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. Permabond Construction, Inc., Respondent,	OSHRC DOCKET NO. 12-0993

Before: Administrative Law Judge Brian A. Duncan

DECISION AND ORDER

Procedural History

This proceeding is before the 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 Katy, Texas on November 14, 2011. As a result of the inspection, OSHA issued a *Citation and Notification of Penalty* to Respondent alleging one serious violation of the Act with an associated penalty of $4,900.00. Respondent contested the citation item.[1]

On October 2, 2012, the Court issued an *Order* which required the parties to appear by telephone for a conference call on October 22, 2012. Complainant's counsel appeared by

[1] Respondent's *Notice of Contest* was not filed until April 26, 2012. Complainant filed *Complainant's Opposition to Relief Under Rule 60(b)* seeking to vacate the *Notice of Contest* as impermissibly late. That issue was still pending when this case was re-assigned to the undersigned for adjudication.

telephone for the conference call. Respondent failed to appear.

On October 30, 2012, the Court issued an *Order to Show Cause* to Respondent, pursuant to Commission Rules 67 and 101, requiring Respondent to: (1) explain its failure to appear on the October 22nd conference call; and (2) explain its reasons for filing the *Notice of Contest* on April 26, 2012 for citations issued on December 6, 2011. The *Order to Show Cause* warned that "[f]ailure to respond to this *Order to Show Cause*, and/or failure to establish good cause, if any, may result in the issuance of default judgment against Respondent dismissing its *Notice of Contest* and affirming the citations proposed in this case pursuant to Commission Rules 67 and 101." As of this date, Respondent has never contacted the Court regarding its failure to appear on the conference call, nor filed any response to the *Order 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 appear for the October 22, 2012 conference call; (2) failing to file its *Notice of Contest* pursuant to the fifteen working day limitation contained in Section 10(a) of the Act, 29 U.S.C. §659(a); and (3) failing to respond to the Court's October 30, 2012 *Order to Show Cause.* Respondent's repeated failure to timely participate in this proceeding constitutes 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 and the violation alleged in the *Citation and Notification of Penalty* is AFFIRMED.

SO ORDERED.

/s/

Date: December 14, 2012
Denver, Colorado

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