

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 16, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2000-231-M
Petitioner	:	A.C. No. 04-04785-05553
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	:	Docket No. WEST 2000-232-M
	:	A.C. No. 04-04785-05554
	:	
	:	Docket No. WEST 2000-239-M
v.	:	A.C. No. 04-04785-05555
	:	
	:	Docket No. WEST 2000-240-M
	:	A.C. No. 04-04785-05556
	:	
	:	Docket No. WEST 2000-241-M
	:	A.C. No. 04-04785-05557
	:	
MARIPOSA AGGREGATES,	:	Docket No. WEST 2000-520-M
Respondent	:	A.C. No. 04-04785-05560
	:	
	:	Docket No. WEST 2000-521-M
	:	A.C. No. 04-04785-05561
	:	
	:	Mariposa Aggregates Quarry

DECISION

Before: Judge Manning

These cases commenced when the Secretary of Labor filed proposed penalty assessments against Mariposa Aggregates under the authority of section 105(a) of the Federal Mine Safety and Health Act of 1977 (the “Mine Act” or the “Act”), 30 U.S.C § 815(a) and the Commission’s Procedural Rules at 29 C.F.R. § 2700.25. Bevan Builders, Inc., doing business as Mariposa Aggregates (“Mariposa Aggregates”) contested the proposed penalties in accordance with 29 C.F.R. § 2700.26, by checking the boxes on the preprinted forms that state “I wish to contest and have a formal hearing on ALL of the violations listed in the Proposed Assessment.” (emphasis in original). These cases involve 107 citations and orders of withdrawal (the “citations”) issued at the Mariposa Aggregates Quarry. The Secretary proposes a total civil penalty of \$108,067.

In response to Mariposa Aggregates’ contests of the penalties, the Secretary filed a

petition for assessment of civil penalty in each case as required by 29 C.F.R. § 2700.28. When Mariposa Aggregates did not file an answer within thirty days as required by 29 C.F.R. § 2700.29, the Commission's Chief Administrative Law Judge issued an order to show cause. In response, Mariposa Aggregates filed a document entitled: "Notice of Fraud; Certified Demand to Cease and Desist Collection Activities Prior to Validation of Purported Debt" ("Notice of Fraud"). The Chief Judge assigned the cases to me.

In its Notice of Fraud, Mariposa Aggregates did not address the citations, orders, or the proposed penalties. Instead, it stated that the Secretary had failed to establish that she had jurisdiction over its quarry. Its notice of fraud also raised a number of other issues that are irrelevant to these proceedings. In my prehearing order, I described the broad nature of Mine Act jurisdiction and suggested that it may be more efficient to resolve any jurisdictional issues prior to hearing. I also explained how cases proceed before the Commission and stated that many of the issues raised by Mariposa Aggregates were not relevant to these proceedings. When the parties were unable to settle the cases, I set them for hearing. I canceled the hearing well before the hearing date on motion of the Secretary. The Secretary filed a motion for summary decision that counsel stated would dispose of all issues in the cases.

The first part of the Secretary's motion for summary decision concerns MSHA's jurisdiction to inspect the quarry. The Secretary argued that there were no genuine issues of material fact on this issue and that she was entitled to summary decision as a matter of law. 29 C.F.R. 2700.67(b). She relied on the declaration of MSHA Inspector Jaime Alvarez and an order of the U.S. District Court. She stated that Mariposa Aggregates has been periodically obstructing MSHA inspections by denying entry to MSHA inspectors. On September 12, 1996, the U.S. District Court for the Eastern District of California granted the Secretary's motion for summary judgment and permanent injunction against Mariposa Aggregates. *Sec'y of Labor v. Bevan Builders, Inc.*, No. CV-F-95-5842 REC (E. D. Cal.) (S. Motion Ex. A). The court found that "defendants' quarry operation, 'Mariposa Aggregates,' constitutes a mine whose products affect commerce and which, as such, is subject to the jurisdiction of the [Act]." Slip op. at 20. The court also found that MSHA "has clear and express authority under the Act to conduct periodic, warrantless, and unannounced health and safety inspections of [the quarry]. . . ." *Id.* The court also enjoined Mariposa Aggregates from obstructing or impeding future MSHA inspections.

Mariposa Aggregates responded to the Secretary's motion for summary decision with a document entitled "Petition for Redress of Grievance" (the "Grievance Petition"). This Grievance Petition was signed by Mr. Wayne R. Bevan, President of Mariposa Aggregates and Bevan Builders, Inc. It is styled as a "Private International Administrative Remedy" brought against the undersigned, the Commission's Chief Administrative Law Judge and two employees of the Department of Labor. The Grievance Petition contains a series of "Statements of Fact." In these statements, Mariposa Aggregates maintains that its quarry is "within the boundaries of Mariposa County in the Republic of California" and the quarry is "outside the exclusive legislative jurisdiction of the United States." (G.P. at 4). It also states that it "is not the operator of the quarry" and that there are no employees at the quarry. *Id.* The Grievance Petition

contains numerous other “statements of fact” relating to the Uniform Commercial Code (“UCC”) and previous correspondence with representatives of the Secretary. The Grievance Petition also contains a series of inquiries directed to MSHA and the undersigned. For example, it asks whether the United States is a municipal corporation, whether California is a republic, and whether the persons to whom it is addressed are “willing participants in aiding or abetting in carrying out a deceptive, false and fraudulent scheme to extort contracts, signatures, funds and/or securities from the citizens of the several united States.” *Id.* at 8.

Mariposa Aggregates also filed another document entitled “Notice of Return of Erroneous Presentments.” Attached to this document are the cover pages of the Secretary’s motion and the attachments for the motion. Handwritten across each of these pages are the words, “Returned, Erroneous, January 25, 2001, Wayne R. Bevan.” The Notice of Return of Erroneous Presentments states:

I am returning your erroneous presentments WITHOUT DISHONOR,
UCC 3-501. You have sent me incomplete instruments. UCC 3-115.
These documents are returned timely, in according to all applicable rules.

This notice makes additional references to the UCC and demands that the Secretary provide “proof of your claim that you maintain a security interest, UCC 1-102(37)(A).”¹

I granted the Secretary’s motion for summary decision on the jurisdictional issue by order dated March 15, 2001. 23 FMSHRC 354. In granting the motion, I relied upon the Secretary’s motion, the order of the District Court, and the declarations of Jan M. Coplick and MSHA Inspector Alvarez.

In her motion for summary decision, the Secretary also sought summary decision on the merits in these cases because Mariposa Aggregates did not deny the allegations set forth in the citations and orders. She argued that she was entitled to summary decision because the answer filed by Mariposa Aggregates did not contain a short and plain statement responding to each allegation in the petition for assessment of penalty, as required by 29 C.F.R. § 2700.29. The Secretary also stated that the other documents filed by Mariposa Aggregates in these cases indicate that Mr. Bevan does not contest the citations and orders.

Counsel for the Secretary stated that she filed this motion because Mariposa Aggregates has a history of “raising a kaleidoscope of ever-shifting yet always meritless objections.” (Motion at 11). For example, she notes that, in its Order Granting the Secretary’s Motion for

¹ Mariposa Aggregates also filed a document entitled “Notice of Fault - Opportunity to Cure.” This document noted that I had not responded to Mr. Bevan’s Grievance Petition and “granted” me an extension of time to respond. Apparently the Postal Service failed to deliver this document to my office. Mariposa Aggregates also filed a copy with the Commission’s Chief Judge on March 1, 2001, and that copy was immediately forwarded to me.

Summary Judgment, the District Court stated that the arguments set forth by Mariposa Aggregates were “without merit,” were “frivolous,” and were made in “bad faith.” (S. Motion at 9-10; slip. op. at 15 and 18). Counsel further states that “[r]equiring the Secretary to repeatedly relitigate these legally insupportable objections, interposed for wrongful reasons, is a waste of taxpayer dollars

. . . [and] threatens the safety and health of Respondent’s miners, and of other miners employed by other operators who may be encouraged to emulate Respondent’s blatant defiance of a remedial statute designed to save worker’s lives.” (S. Motion at 11-12).

