



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1825 K STREET NW
4TH FLOOR
WASHINGTON, DC 20006-1246

FAV
OSHA 201-634-8006
PFB 201-634-8006

SECRETARY OF LABOR
Complainant,

v.

DEMPSEY DARCY OLDSMOBILE
Respondent.

OSHRC DOCKET
NO. 92-1501

NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on February 12, 1993. The decision of the Judge will become a final order of the Commission on March 15, 1993 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before March 4, 1993 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1825 K St. N.W., Room 401
Washington, D.C. 20006-1246

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 634-7950.

FOR THE COMMISSION

Ray H. Darling, Jr. (SKW)
Ray H. Darling, Jr.
Executive Secretary

Date: February 12, 1993

DOCKET NO. 92-1501

NOTICE IS GIVEN TO THE FOLLOWING:

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Thomas P. Dempsey, President
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Sidney J. Goldstein
Administrative Law Judge
Occupational Safety and Health
Review Commission
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SECRETARY OF LABOR,
Complainant,

v.

DEMPSEY D'ARCY OLDSMOBILE,
Respondent.

OSHRC Docket No. 92-1501

APPEARANCES:

Cyrus A. Alexander, Esq., Office of the Solicitor,
U.S. Department of Labor, Chicago, Illinois

Thomas P. Dempsey, *pro se*, Dempsey, D'Arcy Oldsmobile,
Joliet, Illinois

Before: Administrative Law Judge Sidney J. Goldstein

DECISION AND ORDER

This matter arises under Section 10(c) of the Occupational Safety and Health Act of 1970 and involves the application of the penalty provision of this law. After one of its compliance officers inspected a workplace of the Respondent, the Occupational Safety and Health Administration concluded that the Company was in violation of various safety regulations adopted under the Act and issued a citation for the alleged infractions. The Respondent disagreed with the citation and submitted a notice of contest. After a Complaint and Answer were filed with this Commission, the matter was set for hearing. Prior to the hearing date the parties settled all matters relating to the citation with the exception of the penalty, and the hearing was therefore confined to this issue only.

The facts are not in substantial dispute and may be briefly stated. On May 8, 1991, a compliance officer for the Administration inspected an employing unit known as the Graham Oldsmobile dealership in Joliet, Illinois. The following month the Agency issued citations to that company for alleged violations of safety regulations adopted under the Act.

In September, 1991, the Respondent, a new corporation, with independent officers and investors, purchased the fixed assets of the Graham entity and commenced business as Dempsey D'Arcy Oldsmobile Dealership. At that time the new ownership and management did not know of the citations issued to the Graham people.

On March 12 and 13, 1992, the property was reinspected by OSHA, and those previous alleged violations which were not corrected were the subject of a citation issued to Dempsey D'Arcy. The Respondent filed a notice of contest but nevertheless cooperated with the Administration and promptly commenced the abatement of the alleged violations and corrected the infractions at an approximate cost of \$28,000.00. In the assessment of the proposed penalties, the Administration gave credit for various factors, but no credit was given for good faith because of the lack of a written safety and health program. Also, there was no credit or benefit based upon history since there had been a previous inspection of the premises.

With respect to penalties, Section 17(j) of the Act provides:

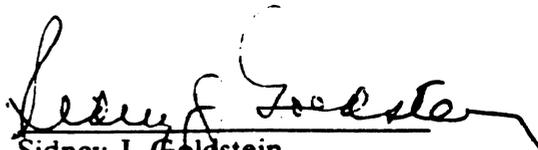
The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of the previous violations.

As noted, the Administration gave no credit in the assessment of penalties on the basis of good faith of the employer because there was no written safety and health program and allocated no credit for history inasmuch as there had been a previous inspection of the dealership.

I believe that the failure to have a written safety and health program should not be the sole consideration in granting credit for good faith in the penalty assessment. Where an employer demonstrates a sensitivity for the safety of its employees in the prompt abatement of the alleged safety violations and cooperates with the

Administration, incurring substantial expenditures in the process, some credit should be advanced in the penalty process. Further, while there had been a previous inspection of the dealership property, the Respondent had no previous inspection, and credit should be accorded on this basis. As a result, there should be additional adjustments to the proposed penalties. The penalties are therefore modified as follows:

Citation No. 1 -	Item 1	-	\$600.00
	Item 2	-	325.00
	Item 3	-	600.00
	Item 4	-	300.00
	Item 5	-	300.00
	Item 6	-	600.00
	Item 7	-	600.00


Sidney J. Goldstein
Judge, OSHRC

Dated: February 5, 1993