

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

On March 29, 1993, I issued Summary Default Decisions in these proceedings finding the respondent in default for failing to respond to certain discovery requests made by the petitioner and for failing to respond to my February 25, 1993, Order to Show Cause affording the respondent an opportunity to explain why it had not answered the discovery requests, why it had not complied with my previous orders directing it to respond to those requests, and why it should not be defaulted for its failure to respond, 15 FMSHRC 559 (March 1993).

The respondent, through counsel, appealed my default decisions, and on April 22, 1993, the Commission vacated my default decisions and remanded the matters to me for further proceedings consistent with its remand order. Thereafter, on April 28, 1993, I issued a remand order affording the respondent an opportunity to explain the circumstances under which it believed it timely responded to my February 25, 1993, show cause order, why it believed it fully responded to the petitioner's discovery requests, and to explain why it introduced a defense to some of the contested citation for the first time in its appeal to the Commission and had not done so in its answers filed in these proceedings. The respondent was afforded twenty (20) days within which to file its responses to my remand order, and was

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advised that its failure to respond would again subject it to a possible default. Copies of the Postal Service certified mailing receipts reflect that respondent's counsel received my remand order on May 3, 1993, and that the respondent's president received it on May 1, 1993.

#### Discussion

The respondent failed to file any substantive response to my remand order of April 28, 1993. Instead of responding and availing itself of an opportunity to explain its position in compliance with the Commission's April 22, 1993, order vacating my default decisions, the respondent's counsel, J. Thomas Hardin, filed a motion to withdraw as counsel for the respondent and a request that the respondent be permitted additional time in which to obtain additional counsel.

On May 4, 1993, pursuant to Commission Rule 3(d), 29 C.F.R. 2700.3(d), I issued an order denying Mr. Hardin's motion to withdraw as counsel for the respondent in these proceedings. Mr. Hardin was reminded of his obligation and duty to remain as counsel for the respondent and to continue his representation until the Commission's remand order of April 22, 1993, was satisfied. Mr. Hardin was specifically advised of my expectation that he comply with my remand order of April 28, 1993, and the respondent was again cautioned that its failure to respond would again result in a possible default. Copies of the Postal Service certified mailing receipts reflect that Mr. Hardin received my order denying his motion to withdraw on May 8, 1993, and that the respondent's president received a copy on May 7, 1993. As of this date, no further responses have been received from the respondent or Mr. Hardin.

#### Conclusion

After careful review and consideration of the entire record in these proceedings, including the matters discussed in my remand order of April 28, 1993, and my order of May 4, 1993, denying counsel Hardin's motion to withdraw from these proceedings, copies of which are attached and incorporated herein by reference, I cannot conclude that the respondent has presented any additional facts or circumstances mitigating its failure to timely respond to the petitioner's discovery requests, or my previously issued orders in these proceedings. In my view, the respondent has had ample opportunity to present its position in response to the Commission's remand of April 22, 1993, but it has failed to timely respond as directed by my remand order of April 28, 1993. Under the circumstances, I again find the respondent IN DEFAULT, and my previous Summary Default Decisions of March 29, 1993, reported at 15 FMSHRC 559 (March 1993), are reinstated and reaffirmed.

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ORDER

Summary judgment is again entered in favor of the petitioner, and the respondent IS ORDERED to immediately pay to the petitioner (MSHA), the proposed civil penalty assessments of \$32,166, for the fifty-one (51), violations in question. The individual citations and assessments amounts are enumerated in my prior summary decision at 15 FMSHRC 561-563 (March 1993).

George A. Koutras  
Administrative Law Judge

Attachments

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