



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.

JGB LLC d/b/a General Fire-Proof Door
Corp.,

Respondent.

OSHRC Docket Nos. 04-2153 & 04-2154

APPEARANCES:

Daniel J. Mick, Esq., U.S. Department of Labor, Washington, D.C.

For the Complainant

Rubin Kuszel, *pro se*, General Manager, General Fire-Proof Door, Bronx, New York

For the Respondent

ORDER

Before: RAILTON, Chairman, and ROGERS, Commissioner.

BY THE COMMISSION:

On August 17, 2005, Chief Judge Irving Sommer granted the Secretary's motion for sanctions based on the failure of JGB LLC d/b/a/ General Fire-Proof Door Corp. (JGB), appearing *pro se*, to comply with the judge's order directing the company to respond to the Secretary's discovery requests. The judge entered a default judgment against JGB, affirming the citations issued by the Secretary, which alleged numerous general industry standard violations primarily with regard to machine guarding, and assessing the total proposed penalty of \$70,750.

After being found in default for failure to comply with the judge's discovery order, JGB, again appearing *pro se*, filed a timely petition for discretionary review of the

judge's decision. The Commission's subsequent briefing notice, issued on October 27, 2005, instructed the parties to file opening briefs within 30 days of the date of the notice. The notice also specifically stated that "[a] party who does not intend to file a brief must notify the Commission in writing, setting forth the reason therefore within the applicable time for filing briefs, and shall serve a copy on all other parties." The Secretary filed a timely brief with the Commission. The deadline for filing a brief has passed. To this date, JGB has neither filed a brief nor notified the Commission of its intent not to do so.

Under Commission Rule 93(d), 29 C.F.R. § 2200.93(d), "[i]f a petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may vacate the direction for review, or it may decide the case without that party's brief." *See, e.g., Honey Creek Contracting Co.*, 1998 CCH OSHD ¶ 31,701 (Nos. 97-0353 & 97-0462, 1998) (direction for review vacated where Respondent failed to respond to briefing notice and Secretary's motion); *Pride Petroleum Services*, 1993-95 CCH OSHD ¶ 30,619 (No. 92-3382, 1994) (direction for review vacated where Respondent failed to respond to briefing notice and Commission's show cause order); *D.A. & S. Oil Well Servicing, Inc.*, 1987 OSAHRC LEXIS 182 (No. 85-604, 1987) (direction for review vacated where Respondent failed to file timely brief); *see also Imageries*, 15 BNA OSHC 1545, 1547, 1991-93 CCH OSHD ¶ 29,639, p. 40,131 (No. 90-378, 1992) (Commission deciding a case without the petitioning party's brief and finding that the *pro se* employer's failure to respond, both before the Commission and the judge, meant that the record lacked any basis "upon which the Commission can rely to grant Imageries relief from the judge's order").

The Commission has provided JGB an opportunity to respond to the judge's order. JGB's continuing inaction signals that it has no intention of participating in this proceeding in the manner offered by the Commission. While parties appearing *pro se* may "require additional consideration of their circumstances[,] such litigants "are not exempt from following Commission rules and procedures that require all litigants to take *some* action or suffer a penalty." *Imageries*, 15 BNA OSHC at 1547, 1991-93 CCH OSHD at p. 40,131 (emphasis in original). Because JGB has failed to act on that

opportunity with no explanation for its inaction, we exercise our discretion to vacate the direction for review.

Accordingly, the direction for review is vacated due to JGB's failure to respond to the briefing notice. The administrative law judge's decision is a final order.

SO ORDERED.

/s/ _____
W. Scott Railton
Chairman

/s/ _____
Thomasina V. Rogers
Commissioner

Dated: February 2, 2006

SECRETARY OF LABOR,

Complainant,

v.

JGB LLC d/ba GENERAL FIRE-PROOF
DOOR CORP.,

Respondent.

Docket Nos. 04-2153 & 04-2154

ORDER

Motion by the Secretary for an order imposing sanctions on the Respondent for failure to comply with the Order of the undersigned, dated July 19, 2005 directing response to the Secretary's discovery requests.

The Secretary served upon the Respondent on April 29, 2005 its First set of Interrogatories and First request for Production of Documents. Upon receiving no response, on June 29, 2005 the Secretary moved the undersigned for an order to compel the Respondent to respond.

On July 17, 2005, I issued an order to the Respondent directing him to comply with all discovery requests made. The Respondent did not respond.

By making no attempt to comply, nor in any way asserting they lacked the ability to comply with my order fully demonstrates a wilful determination not to. Such flagrant and wilful intransigence calls for the severest sanction.

Accordingly, the notice of contest in the captioned cases is dismissed, the Respondent is held in DEFAULT, and the citations in both cases captioned above are AFFIRMED as issued.

IRVING SOMMER
Chief Judge

DATED: August 29, 2005
Washington, D.C.