

SECRETARY OF LABOR,

Complainant,

v.

DAEWOOSA SAMOA, LTD.,

Respondent.

OSHRC DOCKET NO. 01-1272

APPEARANCES:

For the Complainant:

Cheryl L. Adams, Esq., Office of the Solicitor, U.S. Department of Labor, San Francisco, California

For the Respondent:

None

Before: Administrative Law Judge: Robert A. Yetman

DECISION AND ORDER

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651-678; hereafter called "the Act").

During the period November 30, 2000 to February 7, 2001, the Occupational Safety and Health Administration conducted an inspection of Respondent's worksite located at Tafuna, Pago Pago, American Samoa. As a result of that inspection, a serious citation listing eleven violations with multiple subparts, a repeat citation listing eight violations and an other citation listing eight violations were issued to Respondent on May 24, 2001. In addition, a failure to abate citation was issued on the same date alleging that Respondent failed to abate one item which had been cited as a result of an inspection conducted on June 24-30, 1999. By letter dated June 14, 2001, a notice contesting the aforesaid violations was filed by Respondent's president Kil Soo Lee.¹ Thereafter, a complaint was filed by the Secretary on July 18, 2001, and an undated, unsigned answer to the complaint was filed on behalf of Kil Soo Lee as Respondent's president. The answer generally denies the violations as alleged.

By motion dated September 25, 2001, Complainant sought a stay of these proceedings on the ground that Respondent's president Kil Soo Lee was awaiting a criminal trial relating to the violations alleged in this proceeding and the Department of Justice attorneys had requested the Secretary of Labor to seek a stay of this proceeding. By order dated October 17, 2001, the motion for stay of proceedings was granted and that order remained in effect until February 4, 2003 when the matter was reassigned to the

¹It appears that the notice of contest was prepared by Mr. Alexander Silvert, First Assistant Federal Public Defender, Honolulu, Hawaii for Mr. Lee. Mr. Silvert agreed to accept all documentation relating to the case on behalf of Mr. Lee.

undersigned for trial. The trial was scheduled to be heard on April 23-25, 2003 at Pago Pago, American Samoa by an order of the same date. The original trial date was continued on two occasions and a final trial date has been scheduled to commence on August 18, 2003.

The lengthy and convoluted history of this case was summarized by the undersigned in an order issued in response to Complainant's motion seeking an order to show cause. That order is reproduced here as part of the factual predicate underlying this decision.

By motion dated March 25, 2003, Complainant sought an "order to show cause" to be served by the undersigned upon Respondent corporation directing that entity to show cause why the notice of contest filed by Respondent should not be dismissed and the citation affirmed. Complainant asserts that Respondent failed to comply with Commission Rule 32 (Respondent representative's failure to sign its answer), Rule 6 (Respondent's failure to provide the name, current address and telephone number of its Representative) and Rule 23 (failure to file a notice of appearance). In addition, Complainant asserts that it has been unable to comply with the order issued by the Commission that the parties engage in settlement discussions because Respondent has failed to designate an individual to represent its interests in this matter. For these reasons, Complainant requests that Respondent be declared in default. In the alternative, Complainant sought a continuance of the hearing scheduled to commence April 23, 2003.

The following alleged facts have been gleaned from the various documents filed by the parties. Respondent is a corporation with Kil Soo Lee as President and sole stockholder. Mr. Lee, who is Korean and does not speak or understand the English language, was engaged as Respondent's principal owner in the garment manufacturing business at Tafuna, Pago Pago, American Samoa. During November 2000, an outbreak of violence occurred at Respondent's worksite which resulted in a criminal indictment issued against Mr. Lee in the United States District Court for the District of Hawaii.²

Also in response to the outbreak, the Occupational Safety and Health Administration conducted an inspection of Respondent's worksite and, on May 24, 2001, issued various citations to Respondent Corporation. A timely notice of contest was filed and a complaint and answer have been filed with this Commission. At Complainant's request, over the strong objection of Respondent, this matter was stayed by order dated October 17, 2001, pending the resolution of the criminal proceeding against Mr. Lee. As far as can be determined from the record of this matter, all documents generated by Complainant and the Commission have been served upon Mr. Lee at the Federal Detention Center, Honolulu, Hawaii, and Mr. Alexander Silvert, Esq., Mr. Lee's public defender for the criminal proceeding, also located at

²The indictment alleged that Mr. Lee engaged in involuntary servitude, extortion and money laundering.

Honolulu, Hawaii.³ Respondent's submission to the Commission dated April 4, 2003 states that "Respondent" (presumably Mr. Lee) is indigent and has no assets and "the factory and all of the property belonging to Daewoosa Samoa has been seized and belongs to the American Samoa government." (footnote 3, page 5).

On February 21, 2003, Mr. Lee was convicted of eleven counts of involuntary servitude as well as extortion and money laundering. He will be sentenced during July 2003 and is subject to as much as 250 years in prison. (Affidavit of Cheryl Adams, Esq., Complainant's attorney dated March 25, 2003.) By order dated February 4, 2003, the undersigned vacated the stay of proceedings in this case and by order of the same date, scheduled a trial herein to commence April 23, 2003 at Pago Pago, Samoa. As previously stated, Complainant filed a motion dated March 25, 2003, seeking an "order to show cause" to be issued to Respondent which was issued on April 1, 2003, directing Respondent to show cause why its notice of contest should not be dismissed for failure to comply with Commission Rules 6, 23, 32, and 35. In addition, the hearing scheduled to commence April 23, 2003 was continued *sine die*. The order to show cause was served upon Mr. Lee at the Federal Detention Center and his public defender, Alexander Silvert, Esq.