The declaration of Inspector Alvarez states that when he arrived at the quarry for one of the inspections involved in these cases, he could see by the activities that were occurring that it was in operation. (Alvarez Decl. ¶¶ 4-7). After the person in charge at the quarry called Mr. Bevan by telephone, the operations were shut down and everyone was sent home. *Id.* at ¶ 12. Inspector Alvarez was told that he was free to look around but that no questions would be answered and no information would be provided. *Id.* Inspector Alvarez was also told that the people who work at the quarry are not employees because they all signed a “unique labor agreement.” *Id.* at ¶ 16. Inspector Alvarez, who is a health specialist, was unable to sample for silica dust because the operations were shut down. *Id.* at ¶ 18. In his declaration, he stated that during the previous inspection, MSHA determined that miners were “significantly overexposed to silica-bearing dust.” *Id.* Thus, it appears that although Mr. Bevan permitted MSHA inspectors in the quarry, he continued to impede inspections in violation of the District Court order.

In an order dated March 15, 2001, I held that I could not grant summary decision on the merits of the citations. 23 FMSHRC 350. I further held that the Secretary’s motion could be more accurately described as a motion, filed under 29 C.F.R. §§ 2700.10 and 2700.66, requesting that Mariposa Aggregates’ contest of the proposed penalty assessments, brought under 29 C.F.R. § 2700.26, be dismissed. I noted that Mr. Bevan stated “I deny having requested a hearing before your commission” in his Notice of Fraud. (N.F. at 1). Because none of the documents filed by Mariposa Aggregates actually contested the merits of the penalty petitions, I ordered it to show cause why its contests of the citations, orders, and proposed penalties should not be dismissed. 23 FMSHRC at 352. Mariposa Aggregates was ordered to state whether it was contesting the allegations set forth in the citations and orders. If so, Mariposa Aggregates was ordered to briefly state the basis for its contests. I also warned Mariposa Aggregates that if it failed to comply with my order to show cause, I would dismiss its contests of the citations, orders, and penalties, and that I would assess MSHA’s proposed penalties.

In response, Mariposa Aggregates filed a document entitled “Notice of Additional Time to Answer Notice of Fraud, Demand to Answer Prior to Taking Any Official Acts,” dated April 20, 2001. This Notice of Additional Time did not address the concerns of my order to show cause. Instead, it states that I again failed to respond to Mariposa Aggregates’ Grievance Petition and, for that reason, I admitted all of the statements contained in it by operation of law. The Notice of Additional Time “granted” me another extension of time to respond.

The Notice of Additional Time also contains the following:

Your [order to show cause] . . . is refused for fraud since there is no contract with the court to hear any matter it may have before it involving Mariposa Aggregates. Your contention that MSHA had received a request from Mariposa Aggregates for a hearing is clearly fraudulent and there has been no attempt on MSHA's part to provide the document whereby Mariposa Aggregates requested such a hearing. . . .

DEMAND is made that you answer fully the Petition for Redress of Grievances referenced above prior to taking any further actions. Should you not do so you may be personally liable in a court of law for operating under color of law, color of office in a conspiracy to extort money from this company and violating other rights that even a corporation has under the Constitution and International Treaty subjecting yourself to treble damages and RICO charges.

(Notice at 2).

On April 20, 2001, in response to Mariposa Aggregates' Notice of Additional Time, I issued an order requiring it to file an amended answer in these cases. This order was another order to show cause giving Mariposa Aggregates a second opportunity to state whether it was contesting the merits of the citations and whether it wanted a hearing. In this order I stated that I had addressed the issues raised in its Grievance Petition in my order granting the Secretary's motion for summary decision on the jurisdiction issue. I also reminded Mr. Bevan that the other issues it raised are irrelevant to these proceedings, including its arguments concerning the law of contracts, the UCC, and the "Republic of California." I also described how these cases arose, what a mine operator's rights are under the Mine Act, and the Commission's Rules of Procedure.

I explained in this order that the only way for Mariposa Aggregates to contest the citations, orders, and penalties proposed by MSHA is at a hearing before me. I stated that if Mariposa Aggregates did not file an appropriate response to my order I would affirm all of the citations and that I would assess MSHA's proposed penalty of \$108,067.

