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BOYD ASHER V. FAIRDALE MINING
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

BOYD ASHER,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. KENT 85-28-D
MSHA Case No. BARB CD 84-40

FAIRDALE MINING, INC.,
RESPONDENT

ORDER OF DISMISSAL

Before: Judge Melick

Efforts by the Commission Chief Judge and the undersigned to serve show cause orders upon Respondent by certified and first class mail at the addresses provided by Complainant have been unsuccessful with the documents most recently being returned marked by the U.S. Postal Service as "Attempted - Not Known" and addressee "unknown" at those addresses.

Accordingly on February 25, 1986 an order to show cause was issued to the Complainant requiring him to provide evidence of service of his Complaint upon a lawfully designated corporate agent, and to provide the undersigned with the address of said corporate agent, on or before March 7, 1986. Counsel for the Complainant replied on February 28, 1986, but did not provide sufficient evidence that the complaint was served upon a lawfully designated corporate agent, did not identify any lawfully designated corporate agent upon whom service could be made and did not provide a valid address for said corporate agent.

Commission Rule 7, 29 C.F.R. 2700.7 provides in relevant part that a complaint of discharge, discrimination or interference "shall be served by personal delivery or by registered or certified mail, return receipt requested." Rule 4(d)(3) Federal Rules of Civil Procedure (applicable hereto by virtue of Commission Rule 1(b), 29 C.F.R. 2700.1(b)) provides that service upon a domestic corporation shall be made "by delivering a copy of the . . . complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The Complainant in these proceedings has failed to provide satisfactory proof of service upon a lawfully designated corporate agent and has failed to provide the

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identity of or address for any such agent after adequate opportunity has been given. Under the circumstances I have no choice but to dismiss these proceedings.

Gary Melick
Administrative Law Judge