

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001

June 29, 2010

|                               |   |                           |
|-------------------------------|---|---------------------------|
| SECRETARY OF LABOR,           | : | CIVIL PENALTY PROCEEDING  |
| MINE SAFETY AND HEALTH        | : |                           |
| ADMINISTRATION (MSHA),        | : | Docket No. KENT 2008-1407 |
| Petitioner                    | : | A.C. No. 15-15978-148474  |
| v.                            | : |                           |
|                               | : |                           |
|                               | : |                           |
|                               | : |                           |
| SHELTON BROTHERS ENTERPRISES, | : | Martin Plant              |
| Respondent                    | : |                           |

**AMENDED DECISION APPROVING SETTLEMENT**

Before: Judge Feldman

The captioned matter is before me based upon a petition for assessment of civil penalty filed pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act). 30 U.S.C. § 815(b). The Secretary filed a motion to approve a settlement agreement and to dismiss this civil penalty proceeding. A Decision approving the parties' settlement terms was issued on April 22, 2010. The settlement terms included the respondent's agreement to pay a reduced civil penalty of \$1,050.00 instead of the \$1,500.00 initially proposed. The Decision Approving Settlement required the respondent to pay the civil penalty within 30 days.

On or about May 24, 2010, when the 30 day period after the Decision approving settlement had expired, the respondent telephoned my law clerk to request a twelve month payment schedule for the \$1,050.00. It is unclear whether the respondent's telephone request occurred several days before or several days after May 24, 2010, as the date of the telephone contact was not recorded. What is clear is that the respondent had telephoned my secretary with a similar request several days prior to telephoning my law clerk. After speaking to my law clerk, the respondent was requested to submit its request in writing. The respondent's request for a twelve month payment schedule was filed by facsimile on June 1, 2010.

Upon receiving the respondent's request, my law clerk telephoned counsel for the Secretary to determine if there was any opposition. On June 17, 2010, the Secretary filed a motion to oppose the respondent's motion for a payment schedule. The Secretary's opposition is based on her assertion that my Decision ordering the respondent to pay the entire \$1,050.00 penalty within 30 days has become final thirty days after its issuance.

As a threshold matter, the April 22, 2010, Decision Approving Settlement noted that this case would not be dismissed until timely payment of the entire \$1,050.00 civil penalty was received. Consequently, I still retain jurisdiction in this matter. Moreover, the respondent's initial contact with my secretary occurred less than 30 days after the settlement decision was issued, and the telephone contact with my law clerk occurred shortly thereafter. Accordingly, the retention of my jurisdiction notwithstanding, the respondent's motion to reopen is timely even if the April 22, 2010, Decision were to become final after 30 days.

Finally, the request to pay the civil penalty in monthly installments rather than in its entirety is procedural rather than substantive. Consequently, approving the twelve month payment schedule does not substantively alter the terms of the parties' settlement agreement. Significantly, the Secretary does not contend that the respondent's proffered twelve month payment schedule is unreasonable.

In view of the above, the respondent's motion to pay the \$1,050.00 civil penalty in twelve monthly installments **IS GRANTED**. Consequently, **IT IS ORDERED** that the respondent pay \$87.50 per month, for a total of twelve (12) months until the total proposed penalty of \$1,050.00 is received. Payment is to be made on the first of each month for twelve consecutive months beginning on September 1, 2010. **IT IS FURTHER ORDERED**, that if any one of the respondent's monthly payments is more than ten days late, the remaining sum of the initially proposed \$1,500.00 civil penalty shall become immediately due and payable. Upon timely receipt of the \$1,050.00 civil penalty, the captioned civil penalty proceeding **IS DISMISSED**.

Jerold Feldman  
Administrative Law Judge

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