

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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January 4, 2002

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 2001-297
Petitioner	:	A. C. No. 15-16470-03503 YIF
v.	:	
	:	Burke Branch Tipple
SIMP-A-LEX,	:	
Respondent	:	

DEFAULT DECISION

Before: Judge Hodgdon

This case is before me on a Petition for Assessment of Civil Penalty pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). On November 30, 2001, I issued an Order to Show Cause to the Respondent ordering it to show cause within 21 days of that order why a default decision should not be issued in this case. For the reasons set forth below, I find that the Respondent is in default and order the payment of the civil penalty proposed by the Secretary.

On October 1, 2001, I issued a Prehearing order to the parties directing a response not later than November 2, 2001. The order was sent to the parties by Certified Mail-Return Receipt Requested. The Respondent's return receipt card shows that the order was signed for by "Betsy Bentley" on October 4, 2001.

The Secretary, by counsel, filed a Motion for Default Judgment on November 7, 2001. In the motion, counsel stated that he had contacted Jerry Bentley, the former manager of Simp-A-Lex, and the person who responded to the Petition for Assessment of Civil Penalty. Mr. Bentley reiterated to counsel what he had stated in the Answer to the petition, that the company was no longer in business and the principal owner of the company was deceased. Mr. Bentley indicated that neither he nor anyone else was in a position to pursue litigation on behalf of the company. Counsel advised him that if that were the case, he should inform the judge that the company wanted to withdraw the contest of the citations in this case. Mr. Bentley stated that he would do so.

When he had not received anything from the company, counsel for the Secretary filed the motion for default. The judge has not received either a request to withdraw from the proceeding, a response to the Secretary's motion or any other communication from the Respondent.

Commission Rule 66(a), 29 C.F.R. § 2700.66(a), requires that "[w]hen a party fails to comply with an order of a Judge . . . an order to show cause shall be directed to the party before the entry of any order of default or dismissal." Rule 66(c), 29 C.F.R. § 2700.66(c), provides that "[w]hen the Judge finds a party in default in a civil penalty proceeding, the Judge shall also enter an order assessing appropriate penalties and directing that such penalties be paid."

The show cause order was sent to the Respondent by Certified-Mail, Return Receipt Requested and by regular mail. The green return receipt card shows that it was received on December 3, 2001, and was signed for by "Amanda Blackburn." The order stated in bold faced print that: "Failure to respond within the time provided will result in the issuance of a Default Decision affirming the citations and assessing a penalty of \$50,113.00." To date no response has been received.

ORDER

Accordingly, it is **ORDERED** that the Respondent, Simp-A-Lex, is found to be in **DEFAULT** in this matter, that Citation Nos. 7368306, 7368307 and 7368308, alleging violations of sections 48.25, 48.31 and 77.1605(b) of the Secretary's Regulations, 30 C.F.R. §§ 48.25, 48.31 and 77.1605(b), respectively, are **AFFIRMED** and that the company is **ORDERED TO PAY** a civil penalty of **\$50,113.00** within 30 days of the date of this decision.

T. Todd Hodgdon
Administrative Law Judge

Distribution: (Certified Mail)

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