISION

Appearances: Edward H. Fitch IV, Esq., Office of the Solicitor,
Department of Labor, for Petitioner
No one appeared at the hearing on behalf of Respondent

Before : Administrative Law Judge Steffey

When the hearing in the above-entitled proceeding was convened in Pikeville, Kentucky on July 26, 1979, pursuant to a written notice of hearing dated June 14, 1979, and served on respondent's representative on July 13, 1979, by a Federal coal-mine inspector, counsel for the Mine Safety and Health Administration entered his appearance, but no one appeared at the hearing to represent respondent. The Commission's Interim Procedural Rules which were then in effect provided (29 CFR 2700.26(c)):

(c) Where the respondent fails to appear at a hearing, the Judge shall have the authority to conclude that the respondent has waived its right to a hearing and contest of the proposed penalties and may find the respondent in default. Where the Judge determines to hold respondent in default, the Judge shall enter a summary order imposing the proposed penalties as final, and directing that such penalties be paid.

Counsel for petitioner moved at the hearing that respondent be held in default pursuant to Section 2700.26(c) and that the penalties proposed by the Assessment Office be imposed.

Petitioner's motion is granted and I find respondent to be in default. I conclude that respondent has waived its right to a hearing by failing to appear at the hearing.

In this particular case, it should be noted that respondent's reply to the show-cause order issued in this proceeding on April 5, 1979, stated that respondent had filed a bankruptcy action in the United States District Court, Case No. 78-13, and that an amount of \$322.12 had been distributed to respondent's creditors on November 17, 1978.

Counsel for petitioner agreed at the hearing that any penalties which may be assessed in this proceeding may be uncollectible, but he concluded that the collectibility of the penalties could be determined after a decision in this case has been issued.

There is nothing in the official file to show that the penalties proposed by the Assessment Office were improperly determined under the six criteria set forth in Section 110(i) of the Act. Therefore, I shall direct that the proposed penalties be paid pursuant to Section 2700.26(c) quoted above.

WHEREFORE, it is ordered:

M & E Coal Company shall pay civil penalties totaling \$108.00 within 30 days from the date of this decision. The penalties are allocated to the respective violations as follows:

Notice No. 1 CAW (4-1) 10/22/74	75.512	\$	24.00
Notice No. 1 DM (5-1) 2/13/75	75.200		38.00
Notice No. 2 DM (5-2) 2/13/75	75.523		46.00
Total Penalties Assessed in This Proceeding			 \$ 108.00

Richard C. Steffey
Administrative Law Judge