

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 23, 2013

AGAPITO ASSOCIATES, INC.,	:	CONTEST PROCEEDING
Contestant	:	
	:	
v.	:	Docket No. WEST 2008-1451-R
	:	Citation No. 7697010; 07/24/2008
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Crandall Canyon Mine
Respondent	:	Mine ID No. 42-01715 CL3
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2008-1447
Petitioner	:	A.C. No. 42-01715-159799 CL3
	:	
v.	:	Crandall Canyon Mine
	:	
AGAPITO ASSOCIATES, INC.,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Manning

These proceedings are before me upon a notice of contest and a petition for assessment of civil penalty filed by the Secretary of Labor, acting through the Mine Safety and Health Administration (“MSHA”), against Agapito Associates, Inc., pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815 and 820 et seq. (the “Mine Act”). On September 18, 2013, the Secretary filed an unopposed Motion to Approve Settlement and Order Payment.

These cases arose out of the mine collapse at the Crandall Canyon underground coal mine in Emery County, Utah, in August 2007. The collapse led to the loss of the lives of six miners who were working in the mine and the subsequent loss of the lives of three men working to rescue the trapped miners. Several other individuals also sustained serious injuries. The mine was operated by Genwal Resources, Inc. Following the accident, Genwal closed Crandall Canyon Mine. The Secretary and Genwal settled the cases that were brought against Genwal for violations related to the accident and, by order dated October 4, 2012, I approved that settlement. The Secretary also issued Citation No. 7697010 to Agapito under section 104(d)(1) of the Mine Act alleging a violation of 30 C.F.R. § 75.203(a), which is the subject of these proceedings. Agapito is a geological engineering and consulting company that provided services to Genwal.

The cases were set for hearing before me and the parties conducted extensive discovery. Expert witnesses were designated and were set to be deposed. The parties asked that a settlement judge be appointed to see if they could settle the cases to avoid a lengthy trial. Judge Margaret A. Miller met with the parties and was successful in facilitating a settlement of the cases.

Throughout these proceedings, Agapito maintained that, although it made recommendations with respect to roof control at the mine, the mine's operator chose not to follow its recommendations. Agapito contended that it had no control over the mining method or final mining dimensions used by the operator. Agapito further contended that it used sound engineering principles to develop models that it provided to the mine's operator. The Secretary, on the other hand, maintained that Agapito's modeling served as the basis for the mine's roof control plan and its modeling failed to protect miners from the hazards of bursts.

In order to amicably resolve the issues in these cases, the parties propose the following settlement terms:

1. Modify Agapito's negligence from "Reckless Disregard" to "High."
2. Remove the flagrant designation under section 110(b)(2) of the Mine Act.
3. Reduce the proposed penalty from \$220,000.00 to \$100,000.00 based upon the reduction in Agapito's negligence.

I have considered the representations and documentation submitted and I conclude that the proposed settlement is appropriate under the criteria set forth in Section 110(i) of the Mine Act. Accordingly, the Motion to Approve Settlement is **GRANTED**, the citation is **MODIFIED** to reduce the level of negligence to "High," the Secretary's flagrant designation is **REMOVED**, and Agapito Associates, Inc., is **ORDERED TO PAY** the Secretary of Labor the sum of **\$100,000.00** within 40 days of the date of this Order.¹

/s/ Richard W. Manning
Richard W. Manning
Administrative Law Judge

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¹ Payment should be sent to Mine Safety & Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390.