

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

October 31, 2013

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. YORK 2011-51-M
v.	:	A.C. No. 18-00728-238497
	:	
GUDELSKY MATERIALS	:	

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006) (“Mine Act”). On January 16, 2013, the Commission received from Gudelsky Materials (“Gudelsky”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the default order entered against it.

On January 5, 2012, Chief Administrative Law Judge Lesnick issued an Order to Show Cause which by its terms became a Default Order if the operator did not file an answer within 30 days. This Order to Show Cause was issued in response to Gudelsky’s perceived failure to answer the Secretary’s January 7, 2011 Petition for Assessment of Civil Penalty.

Gudelsky asserts that it did not receive the Show Cause Order and that it discovered the delinquency upon checking MSHA’s Data Retrieval System. The record indicates that the Show Cause Order was returned to the Commission as undelivered. The Secretary does not oppose the request to reopen, and notes that MSHA received a timely answer to the penalty petition dated January 27, 2011. The Secretary states that MSHA mailed a delinquency notice on June 14, 2012, which was returned undelivered, and referred the case to the Department of Treasury for collection on August 2, 2012. The Secretary further notes that Gudelsky contacted MSHA regarding the delinquency on September 5, 2012, and paid the penalty through the Department of Treasury on January 17, 2013.

The Secretary asserts that all documents were mailed to Gudelsky’s address of record in Chantilly, Virginia. If mail cannot be delivered to this address, it is the operator’s responsibility to contact MSHA and the Commission to update its address of record.

Pursuant to Commission Procedural Rule 66, an order to show cause shall be mailed to the party by registered or certified mail, return receipt requested, before the entry of any order of default or dismissal. 29 C.F.R. § 2700.66. Having reviewed Gudelsky's request and the Secretary's response, we conclude that the operator did not receive the Show Cause Order, and therefore a Default Order has not been effectively entered. Accordingly, this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

/s/ Mary Lu Jordan
Mary Lu Jordan, Chairman

/s/Michael G. Young
Michael G. Young, Commissioner

/s/ Robert F. Cohen, Jr.
Robert F. Cohen, Jr., Commissioner

/s/ Patrick K. Nakamura
Patrick K. Nakamura, Commissioner

/s/ William I. Althen
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