



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.

E.C.H. CONSTRUCTION,

Respondent.

OSHRC Docket No. 07-0337

DIRECTION FOR REVIEW AND REMAND ORDER

Before: THOMPSON, Chairman; ROGERS, Commissioner.

BY THE COMMISSION:

On January 24, 2007, the Occupational Safety and Health Administration (“OSHA”) issued a citation to E.C.H. Construction (“E.C.H.”) for an “other” violation with a proposed penalty of \$300. The citation alleges that E.C.H. violated 29 C.F.R. § 1903.19(c)(1) because it failed to certify to OSHA that uncontested violations previously cited on October 31, 2006 had been abated within ten calendar days of the prior citation’s abatement dates. Both the current and prior citations identify the following address for E.C.H.: “15730 Agler Rds., Garrettsville, OH 44231.”

E.C.H. filed a timely notice of contest for the current citation that was handwritten on stationary bearing the letterhead of “Holmes Lumber Companies” (Holmes), as well as the addresses of four Holmes locations, including one at “216 East Main Street, Sugarcreek, OH 44681.” The Garrettsville, Ohio address listed on the citations is not mentioned in E.C.H.’s notice of contest. After E.C.H. filed its notice of contest, all subsequent filings were served on Holmes at its Sugarcreek, Ohio address.

On July 2, 2007, Chief Administrative Law Judge Irving Sommer entered an Order dismissing E.C.H.'s notice of contest for its failure to file an answer and for failing to respond to the judge's order to show cause. After the case was docketed by the Executive Secretary, the Executive Secretary's Office received a telephone call from an employee of the parent company of Holmes who had received all of the case filings. The caller claimed that E.C.H. is not a subsidiary or agent of Holmes, and did not know why the case filings had been mailed to Holmes.

Based on our review of the record, it appears that E.C.H. may not have been served any of the documents in this case after the original citation was issued because they were sent to the Holmes address at Sugarcreek, Ohio identified on E.C.H.'s notice of contest. These circumstances might explain E.C.H.'s failure to file an answer or respond to the judge's order to show cause. However, the record is insufficient for us to determine if E.C.H. was properly served these documents or if Holmes was acting as its representative. *See* Commission Rule of Procedure 22(a), 29 C.F.R. § 2200.22(a) (a party may appear through a representative).

We therefore direct this case for review *sua sponte*, set aside the judge's order, and remand the matter to the judge for further proceedings consistent with this order. *See* Commission Rules of Procedure 91(a) and 92(b), 29 C.F.R. 2200.91(a) and 92(b) (Commission review of judge's decision discretionary; review may be directed by Commissioner on his own motion).

SO ORDERED.

/s/ _____
Horace A. Thompson III
Chairman

/s/ _____
Thomasina V. Rogers
Commissioner

Dated: July 31, 2007

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ORDER

On 6/4/07 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: July 2, 2007
Washington, D.C.