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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. WEST 91-230-M
A.C. No. 05-01780-05503

v.

September Morn

MENDISCO MINING,
RESPONDENT

DECISION

Appearances: Margaret A. Miller, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner.

Before: Judge Lasher

This matter arises upon the filing of a proposal for penalty by the Petitioner (MSHA) on April 15, 1991, seeking assessment of civil penalties (\$200 each) against Respondent for four violations described in four Citations which were issued pursuant to Section 104(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(d) (1977).

At the hearing in this matter in Grand Junction, Colorado, on October 24, 1991, Petitioner, as above indicated, was represented by legal counsel. Respondent, which the record shows received actual notice of the hearing (a Postal Service green card attached to the notice of hearing in the Commission's official case file reflects its receipt of the notice of hearing by certified mail on September 17, 1991), neither appeared nor advised the presiding Judge or counsel for Petitioner of its intent not to appear. Indeed, it clearly appears that Respondent repeatedly ignored various orders of this tribunal and efforts of Petitioner's counsel to communicate with it.

At hearing, a full exposition of Respondent's repeated failures was made and after determination of the facts and examination of the case file, it was determined that:

1. Respondent had abandoned its position and interest in this proceeding;
2. Respondent had become incommunicado; and

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3. Respondent had failed to appear at the hearing, even though it had received more than adequate notice and despite efforts of counsel (at my direction) to personally contact it regarding its intentions.

Accordingly, by decision issued from the bench on the record, the default of the Respondent was entered and the penalties initially proposed by MSHA were ordered assessed as final. That decision is here AFFIRMED.

ORDER

Respondent SHALL within 30 days from the date of this decision PAY to the Secretary of Labor the total sum of \$800 as and for the civil penalties previously assessed (\$200 each for Citations numbered 3631073, 3631077, 3631078, and 3631075).

Michael A. Lasher, Jr.
Administrative Law Judge