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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. KENT 82-66  
A. C. No. 15-12650-03009

v.

No. 4 Mine

BARTLEY & BARTLEY COAL COMPANY,  
RESPONDENT

Appearances: Darryl A. Stewart, Esq., Office of the Solicitor,  
U. S. Department of Labor, Nashville, Tennessee,  
for Petitioner No one appeared at the hearing on  
behalf of Respondent

DEFAULT DECISION

Before: Judge Steffey

When the hearing in the above-entitled proceeding was convened in Pikeville, Kentucky, on October 6, 1983, pursuant to a written notice of hearing dated September 8, 1983, and received by respondent on September 12, 1983, counsel for the Secretary of Labor entered his appearance, but no one appeared at the hearing to represent respondent.

Under the provisions of 29 C.F.R. 2700.63(a), when a party fails to comply with an order of a judge, an order to show cause shall be directed to the party before the entry of any order of default. An order to show cause was sent to respondent on October 12, 1983, pursuant to section 2700.63(a), requiring respondent to show cause why it should not be found to be in default for failure to appear at the hearing convened on October 6, 1983. A return receipt in the official file shows that respondent received the show-cause order on October 14, 1983. The time within which a reply to the show-cause order should have been received has passed and no reply has been submitted.

Inasmuch as no reply to the show-cause order was submitted, I find respondent to be in default for failure to appear at the hearing convened on October 6, 1983. Section 2700.63(b) of the Commission's rules provides that "[w]hen the Judge finds the respondent in default in a civil penalty proceeding, the Judge shall also enter a summary order assessing the proposed penalties as final, and directing that such penalties be paid."

WHEREFORE, it is ordered:

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Bartley and Bartley Coal Company, having been found to be in default, is ordered, within 30 days from the date of this decision, to pay a civil penalty of \$22.00 for the violation of 30 C.F.R. 77.516 alleged in Citation No. 953536 dated July 29, 1981.

Richard C. Steffey  
Administrative Law Judge