In response, Mariposa Aggregates filed a document entitled "Notice of Fraud, Demand to Answer Prior to Taking Any Official Acts," dated May 8, 2001. In this document, Mr. Bevan repeats the demands he made in previous documents. He "refused for fraud" my order requiring an amended answer; he states that he did not request a hearing; and he demands that I answer his Grievance Petition. With respect to his Grievance Petition, Mr. Bevan states:

DEMAND is made that you timely answer fully the [Grievance Petition] . . . prior to taking any further official actions. The proper method of answering the Petition would be to change any answer with which you disagree. For example, you refer to the

issue of the California Republic. I have not put it forth as an argument, but as a simple statement of fact. If you should disagree, then change the answer, e.g. Item number # I disagree. The State of California is not a republic because, with evidence in support. Should you take any official actions prior to answering or challenging the Petition, you may be personally liable in a court of law for operating under color of law, color of office in a conspiracy to extort money from this company and violating other rights that even a corporation has under the constitution and International Treaty subjecting yourself to treble damages and RICO charges. Your failure to answer will be deemed an exhaustion of my administrative remedies and your permission for me to remove this matter to a court of competent jurisdiction, of my choice, to have it resolved.

(Notice at 2).

Mr. Bevan made no attempt to advise me of his position on the allegations contained in the citations. He also did not request that these cases be set for hearing. The documents that Mr. Bevan filed on behalf of Mariposa Aggregates do not contest the merits of the Secretary's penalty petitions. Instead, Mr. Bevan raises irrelevant issues or makes meaningless arguments. Another example is instructive. In his Notice of Fraud, Mr. Bevan stated that the failure of counsel for the Secretary to produce a valid licence to practice law constitutes a fraud on the court which "is further exacerbated by [counsel's] deliberate usage of foreign private copyrighted 'law' owned by British companies." (N.F. at 4). He further stated that "British companies own United States and State of California copyrighted 'law' commonly known as 'codes.'" *Id.*

Mr. Bevan based this argument on the fact that some legal publishers, including West Publishing Company, are owned by British companies. On this basis, he stated that counsel for the Secretary is legally required to be registered as a foreign agent and demanded a copy of the attorney's foreign agent registration card. *Id.* at 5. Despite my best efforts, Mariposa Aggregates continued to offer such arguments rather than "a short and plain statement responding to each allegation of the petition," as required by 29 C.F.R. 2700.29.

ORDER OF DEFAULT

I provided Mariposa Aggregates two opportunities to comply with the Commission's Procedural Rules and my orders. Mariposa Aggregates did not make any attempt to comply with my order to show cause or my order to file an amended answer. Consequently, under the authority set forth in 29 C.F.R. § 2700.66, I hold that Mariposa Aggregates is in **DEFAULT** and that it has waived its right to a hearing in these cases.

Each of the citations and orders of withdrawal in these cases are hereby **AFFIRMED**, as

written by the MSHA inspector. Section 110(i) of the Mine Act sets out six criteria to be considered in determining appropriate civil penalties. I base my findings with respect to the civil penalty criteria on the information contained in the Secretary's petitions for assessment of penalty. I find that 62 citations were issued at the quarry during the two years preceding the first inspection involved in these cases. Mariposa was a relatively small operator that worked about 38,480 hours in the previous year. Section 104(b) orders of withdrawal were issued for four citations. The Secretary determined that with respect to 39 citations and orders, the penalties should not be reduced because Mariposa Aggregates failed to demonstrate good faith in attempting to achieve rapid compliance after notification of the violation. Mariposa Aggregates did not submit any evidence that the proposed penalties will have an adverse effect on its ability to continue in business. My gravity and negligence findings are as set forth in the citations and orders. Penalties for 21 of the citations and orders were specially assessed by the Secretary under 30 C.F.R. § 100.5. Thirty of the citations and orders were issued under section 104(d) of the Mine Act. Based on the penalty criteria, I find that the penalties set forth below are appropriate.

Based on the criteria in section 110(i) of the Mine Act, 30 U.S.C. § 820(i), and the information contained in the Secretary's penalty petitions, I assess the following civil penalties:

<u>Citation No.</u>	<u>30 C.F.R. §</u>	<u>Penalty</u>
WEST 2000-231-M		
7969028	56.14103(b)	\$5,280.00
7969029	56.14132(a)	2,531.00
7969030	56.14130(a)(3)	2,531.00
7969031	56.14107(a)	1,247.00
7969053	56.4203	2,531.00
7969033	103(a) of Act	6,000.00
3914242	56.9100(a)	760.00
3914243	56.4430(a)(2)	760.00
3914244	56.4200(b)(2)	475.00
3914245	56.12004	993.00
3914246	56.14205	340.00
3914247	56.12018	340.00
3914248	56.12032	224.00
3914249	56.16006	277.00
3914250	56.16005	340.00
3914251	56.14115(b)	340.00
3914252	56.12004	1,771.00
3914253	56.11027	1,771.00
3914254	56.12004	340.00

