

CCASE:
MSHA V. SIGLER MINING
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
January 27, 1981

SECRETARY OF LABOR.
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA) Docket No. WEVA 80-519

v.

SIGLER MINING, INC.
DECISION

We directed the judge's order of default against Sigler Mining for review sua sponte on December 4, 1980. 30 U.S.C. 823(J)(2)(B) (Supp. III 1979). The Secretary had filed a petition for assessment of civil penalties on August 18, 1980. On October 6, an order to show cause was issued requiring Sigler Mining to file an answer within 15 days or show good reason for its failure to do so. Sigler Mining responded on October 18 by a letter to the judge stating that due to poor market conditions and recent resumption of operations, it did not have funds to pay the penalty. The judge assigned to the case then issued an order declaring the operator to be in default, and assessing the proposed penalty of \$1,174. The order noted that Commission Rule 28, 29 C.F.R. 2700.28 (1979), requires that answers include a statement of why the violations are contested and whether a hearing is requested. The judge found that the operator's letter to the judge failed to comply with these requirements. We disagree. Sigler Mining filed pro se a timely response to the show cause order alleging an inability to pay the penalties. This response at least brings into issue one of the six criteria to be considered in assessing penalties under the Act--effect of the size of the penalty on the operator's ability to continue in business. 30 U.S.C. 820(i)(Supp. III 1979). As we have indicated in the past, a default judgment is a harsh remedy not suitable when a party has substantially complied with a show cause order, and has not demonstrated bad faith. Coaltrain Corp., 1 FMSHRC 1831 (1979); BB&W Coal Co. Inc., 1 FMSHRC

467 (1979). We express no view, of course as to the merits of the operator's allegations, or as to the effect, if true, on any penalty ultimately assessed.

Accordingly, the order is vacated and the case is remanded.

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Distribution

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