

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 23, 2024

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

On November 1, 2024, Respondent MOSenecaManufacturer, LLC, *d/b/a/ American Tripoli* (“American Tripoli”) filed a motion which it entitled “Motion to Cease and Desist Enforcement Actions Pending Final Judgment.” American Tripoli’s arguments relied on purported cases such as “*Secretary of Labor, MSHA v. Contestant*” and “*Mohammed v. Garland.*” Mot. at 2.

On November 22, 2024, the Commission determined that the cases relied upon by American Tripoli could not be identified based on the incomplete information provided.¹ The Commission ordered American Tripoli to submit copies of the relevant cases by December 6, 2024.² As of this date, American Tripoli has not responded to the Commission’s Order.³

The Commission has broad authority to determine whether to grant review of a decision. 29 C.F.R. § 2700.70(b) (review is not a matter of right “but of the sound discretion of the Commission”). Correspondingly, the Commission also has the authority to *vacate* 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).

² All issuances in this proceeding, including the Commission’s November 22 Order, have been mailed to the mine’s address of record in Missouri and sent electronically to the email address provided in American Tripoli’s initial Answer to the Complaint. American Tripoli’s representative, Russell Tidaback, recently submitted a request for record access which listed different physical and email addresses. The Commission’s procedural rules require parties to promptly provide written notice of any change in contact information. 29 C.F.R. § 2700.5(d).

³ On November 27, 2024, Mr. Tidaback erroneously used the docket number for this discrimination proceeding to file a Notice of Contest regarding a related but separate section 104(b) withdrawal order (No. 9998012). The filing was not a response to the Commission’s Order or otherwise relevant to the proceeding before us. American Tripoli’s contest of the withdrawal order has been docketed (No. CENT 2024-0086) and assigned to an Administrative Law Judge.

Birchfield Mining Co., 11 FMSHRC 1428 (Aug. 1989) (holding that vacating directions for review is consistent with the Commission’s powers under 30 C.F.R. § 823(d)); *e.g.*, *Pocahontas Coal Co., LLC*, 45 FMSHRC 794 (Sept. 2023); *Broken Hill Mining Co., Inc.*, 18 FMSHRC 679 (May 1996).

American Tripoli is placed on notice that continued failure to comply with Commission Orders may result in vacating the Commission’s directions for review⁴ and dismissal of this proceeding. *Cf.*, *Broken Hill*, 18 FMSHRC 679 (vacating review and dismissing the proceeding for want of prosecution where the operator failed to file an opening brief and was not reachable); 29 C.F.R. § 2700.70(b) (failure to timely file a brief may result in vacation of review); 29 C.F.R. § 2700.66(a) (failure to comply with a Judge’s order shall result in issuance of a show cause order prior to an order of dismissal).

American Tripoli is hereby **ORDERED TO SHOW CAUSE** within 30 days of the date of this order why the Commission should not vacate its directions for review and dismiss this proceeding. American Tripoli’s response should, at a minimum, provide an explanation for its failure to respond to the Commission’s November 22, 2024, Order. If no response is filed, the Commission’s directions for review in this matter may be vacated, and the proceeding may be dismissed in its entirety.



Mary Lu Jordan, Chair



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

⁴ The Commission directed review *sua sponte* on June 18, 2024, then granted American Tripoli’s Petition for Discretionary Review on June 27, 2024.

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