WEST 2000-232-M

3914255	56.12032	\$1,771.00
3914256	56.4011	340.00
3914257	56.12030	2,531.00
3914258	56.12013(a)	475.00
3914259	56.12008	277.00
3914260	56.11003	760.00
3914401	56.12034	340.00
3914402	56.11001	1,270.00
3914403	56.12004	1,771.00
3914404	56.12004	1,771.00
3914405	56.4202	277.00
3914406	56.12005	1,771.00
3914641	56.15003	1,815.00
3914642	56.14107(a)	1,270.00
3914643	56.4102	1,270.00
3914644	56.4200(a)(1)	340.00
3914645	56.14100(b)	4,400.00
3914646	56.4402	993.00
3914648	56.4101	1,771.00

WEST 2000-239-M

3914649	56.16006	1,957.00
3914650	56.14100(b)	475.00
3914653	56.9300(a)	1,771.00
3914654	56.20003(a)	1,270.00
3914655	56.14107(a)	1,815.00
3914656	56.14107(a)	1,086.00
3914657	56.14112(b)	1,815.00
3914658	56.14112(b)	1,815.00
3914659	56.14112(b)	1,815.00
3914660	56.3131	2,391.00
3914663	104(d) of Act	3,000.00
3914664	104(d) of Act	3,000.00
3914665	104(d) of Act	2,000.00
7969088	56.12028	655.00
7969117	56.12032	993.00
7969118	56.12004	993.00
7969119	56.14107(a)	872.00
7969120	56.14107(a)	1,247.00
7969121	56.14107(a)	399.00

WEST 2000-240-M

7969122	56.12008	\$655.00
7969123	56.15006	655.00
7969124	56.15001	277.00
7969125	56.20003(a)	1,086.00
7969126	56.4102	475.00
7969127	56.12004	317.00
7969128	56.14107(a)	655.00
7969129	56.14101(a)	993.00
7969131	56.14100(c)	993.00
7969134	56.14112(a)(2)	347.00
7969135	56.16005	264.00
7969142	50.30(a)	55.00
7969186	56.12034	55.00
7969187	56.12004	55.00
7969188	56.4603	55.00
7969189	56.12032	161.00
7969190	56.12028	264.00
7969191	56.4402	131.00
7969192	56.14107(a)	131.00

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7969193	56.14109(b)	131.00
7969194	56.12004	161.00
7969195	56.12004	161.00
7969196	56.20001	55.00
7969197	56.11003	97.00
7969198	56.12004	161.00
7969199	56.20003(a)	97.00
7969200	56.12013(a)	55.00
7981001	56.14101(a)(2)	161.00
7981002	56.14100(c)	161.00
7981004	56.14100(b)	55.00
7981005	56.14132(a)	55.00
7981006	56.12005	55.00

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7981052	56.5002	850.00
7981056	56.5001(a)/.5005	850.00
7981059	104(b) of Act	750.00
7981060	104(d)(2) of Act	\$3,500.00
7981061	109(a) of Act	55.00
7981063	104(d)(2) of Act	3,500.00

WEST 2000-251-M

7969707	56.12002	550.00
7969709	56.12002	550.00
7969710	56.12002	550.00
7969711	56.12001	550.00
7969712	56.14100(b)	300.00
7969713	56.12002	550.00
7969714	56.12002	550.00
7969715	56.12008	300.00
7969716	56.12001	550.00
7969717	56.12002	550.00
7969718	56.12002	550.00
7969722	56.12008	550.00
	Total Penalty	\$108,067.00

ORDER DIRECTING THAT PENALTIES BE PAID

Bevan Builders, Inc., doing business as Mariposa Aggregates, is **ORDERED TO PAY** the Secretary of Labor the sum of \$108,067.00 within 40 days of the date of this decision.

Richard W. Manning
Administrative Law Judge

Distribution:

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RWM