



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

VREX CONSTRUCTION, INC.,

Respondent.

OSHRC Docket No. 18-1573

ORDER OF DEFAULT

On August 23, 2018, the Occupational Safety and Health Administration ("OSHA") issued a Citation and Notification of Penalty ("Citation") to Respondent for OSHA inspection number 1298614. The Citation alleged serious violations of the construction safety regulations at 29 C.F.R. § 1926 for a proposed total penalty of \$34,738.

Respondent filed a timely notice of contest through its president, Vedat Rexhepi. The case was docketed with the Commission and the Notice of Docketing was sent to the Respondent at its record address on October 5, 2018. The Notice of Docketing included a postcard that was to be returned to the Commission to verify Respondent had complied with the employee posting requirements of Commission Rule 7. *See* 29 C.F.R. § 2200.7. Respondent did not return the postcard.

On June 28, 2019, the Secretary filed the Complaint in this matter. Respondent did not file an Answer as required by Commission Rule 34(b), 29 C.F.R. § 2200.34(b).

On August 16, 2019, the undersigned issued an Order to Show Cause Why Notice of Contest Should Not Be Dismissed ("Order") to Respondent. The Order directed Respondent to show cause on or before August 30, 2019, as to why it should not be declared in default for not filing an Answer to the Complaint. The Order expressly stated that a failure to respond will result in all violations set out in the Citation being affirmed and the proposed penalties assessed without a hearing.

The Order was sent to Respondent, at its record address, through the United States Postal Service ("USPS") by regular first-class mail and by certified mail¹ with return receipt requested. The mailing by regular first-class mail was not returned and is presumed delivered. Respondent received and signed for the certified mailing on August 26, 2019. It is concluded Respondent received the Order.

The undersigned's office staff attempted to contact Respondent by phone on October 2, 2019 and October 16, 2019. A message requesting a reply call was left each time. There was no response to these phone calls. On October 23, 2019, my staff called and spoke with a representative of the Respondent, who promised to file documents in the Commission's e-filing system. Despite that, Respondent has not responded to the Order, did not provide an Answer, and has not otherwise communicated with my office.²

The sanction of a default judgment is appropriate "when any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge." 29 C.F.R. § 2200.101(a).³ A judge has very broad discretion in imposing sanctions for

¹ The certified mailing tracking number was 7017-3040-0001-1132-2068.

² The Commission expects a business to maintain "orderly procedures for handling important documents." *Louisiana-Pacific Corp.*, 13 BNA OSHC 2020, 2021 (No. 86-1266, 1989) (citations omitted).

³ Commission Rule 101(a), 29 C.F.R. § 2200. 101(a), provides in pertinent part that: "*Sanctions*. When any party has failed to plead or otherwise proceed as provided by these rules or as required by the . . . Judge, he may be declared to be in default . . . after having been afforded an opportunity to show cause why he should not be declared to be in default. . . . Thereafter, the . . . Judge, in [her] discretion, may enter a decision against the defaulting party."

noncompliance with the judge's orders or the Commission's Rules of Procedure. *See Sealtite Corp.*, 15 BNA OSHC 1130, 1134 (No. 88-1431, 1991). The Commission has long held that dismissal is too harsh a sanction for failure to comply with certain prehearing orders unless the record shows contumacious conduct by the noncomplying party, prejudice to the opposing party, or a pattern of disregard for Commission proceedings. *See Architectural Glass & Metal Co.*, 19 BNA OSHC 1546, 1547 (No. 00-0389, 2001).

Respondent's conduct here shows a pattern of disregard for Commission rules and proceedings. As set *out* above, Respondent did not verify compliance with the posting requirements of Commission Rule 7, did not provide an Answer to the Complaint, and did not respond to the Order to Show Cause.

For these reasons, Respondent is found to be in DEFAULT, its notice of contest is DISMISSED, and the OSHA citation issued to Respondent on August 23, 2018, inspection number 1298614 is AFFIRMED in its entirety and penalties ASSESSED.

SO ORDERED.

/s/
Covette Rooney
Chief Judge

Dated: December 26, 2019
Washington, D.C.