

CCASE:
SOL (MSHA) V. HELDENFELS BROTHERS
DDATE:
19871113
TTEXT:

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

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

v.

HELDENFELS BROTHERS, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 87-39-M
A.C. No. 41-00035-05503

Crusher No. 9101

DEFAULT DECISION

Before: Judge Koutras

Statement of the Case

This proceeding concerns proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments in the amount of \$80 for four alleged violations of certain mandatory safety standards found in Part 56, Title 30, Code of Federal Regulations. The citations and proposed civil penalty assessments are as follows:

| Citation No. | Date | 30 C.F.R. Section | Assessments |
|--------------|----------|----------------------|-------------|
| 2868074 | 12/04/86 | 56.6042 | \$ 20 |
| 2868076 | 12/04/86 | 56.9022 | \$ 20 |
| 2868077 | 12/04/86 | 56.14007 | \$ 20 |
| 2868078 | 12/04/86 | 56.1800(a)(b) | \$ 20 |

On October 2, 1987, I issued an Order to Show Cause directing the respondent to state why it should not be held in default and a summary order entered in accordance with the applicable Commission rules because of its failure to file a timely answer in this case. The order directed the respondent to respond by October 17, 1987. On October 21, 1987, respondent's counsel contacted me by telephone, and after explaining the circumstances concerning the respondent's failure to file

~1945

a timely response, counsel indicated that he was contemplating paying the proposed civil penalty assessments in full, or in the alternative, would attempt to settle the matter with the petitioner's counsel. Respondent's counsel was advised that he would have an additional week within which to decide how to proceed further, but that any decision in this regard should be made within that time frame, and that he was to communicate his decision to me in writing, with a written response to my show-cause order. On November 9, 1987, petitioner's counsel advised me that the respondent has not further communicated with his office, and the respondent's counsel has not communicated with me, nor has he filed any written response to my show cause order.

Discussion

The applicable Commission Rules in this case provide as follows:

29 C.F.R. 2700.27

2700.27 Proposal for a penalty.

(a) When to file. Within 45 days of receipt of a timely notice of contest of a notification of proposed assessment of penalty, the Secretary shall file a proposal for a penalty with the Commission.

29 C.F.R. 2700.28

2700.28 Answer.

A party against whom a penalty is sought shall file and serve an answer within 30 days after service of a copy of the proposal on the party. An answer shall include a short and plain statement of the reasons why each of the violations cited in the proposal is contested, including a statement as to whether a violation occurred and whether a hearing is requested.

29 C.F.R. 2700.63

2700.63 Summary disposition of proceedings.

(a) Generally. When a party fails to comply with an order of a judge or these

~1946

rules, an order to show cause shall be directed to the party before the entry of any order of default or dismissal.

(b) Penalty proceedings. When 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.

The pleadings in this case reflect that the respondent was served with a copy of the petitioner's complaint proposing the assessment of civil penalties for the alleged violations in question on April 1, 1987. Respondent's answer was received by the petitioner on July 27, 1987. As a result of the untimely answer, petitioner filed a motion for default judgment, and my show-cause order followed.

The respondent has failed to respond in writing to my show-cause order, and its counsel has not further communicated with me in this matter. Under the circumstances, I conclude and find that the respondent is in default and has waived its right to be further heard in this matter. I see no reason why the petitioner's proposed civil penalty assessments should not be made the final order of the Commission, and the motion for default judgment IS GRANTED.

ORDER

Pursuant to Commission Rule 63, 29 C.F.R. 2700.63, judgment by default is herewith entered in favor of the petitioner, and the respondent IS ORDERED to immediately pay to the petitioner the sum of \$80, as the final civil penalty assessment for the violations in question.

George A. Koutras
Administrative Law Judge