



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.	:	OSHRC DOCKET NO. 05-0098
	:	
CONTI & CARLUCCI	:	
CONSTRUCTION, INC.,	:	
	:	
Respondent.	:	

Appearances:

Margaret A. Temple, Esquire U.S. Department of Labor New York, New York For the Complainant.	John P. Ruggiero, Esquire Canfield, Madden & Ruggiero, LLP Garden City, New York For the Respondent.
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Before: Chief Judge Irving Sommer

DECISION AND ORDER

This matter 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”). On June 3, 2004, the Occupational Safety and Health Administration (“OSHA”) inspected a work site of Respondent; as a result, on December 2, 2004, OSHA issued to Respondent a citation alleging various violations of OSHA’s construction standards and proposing a total penalty of \$119,000.00. Respondent contested the citation and proposed penalty, and this matter was set for a hearing on September 14, 2005. At the hearing, the Secretary’s counsel advised the undersigned the parties had settled this matter the day before, and counsel read the terms of the settlement into the record. (Tr. 3-5). On September 23, 2005, the Secretary’s counsel sent the agreed-to settlement document to Respondent’s counsel. On October 7, 2005, the Secretary’s counsel spoke

to Respondent's counsel, who said he had signed the agreement and sent it for signature to his client, who was to return it to the Secretary with a check by overnight mail. The Secretary's counsel spoke to Respondent's counsel again on October 14, 2005, to ask why she had not yet received the signed agreement, and Respondent's counsel said he would call his client and inquire about the delay. On October 26, 2005, Respondent's counsel advised the Secretary's counsel that his client had not returned his calls and that he would write a letter requesting that the client return the agreement to the Secretary. On November 3, 2005, Respondent's counsel informed the Secretary's counsel that despite various phone calls and letters, his client had not contacted him. The Secretary filed a motion to dismiss Respondent's notice of contest in this matter on November 4, 2005.¹

Discussion

As the Secretary points out, Commission Rule 101(a) provides for a default judgment to be entered against a party who has failed to plead or otherwise proceed as provided by Commission Rules or as required by the Commission or Judge. *See* 29 C.F.R. 2200.101(a). As the Secretary also points out, the Commission has held that, where a party displays a pattern of disregard for Commission procedures, dismissal may be an appropriate sanction. *See Philadelphia Constr. Equip., Inc.*, 16 BNA OSHC 1128, 1131 (No. 92-899, 1993). *See also Caterpillar, Inc.*, 17 BNA OSHC 1507, 1509-10 (No. 94-347, 1996).

I agree with the Secretary that, based on its course of conduct in this matter, it is unlikely that Respondent will participate further in this matter or appear at a rescheduled hearing. I also agree that dismissal of Respondent's notice of contest is the appropriate sanction in this case. Respondent's notice of contest is accordingly DISMISSED, and the citation is AFFIRMED in all respects. So ORDERED.

/s/

Irving Sommer
Chief Judge

Dated: December 12, 2005
Washington, D.C.

¹The facts and circumstances of this case are set out in an Affidavit of the Secretary's counsel that is included with the Secretary's motion.