

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

January 17, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
o/b/o ROBERT BAUMANN

Docket No. CENT 2023-0251-DM

v.

MOSENECAMANUFACTURER, LLC
d/b/a AMERICAN TRIPOLI

ORDER

The Commission directed review of this matter *sua sponte* on June 18, 2024, then granted the Petition for Discretionary Review filed by MOSenecaManufacturer, LLC, *d/b/a/ American Tripoli* (“American Tripoli”) on June 27, 2024.

American Tripoli subsequently filed a motion entitled “Motion to Cease and Desist Enforcement Actions Pending Final Judgment.” The operator’s arguments relied on purported cases such as “*Secretary of Labor, MSHA v. Contestant*” and “*Mohammed v. Garland*.” Mot. at 2. Following several attempts to locate these cases, the Commission determined that the cases relied upon by the operator could not be identified based on the incomplete information provided, and ordered American Tripoli to submit copies of the relevant cases by December 6, 2024.¹ Unpublished Order dated Nov. 22, 2024.

American Tripoli did not respond. Accordingly, on December 23, 2024, the Commission ordered the operator to show cause why the proceeding should not be dismissed. The Commission directed American Tripoli to explain its failure to respond to the previous Order, and explicitly placed the operator on notice that continued failure to comply with Commission Orders could result in the Commission vacating the directions for review and dismissing this proceeding. 46 FMSHRC __, No. CENT 2023-0251 (Dec. 23, 2024), *citing, e.g., Broken Hill Mining Co., Inc.*, 18 FMSHRC 679 (May 1996).

American Tripoli filed a response on January 9, 2025. The filing offers *no* explanation for the operator’s failure to timely respond to the Commission’s November Order. Accordingly, American Tripoli has not shown good cause why the proceeding should not be dismissed. *See, e.g., Coal-Mac LLC*, 46 FMSHRC 33 (Jan. 2024) (operator failed to show good cause where it offered no explanation for its failure to timely answer the Secretary’s petition); *Earl Begley, employed by Manalapan Mining Co., Inc.*, 22 FMSHRC 629 (May 2000) (miner failed to show good cause where he offered no explanation for his failure to timely file a petition for review).

¹ The Commission noted that American Tripoli’s previous filings also appeared to contain incorrect or incomplete case citations. Order at 1 n.1 (Nov. 22, 2024).

Additionally, American Tripoli *still* has not provided copies of the cases upon which it purportedly relied. Instead, the operator asserts that the “lack of proper citations” in the Motion was an “oversight” and summarizes five new cases purportedly relevant to the proceeding.² Resp. at 1, 2-4. American Tripoli has apparently chosen to abandon the cases upon which it initially relied rather than attempting to support their legitimacy or existence. Notably, American Tripoli asserts that it has attached “verified case law citations and documentation” for the *new* cases upon which it now purports to rely (Resp. at 5) but has failed to provide any such attachments.

The Commission ordered American Tripoli to establish the legitimacy of the cases upon which it purportedly relied by providing copies. The operator failed to do so. The Commission then ordered American Tripoli to explain its failure to comply with the Commission’s previous order. The operator again failed to do so. Accordingly, the Commission concludes that the operator fabricated cases in its filings to the Commission. In light of the foregoing considerations, the directions for review in this matter are hereby **VACATED**, and this proceeding is **DISMISSED**.


Mary Lu Jordan, Chair


Timothy J. Baker, Commissioner


Moshe Z. Marvit, Commissioner

² One such case is *Broken Hill Mining Co., Inc.*, 18 FMSHRC 679 (May 1996), which we cited in our December Show Cause Order. The Commission in that case vacated review and dismissed the proceeding for want of prosecution where the operator failed to file an opening brief and was not reachable, and yet American Tripoli cites the case for the proposition that “leniency is warranted.” Resp. at 3.

Distribution List:

Russell Tidaback
Jordan Tidaback
American Tripoli
222 Oneida Street
Seneca, MO 64865
Russell.Tidaback@AmericanTripoli.com
RTidaback@deedyco.com

Russell Tidaback
2701 East Grauwylar Road, Bldg. 1, Dept. #1008
Irving, TX 75061
Russell.Tidaback@deedyco.com

Robert Baumann
baumannr24@gmail.com

Laura O'Reilly, Esq.
U.S. Department of Labor
2300 Main Street, Suite 10100
Kansas City, MO 64108
oreilly.laura.m@dol.gov

Quinlan B. Moll, Esq.
U.S. Department of Labor
2300 Main St., Suite 10100
Kansas City, MO 64108
Moll.Quinlan.B@dol.gov

Elaine M. Smith, Esq.
U.S. Department of Labor
2300 Main St., Suite 10100
Kansas City, MO 64108
smith.elaine.m@dol.gov

Susannah M. Maltz, Esq.
U.S. Department of Labor
Office of the Solicitor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4420 – N4430
Washington, DC 20210
maltz.susannah.m@dol.gov

Marcus D. Reed, Esq.
U.S. Department of Labor
Office of the Solicitor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4420 – N4430
Washington, DC 20210
Reed.Marcus.D@dol.gov

Emily Toler Scott, Esq.
Counsel for Appellate Litigation
U.S. Department of Labor
Office of the Solicitor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4420 – N4430
Washington, DC 20210
scott.emily.t@dol.gov

April Nelson, Esq.
Associate Solicitor
U.S. Department of Labor
Office of the Solicitor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4420 – N4430
Washington, DC 20210
Nelson.April@dol.gov

Melanie Garris
U.S. Department of Labor
Office of Civil Penalty Compliance
Mine Safety and Health Review Commission
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Garris.Melanie@dol.gov

Administrative Law Judge William B. Moran
Federal Mine Safety and Health Review Commission
Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
wmoran@fmshrc.gov

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety & Health Review Commission
Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov