

CCASE:
SOL (MSHA) V. NEW HOPE
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 94-326
Petitioner : A.C. No. 15-16708-03580
v. :
: No. 1 Mine
NEW HOPE OF KENTUCKY, INC., :
Respondent :

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for the Petitioner;
John Robbins, Supervisor, New Hope of Kentucky,
Inc., Pineville, Kentucky, for the Respondent.

Before: Judge Feldman

This matter concerns a petition for civil penalty filed by the Secretary of Labor against the respondent pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (the Act). The petition seeks to impose a total civil penalty of \$1,642 for three alleged violations of the mandatory health and safety standards contained in Part 75 of the regulations. 30 C.F.R. Part 75.

The above proceeding was called for hearing on July 14, 1994, in Pineville, Kentucky. The respondent was represented by John Robbins who is the respondent's supervisor. Ana Robbins, John Robbins' wife, is the President of the respondent corporation.

At the commencement of trial, the parties informed me they had reached a settlement. Counsel for the Secretary presented the settlement terms for my approval. Citation No. 4240224 cited an alleged violation of section 75.310(d), 30 C.F.R. 75.310(d), because the weak walls and explosion doors associated with the mine's main fan were not constructed in conformity with the regulatory requirements. The parties moved to reduce the degree of negligence associated with this violation from moderate to low because the main fan had been in existence for a prolonged period

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of time and its construction and design had been inspected by the Mine Safety and Health Administration (MSHA) on numerous occasions. Consequently, the parties averred that the deficiency in the fan's design was not readily apparent. Therefore, the parties moved to reduce the proposed penalty from \$506 to \$216.

The proposed civil penalties for Citation Nos. 4240258 and 4240259 were \$724 and \$412, respectively. The settlement terms included reducing the degree of negligence associated with these citations from moderate to low and a corresponding reduction in the proposed penalties to reflect a \$382 penalty for Citation No. 4240258 and a \$292 penalty for Citation No. 4240259. The reduction in penalties was predicated on the assertion that the cited violations were primarily attributable to the mining of an adjacent mine by another operator.

Thus, the settlement motion presented on the record contemplated a reduction in total civil penalties from \$1,642 to \$890. At the hearing the respondent emphasized that its agreement to settle this matter should not be construed as an admission of liability or negligence. In this regard, the parties settlement terms include the following statement:

The parties agree that for purposes of actions or proceedings other than actions or proceedings under the Federal Mine Safety and Health Act of 1977 (Mine Act), nothing contained herein shall be deemed an admission by the respondent New Hope of Kentucky, Inc., that it violated the Mine Act or its regulations or standards.

ORDER

In view of the above, the parties' motion to approve settlement IS GRANTED. Accordingly, IT IS ORDERED that the respondent pay a civil penalty of \$890 in satisfaction of the three citations in issue. Payment is to be made to the Mine Safety and Health Administration within 30 days of the date of this decision. The failure of the respondent to remit timely payment will result in the imposition of the initial proposed civil penalty of \$1,642. Upon timely receipt of the \$890 payment, this case IS DISMISSED.

Jerold Feldman
Administrative Law Judge

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Distribution:

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Mr. Reece Lamar, and Mr. John Robbins, Supervisors, New Hope of Kentucky, Inc., P.O. Box 1597, Harlan, KY 40831 (Certified Mail)

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