

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Office of Administrative Law Judges
1331 Pennsylvania Avenue, N.W., Suite 520N
Washington, D.C. 20004

December 12, 2014

STAR MINE OPERATIONS, LLC,	:	CONTEST PROCEEDING
Contestant,	:	
v.	:	Docket No. WEST 2015-100-RM
	:	Written Notice No. 8834101; 09/25/2014
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Revenue Mine
Respondent.	:	Mine ID 05-03528

ORDER GRANTING SECRETARY’S MOTION TO DISMISS

This case is before me upon the Notice of Contest filed by Star Mine Operations (“Star Mine” or “the operator”) pursuant to section 105 of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815. Star Mine filed this contest case on October 24, 2014, to seek review of the pattern of violations (“POV”) notice that the Secretary of Labor (“Secretary”) issued to Star Mine pursuant to his rule implementing section 104(e), 30 U.S.C. § 814(e).

I. Procedural Background

On November 13, 2014, the Secretary filed a Motion to Dismiss, asking that Star Mine’s contest be dismissed with prejudice for lack of subject-matter jurisdiction. Thereafter, on November 24, 2014, Chief Administrative Law Judge Robert J. Lesnick assigned this contest case to me.¹ Star Mine filed its Response in Opposition to the Secretary of Labor’s Motion to Dismiss on November 26, 2014.²

On September 25, 2014, the Secretary issued Written Notice No. 8834101 to Star Mine. (Mot. to Dismiss at 1; Resp. in Opp’n at 3.) Because a POV notice is not a citation or order issued under section 104, the Secretary contends that the text of the Mine Act does not give the

¹ The deadline to file a response in opposition was initially November 25, 2014. *See* 29 C.F.R. § 2700.10(d). However, on November 24, 2014, Star Mine filed an unopposed motion asking for a one-day extension to file its response to the Secretary’s motion seeking dismissal. Commission Procedural Rule 55 grants Commission Judges broad powers to issue orders and procedurally manage the cases before them. 29 C.F.R. § 2700.55. The operator’s unopposed motion is **GRANTED** and its Response in Opposition is hereby **ACCEPTED**.

² On December 3, 2014, the Secretary filed a motion seeking leave to file a reply to Star Mine’s response in opposition. According to the Secretary, such a reply will allow him to “meaningfully respond” to Star Mine’s “due process argument.” (Mot. for Leave at 1.) I need not address the Secretary’s motion for leave to file a reply because I have determined that I do not have jurisdiction in this case. *See* discussion *infra* Part III.

Commission and its Administrative Law Judges jurisdiction to hear this case. (Mot. to Dismiss at 1–4.) In support of his claim, the Secretary also argues that the Commission’s own rules provide “no procedure for contesting or answering contests of a pattern of violations notice or any other notice.” (*Id.* at 3.) Further, the Secretary highlights recent decisions from Chief Judge Lesnick and Administrative Law Judge Margaret Miller that dismissed contest cases involving POV notices for lack of subject-matter jurisdiction. (*Id.* at 3–4 (citing *Brody Mining, LLC*, 36 FMSHRC 284, 287 (Jan. 2014) (ALJ), and *Pocahontas Coal Co.*, 36 FMSHRC 1371, 1372–73 (May 2014) (ALJ).)³ Accordingly, the Secretary contends that this contest case should be dismissed with prejudice.

In response, Star Mine notes that it sold the Revenue Mine to Fortune Minerals Limited (“Fortune”) earlier this year. (Resp. in Opp’n at 3–4.) Although MSHA is now issuing citations and orders to Fortune, the agency apparently “refuses to change the information available to the public, continuing to state that Star Mine is the operator of the mine, and therefore, responsible for the issuance of the present [section] 104(e) orders.” (*Id.* at 4.) Thus, Star Mine claims to have “an interest in having accurate information being publicly disseminated about its current ownership obligations.” (*Id.* at 5.) In Star Mine’s view, that interest requires a hearing under the Due Process Clause. (*Id.* at 5–8.) Moreover, the operator claims this contest case represents its only opportunity for relief before the Commission because Star Mine no longer owns or operates the Revenue Mine. (*Id.* at 5, 9.) Star Mine therefore argues it should be afforded a hearing and that MSHA should be ordered to correctly identify the operator of the Revenue Mine in its Data Retrieval System.⁴ (*Id.* at 9.)

II. Principles of Law

A. Motion to Dismiss for Lack of Subject-Matter Jurisdiction

Although the Commission’s Procedural Rules do not specifically enumerate the grounds for a motion to dismiss for lack of subject-matter jurisdiction, the Federal Rules of Civil Procedure guide Commission Judges “as far as practicable” on procedural questions “not regulated by the [Mine] Act, [the Commission’s] Procedural Rules, or the Administrative Procedure Act.” 29 C.F.R. § 2700.1(b). Federal Rule 12(b)(1) allows parties to move for dismissal for lack of subject-matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). When considering

³ Although both ALJ cases are currently on appeal, the operator in *Brody* did not raise this jurisdictional issue before the Commission. *Brody Mining, LLC*, 36 FMSHRC 2027, 2033 (Aug. 2014). However, the Commission has granted Pocahontas Coal Company’s petition for discretionary review of Judge Miller’s decision. *See* Unpublished Order Granting PDR dated June 25, 2014.

