

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 22, 2017

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

v.

ARJ CONSTRUCTION COMPANY INC.,
Respondent.

CIVIL PENALTY PROCEEDING

Docket No. YORK 2016-103
A.C. No. 18-00748-409912

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 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d).

At issue in this docket is one citation with a total proposed penalty of \$154.00. The Petition was filed on July 27, 2016. On August 10, 2016, the docket was assigned to me and designated for simplified proceedings under the Commission’s procedural rules at 29 C.F.R. Part 2700, Subpart J. Pursuant to the procedural rules, within 45 days after a case has been designated for simplified proceedings, the parties must exchange any information and materials which may be used to support their claims or defenses and must “engage in a discussion to explore the possibility of settlement” before a prehearing conference is held by the judge. 29 C.F.R. § 2700.105, § 2700.106(a). Between October and December 2016, the Solicitor provided several status updates stating that she had duly provided disclosures to Respondent’s counsel but had never heard back from him.

I held a prescheduled conference call on December 6, 2016 in an attempt to discuss the status of this case and schedule a hearing, if necessary. Counsel for the Respondent failed to appear despite having received two emails stating the date and time for the call and directing him to appear. After missing the call, counsel for the Respondent phoned my law clerk and stated that his client was willing to pay the \$154.00 penalty for the one citation at issue in this docket. My clerk told Respondent’s counsel that he needed to contact opposing counsel to confirm the settlement. However, he never contacted opposing counsel.

A last attempt was provided to Respondent’s counsel to comply with my previous orders by scheduling a conference call on February 3, 2017, at which time he again failed to appear.

On February 6, 2017, I issued an Order to Show Cause ordering Respondent to explain in writing within ten days why an order of default should not be issued against it due to its failure to comply with the procedural rules and with my previous orders to appear on conference calls.

Respondent's counsel signed for receipt of the show cause order on February 9, 2017. However, he has failed to submit a written response.

The Commission's procedural rules 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 \$154.00 within thirty (30) days of the date of this Order.¹



Priscilla M. Rae
Administrative Law Judge

Distribution:

Helga P. Spencer, 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

¹ 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.