

THIS CASE IS NOT A FINAL ORDER OF THE REVIEW COMMISSION AS IT IS  
PENDING COMMISSION REVIEW

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

EAST WEST SEAFOODS, LLC,

Respondent,

OSHRC DOCKETS  
NO. 23-0236

Before: Administrative Law Judge Brian A. Duncan

**DECISION AND ORDER**

This proceeding is before the U.S. Occupational Safety and Health Review Commission ("the Commission") pursuant to Section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 *et seq.* ("the Act"). The Occupational Safety and Health Administration ("OSHA") conducted an inspection of Respondent's worksite in Kodiak, Alaska on July 18, 2022. As a result of the investigation, OSHA issued a *Citation and Notification of Penalty* to Respondent alleging a total of twenty-two serious, two repeat, and one other-than-serious violations of the Act with a combined total penalty of \$208,983.00. Respondent contested the citation items.

On March 3, 2023, the undersigned was assigned to preside over Mandatory Settlement Proceedings in this case pursuant to OSHRC Rule 120(b), 29 C.F.R. §2200.120(b). On March 14, 2023, the Court issued two orders: (1) *Order to Respondent to Register for Electronic Filing*, requiring Respondent's representative to register by March 29, 2023, and (2) *Order to Appear for Mandatory Settlement Proceeding Conference Call*, requiring the parties to participate in a conference call with the Court on April 18, 2023. Both *Orders* were served on Complainant

electronically through OSHRC's docketing system, and by U.S. Mail to Respondent.

To date, Respondent has failed to register for electronic filing, as ordered, and failed to request exemption from electronic filing pursuant to Commission Rule 8(c)(2). On April 18, 2023, Complainant appeared for the court-ordered conference call, ready to proceed. Respondent failed to appear. Respondent also failed to file an *Answer*, or other response, to the Secretary's *Complaint*.

Accordingly, on May 16, 2023, the Court issued an *Order to Respondent to Show Cause*. Respondent was ordered to show cause "as to why the Court should not vacate its *Notice of Contest*, affirming all alleged violations and penalties in this case, for: (1) failing to comply with, or otherwise respond to, the Court's March 14, 2023 *Order to Respondent to Register for Electronic Filing*; (2) failing to appear for the court-ordered conference call on April 18, 2023; and (3) failing to file an *Answer*, or other responsive pleading, to the *Complaint*." Respondent never filed a response to the *Order to Respondent to Show Cause*. However, the Court learned through the filing of *Secretary of Labor's Reply to Respondent's May 26, 2023 Letter* that Respondent sent an e-mail to Complainant after the *Order to Respondent to Show Cause*. Respondent's emailed letter to Complainant acknowledges receiving the Court's *Order to Respondent to Show Cause*, but does not address the three deficiencies outlined in the *Order*. In summary, Respondent's letter basically states that Respondent "does not have any money at all." Respondent's letter was not filed with the Court.

Out of an abundance of caution, the Court issued a *Second Order to Respondent to Show Cause* on June 15, 2023. Respondent was afforded another opportunity to explain "why the Court should not vacate its *Notice of Contest*, affirming all alleged violations and penalties in this case, for: (1) failing to comply with, or otherwise respond to, the Court's March 14, 2023 *Order to*

*Respondent to Register for Electronic Filing*; (2) failing to appear for the court-ordered conference call on April 18, 2023; (3) failing to file an *Answer*, or other responsive pleading, to the *Complaint*; and (4) failing to file a response to the *Order to Respondent to Show Cause* issued on May 16, 2023.” Respondent was warned that “If Respondent does not respond to this *Second Order to Respondent to Show Cause*, or fails to establish good cause, it may result in sanctions pursuant to Commission Rules 8(c) and 101, including dismissal of Respondent’s *Notice of Contest* and affirming the violations and penalties alleged in this case.” Respondent never filed any type of response to the *Second Order to Respondent to Show Cause*.

Commission Rule 101(a) provides “[w]hen any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge, he may be declared to be in default either on the initiative of the Commission or the Judge, after having been afforded an opportunity to show cause why he should not be declared in default ... [t]hereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party ...” The Court finds that Respondent has either abandoned its contest in this case or demonstrated a pattern of disregard for the procedural requirements and authority of the Commission by: (1) failing to comply with, or otherwise respond to, the Court’s March 14, 2023 *Order to Respondent to Register for Electronic Filing*; (2) failing to appear for the court-ordered conference call on April 18, 2023; (3) failing to file an *Answer*, or other responsive pleading, to the *Complaint*; (4) failing to file a response to the *Order to Respondent to Show Cause* issued on May 16, 2023; and (5) failing to file a response to the *Second Order to Respondent to Show Cause* issued on June 15, 2023. Respondent’s repeated failure to timely participate in this proceeding constitutes abandonment, and/or contumacious conduct justifying sanctions. *Philadelphia Construction Equipment, Inc.*, 16 BNA OSHC 1128, 1993 CCH OSHD ¶30,051 (No. 92-0899, 1993); *Sealtite Corporation*, 15 BNA

OSHC 1130, 1991 CCH OSHD ¶29,398 (No. 88-1431, 1991).

Accordingly, Respondent's *Notice of Contest* is hereby VACATED in Docket No. 23-0236, and the violations and penalties alleged in the *Citation and Notification of Penalty* for OSHA Inspection No. 1608381 are AFFIRMED.

SO ORDERED.

Date: July 19, 2023  
Denver, Colorado

*/s/ Brian A. Duncan*

**Judge Brian A. Duncan**  
U.S. Occupational Safety and Health Review Commission