

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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**JUN 11 2015**

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Petitioner

v.

MIZE GRANITE QUARRIES, INC.,  
Respondent

CIVIL PENALTY PROCEEDINGS:

Docket No. SE 2014-407-M  
A.C. No. 09-01036-353316

Docket No. SE 2014-408-M  
A.C. No. 09-01036-353316

Mine: Mize Granite Quarries

**DECISION**

Appearances: Charna Hollingsworth-Malone, Esq., Office of the Solicitor,  
U.S. Department of Labor, Atlanta, GA, for Petitioner

Robert W. Mize, III, President, Mize Granite Quarries, Inc., Elberton,  
GA, for Respondent

Before: Judge David Barbour

In Docket No. SE 2014-407-M, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (2012) the Secretary of Labor (Secretary), on behalf of his Mine Safety and Health Administration (MSHA) alleges that Mize Granite Quarries, Inc., (Mize Granite or the company) violated mandatory safety standard 30 C.F.R. 56.15005, at a granite quarry owned and operated by the company.<sup>1</sup> The standard requires in pertinent part that [“s]afety belts and lines shall be worn when persons work where there is danger of falling.” 30 C.F.R. § 56.15005. The Secretary asserts that on January 14, 2014, MSHA Inspector John Mayer observed that a miner working on a ledge in the quarry was not wearing fall protection while drilling within 6 feet of the ledge’s edge. Gov’t Exh. 1. The ledge slopes downward towards the edge and the edge is more than 20 feet from the floor of the quarry. *Id.* The inspector cited Mize Granite for the alleged violation. He found that the violation was highly likely to cause a fatality, that the violation was a significant and substantial contribution to a mine safety hazard and that Mize Granite was highly negligent in allowing the condition to exist. The Secretary petitioned for the assessment of a civil penalty of \$45,000 for the alleged violation.

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<sup>1</sup> The quarry is located in Elberton, Georgia.

After the petition was filed, the company answered, conceding the violation, but asserting that the penalty would adversely impact its ability to continue in business. The Commission's chief judge assigned the case to the undersigned who directed the parties to engage in discussions to determine whether they could resolve their differences. When the parties reported they remained at loggerheads, the undersigned scheduled the matter for hearing.


The parties agreed to go forward on May 5 - 6, 2015, in Athens, Georgia. The hearing convened as scheduled on the morning of May 5. At the conclusion of the hearing, the undersigned again urged the parties to engage in settlement discussions. Tr. 77. After conferring, the parties reached a settlement.<sup>2</sup> *Id.* Counsel for the Secretary explained the settlement as follows:

<u>Citation No.</u>	<u>Date</u>	<u>30 C.F.R.</u>	<u>Proposed Penalty</u>	<u>Settlement Amount</u>
8811725	1/14/14	56.15005	\$45,000	\$27,250

Counsel stated that there are no changes to the citation. Tr. 78. She also stated that the parties agree a total penalty of \$27,250 is warranted and that they request it be paid with an initial payment of \$2,250, the remainder to be paid over a three-year period at monthly intervals. *Id.*

### ORDER

The settlement **IS APPROVED**. Mize Granite **IS ORDERED** to pay a total penalty of \$27,250.00 for the violation in question. On August 3, 2015, Mize Granite shall make an initial payment of \$2,250. On the first business day of the next 34 months, Mize Granite shall pay \$714.30, and on the first business day of July, 2018, Mize Granite shall pay \$713.80. Should Mize Granite fail to make a scheduled payment the entire balance due will be payable.<sup>3</sup> Upon payment of the full penalty of \$27,250.00 this proceeding **IS DISMISSED**.

  
David F. Barbour  
Administrative Law Judge

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<sup>2</sup> The parties had already submitted a written settlement for Docket No. SE 2014-408-M, which the court approved on June 9, 2015. In the decision approving the settlement, the court effectively dismissed Docket No. SE 2014-408-M.

<sup>3</sup> Payment shall be sent to: Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, Missouri 63197-0390.

Distribution (Certified Mail):

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