By letter dated April 4, 2003, Respondent filed a response to the order to show cause. Although this document purports to be signed by Kil Soo Lee, it was transmitted under the Federal Public Defender letterhead and was clearly authored by an individual conversant in the English language and knowledgeable about the practice of law (hereinafter referred to as the public defender response). On the other hand, two handwritten documents have been received by the undersigned in response to the order to show cause also signed by Kil Soo Lee. . . .

The order to show cause directed Respondent to show cause why the notice of contest should not be dismissed because of its failure to comply with certain procedural rules of the Commission. As pointed out by the public defender response, Respondent has complied with all substantive rules to date and should not be denied its right to a hearing because of its inability to comply with procedural requirements. Moreover, Complainant has been aware that Mr. Lee was the principal owner of Respondent as well as his location at all times relevant to this matter. Although Mr. Lee has been in prison since the inception of this matter, Respondent Daewoosa Samoa Ltd., through its representative, Mr. Lee, has demanded an immediate trial of this case. Since Respondent Daewoosa has consistently insisted upon exercising its right to a hearing, Complainant's motion to dismiss the notice of contest is DENIED and by separate order, this matter will be set for trial.

³Mr. Silvert agreed to accept service of documents in this matter which he forwards to Mr. Lee. Mr. Silvert has not filed an appearance in this matter as Respondent's representative.

In general, hearings in Commission cases are scheduled as close to the location of the alleged violations as possible to allow exposed employees an opportunity to testify. In this case, Respondent's President is located, and likely to remain, at the Federal Detention Center in Hawaii. Mr. Lee requests that the hearing be held at that location. However, acceding to his request would create a hardship for exposed employees located at Samoa who wish to testify. Since the Act is intended to protect the safety and health of employees, the interest of those employees to testify will take precedence over the desire of Respondent corporation's President to attend the hearing in Hawaii. Accordingly, by separate order, the place of hearing has been designated as Pago Pago, American Samoa. However, a testimonial deposition of Mr. Lee, if otherwise admissible, will be accepted as part of the record.

The remaining issue is whether an individual will appear at the hearing as Respondent Corporation's representative. As pointed out by Complainant, no individual, other than Mr. Lee, has been designated as Respondent's representative for purposes of attempting to settle the case or trial preparation. Since the matter has been set for trial at American Samoa, it will be an expensive exercise for the Complainant's representatives and the undersigned to travel to that location if no individual appears on Respondents' behalf. Accordingly, Respondent corporation is directed to notify the undersigned no later than May 23, 2003 of the name and address of the person(s) who will appear at the hearing to represent Respondent's interests. That person is directed to file an affidavit with the undersigned no later than June 6, 2003, that he will appear at the hearing as Respondent's representative. In the event that a representative has not been designated by Respondent or said representative fails to file the required affidavit, Respondent's notice of contest will be dismissed and citation affirmed.

By separate order, the matter was set for trial to commence July 14, 2003 at Pago Pago, American Samoa. By letter dated May 9, 2003, Mr. Kil Soo Lee requested a postponement of the hearing in order to obtain representation for Respondent. By order dated June 2, 2003, the July hearing was rescheduled to commence on August 18, 2003 and Mr. Lee was directed to disclose the name of Respondent's trial representative no later than July 11, 2003. By order dated June 16, 2003, Mr. Lee was, once again, directed to disclose the identity of Respondent's trial representative. All of the aforesaid documents were served upon Mr. Lee at the Federal Detention Center, Honolulu, Hawaii.

On July 7, 2003, the undersigned received the following documents from Respondent's President

Kil Soo Lee:

- (a) Statement of Kil Soo Lee consisting of five typewritten pages. The document appears to be a rambling recitation of events that occurred at Respondent's place of business which are unrelated to the merits of the instant case. The subject line of the document identifies Mr. James Fond as Respondent's "legal receiver." The document fails to identify Respondent's representative who will appear at the hearing in this matter.
- (b) Statement of Kil Soo Lee. This document consists of four typewritten pages and contains allegations relating to "rape, assault, false accusations of affidavit, illegal strike and conspiracy." The document contains nothing relating to the merits of this case nor is the identity of Respondent's representative disclosed.
- (c) Additional statement of Kil Soo Lee. This document consists of two typewritten pages and appears to relate to a criminal investigation of Respondent's place of business. The document contains nothing relevant to this case nor is Respondent's representative disclosed.
- (d) Affidavit of Kil Soo Lee. This documents consists of five typewritten pages and is a rambling, incoherent statement of events which occurred at Respondent's worksite. The document fails to identify Respondent's representative who has been designated to appear at the hearing in this matter.
- (e) A six-page typewritten document entitled "Statement of Kil Soo Lee" addressed to Cheryl Adams, Esq., Solicitor's Office, U.S. Department of Labor, containing information which appears to relate to a wage-hour investigation of Respondent's worksite conducted by the Department of Labor. The document contains nothing relevant to this case nor is Respondent's representative disclosed.

Based upon the aforesaid submissions, it is clear that Respondent has not designated an individual to represent Respondent at the scheduled hearing in violation of the order dated June 16, 2003. Since no individual will appear to represent Respondent at the hearing, it will be an expensive and useless exercise to require the Secretary's Counsel, the witnesses and the undersigned to travel to Pago Pago, American Samoa simply to default Respondent for its failure to appear. Accordingly, pursuant to Commission Rule 41, in light of Respondent's failure to designate a representative to appear at the hearing, Respondent's notice of contest dated June, 14, 2001 is vacated and the citations and proposed penalties, as written, are **AFFIRMED**.

Findings of Fact and Conclusions of Law

Findings of fact and of law relevant and necessary to a determination of all issues have been made above. All proposed findings of fact inconsistent with this decision are hereby denied.

/s/ _____
Robert A. Yetman
Judge, OSHRC

Dated: August 4, 2003