
SECRETARY OF LABOR,

Complainant,

v.

MARCHMAN CONSTRUCTION CORP.,

Respondent.

OSHRC Docket No. 02-1097

ORDER

Before: RAILTON, Chairman; and ROGERS, Commissioner.

BY THE COMMISSION:

On October 12, 2002, Chief Administrative Law Judge Irving Sommer issued an order dismissing the notice of contest in this case after Respondent failed to file an answer to the Secretary's complaint and then failed to respond to the judge's subsequent Order to Show Cause. The judge's order dismissing the notice of contest was docketed with the Commission on October 22, 2002. On November 4, 2002, Respondent petitioned for discretionary review. Respondent's president claimed that it failed to respond to the judge's Order to Show Cause because it had not received the order. The case was directed for review on November 8, 2002.

The case file shows that the Commission sent its Notice of Docketing Of Administrative Law Judge's Decision to Respondent's correct business address at P.O. Box 469, 5555 Highway 43, Satsuma, AL 36572, thus triggering Respondent's petition. However, the Secretary served her complaint on Respondent at 555 Highway 43, Satsuma, AL 36572, and did not identify a post office box. Thereafter, the Commission sent the judge's show cause order to the same incorrect address used by the Secretary. The envelope containing the show cause order, which was sent on September 9, 2002 by certified mail with return receipt,

was returned to the Commission unopened, with the return receipt still attached.¹ The envelope is stamped “Returned to Sender UNCLAIMED” and has stamped on it a first notice date of September 13, a written but crossed-out second notice date of September 18, and a written return date of September 28.²

It appears that Respondent may not have received either the Secretary’s complaint or the judge’s show cause order because of an addressing error. We therefore remand the case to the judge to conduct further proceedings to determine whether Respondent’s failure to file an answer to the complaint and respond to the show cause order may be excused under Commission Rule of Procedure 41(b), which permits the Commission to set aside sanctions for “reasons deemed sufficient.” 29 C.F.R. § 2200.41(b); *see Lavelle Construction*, 19 BNA OSHC 1149, 1150, 2000 CCH OSHD ¶ 32,200, pp. 48,758-9 (No. 99-2191, 2000) and cases cited therein.

/s/

W. Scott Railton
Chairman

/s/

Thomasina V. Rogers
Commissioner

Dated: November 20, 2002

¹There is no record of when the Commission received the returned envelope containing the show cause order.

² “PO Box # 469” is written on the face of the envelope containing the show cause order. It is not known when or by whom this was written.

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On **9/09/02** the undersigned issued an ORDER TO SHOW CAUSE to the Respondent as to why his Notice of Contest should not be dismissed for failure to file an answer to the complaint as required by the Commission Rules of Procedure. The Respondent failed to reply to the ORDER. His actions demonstrate either that he has abandoned the case or treats the Rules of Procedure of the Commission with disdain. This cannot be countenanced as it seriously impedes the administration of justice.

Accordingly, the Notice of Contest filed by the Respondent is dismissed. The Secretary's citation(s) and proposed penalties are AFFIRMED in all respects.

/S/
IRVING SOMMER
Chief Judge

DATE: October 12, 2002
Washington, D.C.