

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710  
TELEPHONE: 202-434-9956 / FAX: 202-434-9949

February 2, 2017

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

v.

ARJ CONSTRUCTION COMPANY INC.,  
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. YORK 2016-7  
A.C. No. 18-00748-391227

Mine: Taylor # 1

**ORDER OF DEFAULT AND ORDER TO PAY**

This case is before me upon a petition for assessment of civil penalties under section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 820(c).

This docket involves two alleged violations and total proposed penalties of \$32,100.00. The Petition was filed on November 10, 2015. Counsel for Respondent filed an Answer on his client's behalf December 16, 2015. When this docket was assigned to me on December 29, 2015, I issued a prehearing order directing the parties to engage in settlement discussions to determine whether a hearing would be necessary. The parties were further advised that failure to comply with the terms of the order could result in an order to show cause and a finding of default.

On September 2, 2016, after the case had been outstanding for nine months without apparent progress toward settlement, my law clerk requested the parties' availability for a conference call with me to discuss scheduling a hearing. In response, Respondent's counsel requested additional time to look into the case and discuss his client's position with the Solicitor. However, after several months, the Solicitor advised that Respondent's counsel still had not been in contact with him.

I held a conference call on December 6, 2016 to discuss scheduling a hearing for this case. Respondent's counsel failed to appear despite having received two emails stating the date and time for the call, including one that was sent to him the day before the call in response to an email from his office asking what time the call would be held. Shortly after missing the call, Respondent's counsel phoned my law clerk, explained that his office had confused the time for the call, and requested copies of the citations. My clerk told him that a hearing needed to be scheduled and emailed him a copy of the Petition.

The conference call was rescheduled for the afternoon of December 9, 2016. My office sent an email to both parties ordering them to appear. Counsel for Respondent again failed to appear. He did not contact my office afterward to explain his failure to appear.

On December 13, 2016, I issued an Order to Show Cause summarizing the procedural history of the case and directing Respondent to explain why an order of default should not be issued against it given its failure to comply with my order to engage in settlement discussions and failure to appear on conference calls. My office did not receive any response.

On January 9, 2017, I issued a Final Order to Show Cause again directing Respondent to explain why an order of default should not be entered. Respondent was warned that if an explanation was not filed within ten days of its receipt of the order, no further notices would be issued, Respondent would be in default, its notice of contest and request for hearing would be dismissed, and it would be ordered to pay the full amount of the proposed penalties. The certified mail receipt shows that Respondent received the Final Order to Show Cause on January 17, 2017. My office has not received any response.

Respondent has failed to defend its case and to comply with my orders and instructions, including my two Orders to Show Cause and my instructions to engage in settlement discussions with the Secretary, to provide its availability for hearing, and to attend conference calls. The Federal Rules of Civil Procedure require entry of default against a defendant who fails to plead or otherwise defend his case. Fed. R. Civ. Pro. 55. The Commission's procedural rules also permit a finding of default and summary disposition of a case after issuance of a show cause order when a party has failed to comply with a judge's orders. 29 C.F.R. § 2700.66.

**WHEREFORE**, I find Respondent to be **IN DEFAULT**.

Respondent's notice of contest and request for hearing are **DISMISSED**. Respondent is hereby **ORDERED** to pay a total penalty of \$32,100.00 within thirty (30) days of the date of this Order.<sup>1</sup>



Priscilla M. Rae  
Administrative Law Judge

---

<sup>1</sup> Checks or money orders should be sent to: Mine Safety & Health Administration, U.S. Department of Labor, P.O. Box 790390, St. Louis, MO 63179-0390.

Distribution:

Anthony M. Fassano, Esq., U.S. Department of Labor, Office of the Solicitor, 170 South Independence Mall West, Suite 630E, Philadelphia, PA 19106-3306

John F. Leaberry, Esq., Law Office of John Leaberry, 106 Patrick Street, Lewisburg, WV 24901

ARJ Construction Company Inc., 201 South Jefferson Street, Lewisburg, WV 24901