

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

January 23, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 2006-70-M
	:	A.C. No. 46-08972-74689
v.	:	
	:	
H.B. MELLOTT ESTATE, INC.	:	

ORDER

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On January 10, 2006, the Commission received from H.B. Mellott Estate, Inc. (“Mellott”) a motion made by counsel to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). On January 12, 2006, Mellott filed a Withdrawal of Motion to Reopen Penalty Assessment in which the company requested that it be allowed to withdraw its motion to reopen. In support of this request, Mellott states that the Department of Labor’s Mine Safety and Health Administration advised Mellott that the “assessment matter” that was the subject of Mellott’s January 10 motion was in fact “still open.” Mot. at 1. Mellott states that it subsequently filed a contest of the penalty at issue on January 11, 2006. *Id.*

In light of the foregoing, the Commission grants Mellott’s request to withdraw its motion to reopen. 29 C.F.R. § 2700.11. Accordingly, this proceeding is dismissed.

For the Commission:

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Michael F. Duffy, Chairman

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