⁴ Star Mine also attached four exhibits to its response, which included: (1) a redacted copy of the sales contract between the operator and Fortune; (2) a printout of a legal identity report submitted to MSHA’s website that is dated March 10, 2014; (3) a printout from MSHA’s Mine Data Retrieval System that is dated November 26, 2014; and (4) a section 104(e) withdrawal order that was issued to Fortune and dated October 29, 2014.

a motion to dismiss for lack of subject-matter jurisdiction, courts accept a plaintiff's well-pleaded factual allegations as true and draw all reasonable inferences in the plaintiff's favor. *Ctr. for Dermatology & Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588 (7th Cir. 2014); *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). However, such plaintiffs bear the burden of establishing that jurisdiction is proper. *Ctr. for Dermatology & Skin Cancer*, 770 F.3d at 589; *Leite*, 749 F.3d at 1117. Here, that burden is borne by Star Mine.

B. Subject-Matter Jurisdiction Under the Mine Act

Section 105(d) of the Mine Act allows mine operators “to contest the issuance or modification of an order issued under section 104, or citation or a notification of proposed assessment of a penalty issued under [section 105(a) or (b)], or the reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 104” 30 U.S.C. § 815(d). As Judge Miller noted in her order dismissing a contest case involving a POV notice, “[n]otably, the section does not afford a right to contest written notices.” *Pocahontas Coal Co.*, 36 FMSHRC at 1372; *see also id.* at 1372–74 (examining statutory text and legislative history to conclude that Congress intended to treat POV notices differently than citations and orders).

III. Analysis and Order

Every adjudicatory body requires jurisdiction before it hears a case. As the party invoking the Commission's authority in this matter, Star Mine bears the burden of demonstrating that the Commission has subject-matter jurisdiction under the Mine Act to hear the contest case before me. Although section 105(d) is the Commission's jurisdictional touchstone, Star Mine has not explained how section 105(d) can be read to confer jurisdiction upon the Commission to hear this matter. Instead, the operator seizes on the unusual facts of this case to claim it will be denied due process if this case is dismissed. Because the operator sold its interest in the Revenue Mine, Star Mine contends it “has no other avenue of recourse before this Commission to challenge MSHA's decision to issue a Pattern Notice” other than the contest case before me.⁵ (Resp. in Opp'n at 9.) Star Mine therefore claims that it will be denied due process if not afforded a hearing before the Commission regarding the POV notice. (*Id.* at 3.)

Star Mine seemingly hopes that I will ignore or contort the text of section 105(d) to accommodate its purported due process interests, but those interests are illusory.⁶ Moreover, the

⁵ In contrast, the mine operators in *Brody Mining* and *Pocahontas Coal Co.* retained control of the mine. Because those operators ultimately received withdrawal orders under section 104(e), they were free to challenge the POV notice after Commission jurisdiction attached to the resulting 104(e) withdrawal orders. *See Brody Mining*, 36 FMSRHC at 286–87; *Pocahontas Coal Co.*, 36 FMSHRC at 1373–74.

⁶ Star Mine's due process argument puts the cart before the horse: it assumes that it has an interest protected by the Due Process Clause. Yet, due process protections only attach to life, liberty, and property interests. *See, e.g., Bryn Mawr Care, Inc. v. Sebelius*, 749 F.3d 592, 598 (7th Cir. 2014) (indicating that a party must establish a protected interest before a court will

text of section 105(d) specifically limits the Commission’s jurisdiction—and excludes contests of notices, POV or otherwise. Even accepting as true the factual allegations included in Star Mine’s Notice of Contest and drawing all reasonable inferences in its favor, Star Mine simply has not met its burden of demonstrating that the Commission has jurisdiction over this case. In light of the text of section 105(d) and the persuasive analyses included in the recent decisions from Chief Judge Lesnick and Judge Miller, I conclude that I am without jurisdiction to hear a contest case regarding a POV notice. Accordingly, the Secretary’s motion to dismiss this case with prejudice is **GRANTED**.

WHEREFORE, it is hereby **ORDERED** that Docket No. WEST 2015-100-RM be **DISMISSED** with prejudice.



Alan G. Paez
Administrative Law Judge

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determine what process is due). Notwithstanding Star Mine’s claim that its “reputational” interest in “having accurate information about its current ownership obligations” entitle the operator to a hearing in this case (Resp. in Opp’n at 5–6, 8), Star Mine does not explain why its interests are cognizable under the Due Process Clause. *See Bryn Mawr Care, Inc.*, 749 F.3d at 598 (suggesting that reputational harms, alone, do not constitute interests protected by the Due Process Clause). Thus, I need not address the adequacy of the Commission’s procedure for contesting the POV notice in this case because Star Mine has not demonstrated an interest to which due process protections attach.