

CCASE:
SOL (MSHA) V. MARTIN SALES & PROCESSING
DDATE:
19930329
TTEXT:

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 92-1008
Petitioner	:	A.C. No. 46-02208-03595
v.	:	
	:	Docket No. WEVA 92-1096
MARTIN SALES & PROCESSING,	:	A.C. No. 46-02208-03597 R
Respondent	:	
	:	Docket No. WEVA 92-1097
	:	A.C. No. 46-02208-03598 R
	:	
	:	Docket No. WEVA 92-1108
	:	A.C. No. 46-02208-03599 R
	:	
	:	Mine No. 1

SUMMARY DEFAULT DECISIONS

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern 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 for fifty-one (51), alleged violations of certain mandatory safety and health standards found in Parts 70, 75, and 77, Title 30, Code of Federal Regulations. The respondent, through counsel, filed answers to the proposals and three of the cases were consolidated for hearing in Charleston, West Virginia, on Wednesday, February 10, 1993. The hearing was continued at the request of the respondent, and after the addition of another case, a consolidated hearing was scheduled in Charleston, West Virginia, on Friday, March 19, 1993. The hearing was subsequently cancelled on February 24, 1993, and an Order to Show Cause was issued by me after the petitioner filed a Motion for Summary Order of Default because of the failure by the respondent to respond to its pre-trial discovery requests.

The petitioner initiated timely discovery in these matters pursuant to the Commission's applicable Rules found at Part 2700, Title 29, Code of Federal Regulations, and served the respondent with interrogatories, requests for admissions, and requests for the production of documents. Of particular interest to the

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petitioner was the apparent position taken by the respondent that it is financially unable to pay any of the proposed civil penalty assessments. This position was stated in a January 24, 1993, letter from the respondent's counsel to the petitioner's counsel, with two attachments itemizing the respondent's debts. The letter states as follows:

Pursuant to our previous discussions, I have enclosed a copy of financial information from my client's bank, Bank of Mingo. Additionally, as you are aware, my client is no longer operating the mine. As a result of this idle status of the mine, my client has no income to pay any debts at this time. If additional information is required regarding the ability of my client to pay, please contact me at your convenience.

On January 5, 1993, I issued an Order compelling the respondent to answer the petitioner's discovery requests and I took note of the fact that the petitioner's requests to the respondent were timely filed, and the respondent had ample time to respond and advanced no objections or excuses for failing to fully respond. Thereafter, on January 11, 1993, I issued another Order directing the respondent to respond to the petitioner's second request for production of documents.

The petitioner's counsel states that she has repeatedly attempted to contact the respondent's counsel regarding these cases, and has sent counsel letter asking him to respond to her discovery requests, all to no avail. The only response from the respondent's counsel appears to be the aforementioned letter dated January 24, 1993. With regard to that letter, petitioner's counsel states that she received the letter on March 5, 1993, and that the attachments post-date the cover letter. Petitioner's counsel further states that the letter and attachments merely show that the respondent has outstanding debts, do not answer the bulk of her discovery requests, and do not establish that the respondent does not have the means to pay the assessments.

In view of the respondent's failure to respond to its discovery requests, the petitioner filed a motion for summary order of default on February 25, 1993. That same day, I issued an Order directing the respondent to show cause as to why it should not be held in default and immediately ordered to pay the proposed civil penalty assessments because of its failure to respond to the petitioner's discovery requests and for its failure to comply with my previously issued orders directing it to reply to those requests. The respondent has not replied to my Order.

Discussion

Commission Rule 63, 29 C.F.R. 2700.63, provides for the summary disposition of proceedings, and it states as follows:

(a) Generally. When a party fails to comply with an order of a judge or these 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 respondent has failed to respond to my Order to Show Cause of February 25, 1993. It has also failed to adequately respond to my previous orders compelling it to respond to the discovery requests filed by the petitioner. Under all of these circumstances, I conclude and find that the respondent is in default and the petitioner's motion for summary decision IS GRANTED.

ORDER

Summary default judgment is entered in favor of the petitioner, and the respondent IS ORDERED to immediately pay to the petitioner (MSHA), the following proposed civil penalty assessments as the final civil penalty assessments for the contested violations in these proceedings:

Docket No. WEVA 92-1008

Order No.	Date	30 C.F.R. Section	Assessment
3578142	2/10/92	75.1704	\$3,500

Docket No. WEVA 92-1096

Citation/ Order No.	Date	30 C.F.R. Section	Assessment
2743723	5/2/91	75.1721(a)	\$300
2743724	5/2/91	75.321	\$600
2743725	5/2/91	75.1721(b)(6)	\$600
2743726	5/2/91	75.1721(b)(7)	\$600
2743727	5/2/91	75.1721(b)(8)	\$600
2743728	5/2/91	75.1721(c)(1)	\$800
2743729	5/2/91	75.1721(b)(9)	\$600
2743731	5/2/91	49.2(a)(1)	\$600

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Citation/ Order No.	Date	30 C.F.R. Section	Assessment
2743732	5/2/91	75.1200	\$600
2743733	5/2/91	75.508	\$600
2743735	5/2/91	75.300	\$600
2743736	5/2/91	75.305	\$800
2743737	5/2/91	75.306	\$600
2743738	5/2/91	75.512	\$600
2743739	5/2/91	75.1704-2(c)(1)	\$600
2743740	5/2/91	77.800-1(a)	\$600
3757415	6/19/91	70.400	\$200
3757119	9/24/91	75.212(c)	\$ 90
2723528	10/9/91	75.900	\$800
2723531	10/10/91	75.901	\$800

Docket No. WEVA 92-1097

Citation/ Order No.	Date	30 C.F.R. Section	Assessment
2723533	11/19/91	75.503	\$78
9921772	1/09/92	70.207(a)	\$119
3742612	1/21/92	75.1725(a)	\$655
3742614	1/21/92	75.220(a)(1)	\$1,000
3753662	1/21/92	75.316	\$850
3753664	1/21/92	75.400	\$1,071
3753665	1/21/92	75.2030	\$1,071
3753666	1/21/92	75.204(f)(7)	\$714
3742626	1/23/92	75.1106-5(a)	\$560
3575141	2/10/92	75.523-2(a)(2)	\$445
3575147	2/10/92	75.516	\$445
3575148	2/10/92	75.1100-2(e)(2)	\$112
3575149	2/10/92	75.1722(a)	\$560
3742640	2/10/92	75.503	\$445
3754206	2/10/92	75.400	\$714
3754207	2/10/92	75.1722(b)	\$714
3754208	2/10/92	75.1722(b)	\$213
3575152	2/11/92	75.1100-2(a)(1)	\$655
3575153	2/11/92	75.900	\$259
3575154	2/11/92	75.316	\$655

Docket No. WEVA 92-1108

Citation/ Order No.	Date	30 C.F.R. Section	Assessment
3575155	2/11/92	75.1403	\$445
3754209	2/11/92	75.515	\$259
3754210	2/11/92	75.1103-4(a)(3)	\$572
3754211	2/11/92	75.400	\$168
3754212	2/11/92	75.1722(a)	\$714

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Citation/ Order No.	Date	30 C.F.R. Section	Assessment
3575157	2/12/92	75.523-3(b)(2)	\$445
3575159	2/12/92	75.513-1(a)(1)	\$168
3575160	2/18/92	75.305	\$470
3754213	2/18/92	75.220(a)(1)	\$1,357
3754214	2/18/92	75.208	\$1,143

George A. Koutras
Administrative Law Judge

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