

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

MAR 05 2018

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

RICKY J. PALASOTA, JR., employed by
BVS CONSTRUCTION, INC.

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: Docket No. CENT 2017-341-M
: A.C. No. 41-04570-437020
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BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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. (2012) (“Mine Act”). On May 30, 2017, the Commission received a filing denominated as a “Motion to Reopen Final Order.” The motion was filed by an attorney on behalf of Mr. Ricky J. Palasota Jr. (“Palasota Jr.”) The background of the motion is strange, to say the least.

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that on May 8, 2017 MSHA proposed an assessment of \$65,418.00 against an operator identified as BVS Construction, Inc. (“BVS”). MSHA assessed BVS as the operator of the Palasota Mine. Following appropriate procedures, MSHA mailed the assessment to BVS’ address of record and addressed it to Ricky Palasota Jr. because the MSHA Legal Identification Report listed both Palasota Jr. and a Ricky J. Palasota Sr. as officers. Further, the Mine Identification Report simply listed “Ricky J. Palasota” as the person in charge of health and safety at the mine. The assessment was against BVS, the operator, and not against Palasota Jr. personally.

BVS did not respond to the assessment. Accordingly, the assessment against BVS became a final order of the Commission with respect to BVS on June 7, 2017.

On May 30, 2017, eight days before the assessment against BVS became final, the attorney representing Palasota Jr. filed the instant Motion to Reopen a Final Order. At that time, there was no final order against BVS. More importantly for present purposes, there was not any proposed assessment against Palasota Jr. The contents of the motion demonstrate that Palasota Jr. and his attorney apparently believed the assessment was a personal assessment against him. The motion asserts that Palasota Jr. was not a shareholder or officer at BVS. It states that Ricky

J. Palasota, Sr., is the owner of BVS and requests that the orders, which were not final when the motion was filed, be reopened so that Palasota Jr. could have the “opportunity to defend these allegations and citations.”

The Secretary avers that Palasota Jr. is not personally responsible for the assessed penalty. The Secretary further asserts that, because Palasota Jr. has no personal liability for the assessed penalty, he has no standing to move to reopen the penalty. *See Bridgeport Music, Inc. v. Smith*, 714 F.3d 932, 940-41 (6th Cir. 2013) (non-parties do not have standing to file a Rule 60(b) motion; the only exception applies when the moving non-party is strongly and directly affected by the judgement). As a result, the Secretary opposes the motion to reopen.

Based upon the filings before us, MSHA has not issued an assessment against Palasota Jr. The Secretary provided documentation showing that the proposed assessment was against only BVS, and MSHA delivered it to BVS’ address of record. Thus, there is no proceeding against Palasota Jr. Accordingly, Palasota Jr. had neither the right nor the responsibility to challenge the assessment. Only BVS was responsible for contesting the assessed penalty and, now that the penalty has become final, BVS is responsible for paying the penalty.

In order to provide a completed record, the Motion to Reopen a Final Order is denied.¹


William I. Althen, Acting Chairman


Mary Lu Jordan, Commissioner


Michael G. Young, Commissioner


Robert F. Cohen, Jr., Commissioner

¹ This decision does not preclude the Secretary from seeking to collect an obligation of BVS from any other entity or person under an alter ego or other theory of derivative liability.

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