



UNITED STATES OF AMERICA  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
One Lafayette Centre  
1120 20th Street, N.W. — 9th Floor  
Washington, DC 20036-3419

PHONE:  
COM (202) 606-5100  
FTS (202) 606-5100

FAX:  
COM (202) 606-5060  
FTS (202) 606-5060

SECRETARY OF LABOR  
Complainant,  
v.  
GALLO WINE DISTRIBUTORS, INC.  
Respondent.

OSHRC DOCKET  
NO. 93-2634

**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 March 22, 1994. The decision of the Judge will become a final order of the Commission on April 21, 1994 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 April 11, 1994 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  
1120 20th St. N.W., Suite 980  
Washington, D.C. 20036-3419

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) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.  
Executive Secretary

Date: March 22, 1994

DOCKET NO. 93-2634

NOTICE IS GIVEN TO THE FOLLOWING:

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

Patricia Rodenhausen, Esq.  
Regional Solicitor  
Office of the Solicitor, U.S. DOL  
201 Varick, Room 707  
New York, NY 10014

David S. Taub, President  
Gallo Wine Distributors, Inc.  
48-18 Northern Boulevard  
Long Island City, NY 11101

Irving Sommer  
Chief Administrative Law Judge  
Occupational Safety and Health  
Review Commission  
One Lafayette Centre  
1120 20th St. N.W., Suite 990  
Washington, DC 20036 3419

00108907924:02



UNITED STATES OF AMERICA  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
 One Lafayette Centre  
 1120 20th Street, N.W. — 9th Floor  
 Washington, DC 20036-3419

PHONE:  
 COM (202) 606-6100  
 FTS (202) 606-6100

FAX:  
 COM (202) 606-6060  
 FTS (202) 606-6060

---

SECRETARY OF LABOR,  
 Complainant,  
 v.  
 GALLO WINE DISTRIBUTORS,  
 INC.,  
 Respondent.

---

Docket No. 93-2634

**Appearances:**

Rebecca Rae Stern, Esq.  
 U.S. Department of Labor  
 New York, N.Y.

Gerald L. Neway, Mgr.  
 Gallo Wine Distr.  
 Long Island City, N.Y.

For the Complainant

For the Respondent

BEFORE: Administrative Law Judge Irving Sommer

**DECISION AND ORDER**

The Respondent was issued a repeat citation and notification of proposed penalty on June 29, 1993. A hearing was held in New York, N.Y. on January 27, 1994 concerning the motion of the Secretary to dismiss the Respondent's notice of contest as not being timely filed under Section 10 of the Act.

Diana Cortez, a safety supervisor in the Bayside, N.Y. office of OSHA testified that a citation and notice of proposed penalty was issued to the Respondent on June 29, 1993 and was received on June 30, 1993 being signed for by one Jose Padilla, an employee of the Respondent. She stated that the last day to contest the citation was July 22, 1993.

Respondent. **She stated that the last day to contest the citation was July 22, 1993. Thereafter, not having heard from the Respondent, a letter demanding payment was sent on August 30, 1993 which was once again signed for by Jose Padilla on behalf of the Respondent. The Respondent telephoned her office on August 31, 1993 stating it had never received the citation and a copy of the citation was faxed to them on September 1. On September 16, 1993 the OSHA office received a letter from the Respondent dated September 7 which purported to be a notice of contest.**

The evidence of record fully demonstrates that the notice of contest herein was untimely filed. It was due on or before July 22, 1993 and was not filed until well into September 1993. The Respondent says it did not receive the citation, yet it was signed for by Mr. Padilla one of its employees who among other responsibilities also picked up mail and sorted and distributed it. The Respondent's failure to file its notice in a timely fashion was due solely to its own carelessness and negligence. It is apparent that its business procedures for the distribution of mail were inefficient and slovenly. The Commission has held that employers whose improper business procedures has led to failure to file in a timely manner are not entitled to relief. See *Louisiana-Pacific Corp.*, 13 BNA OSHC 2020, 1987-90 CCH OSHD par. 28,409 (No. 86-1266, 1989); *Stroudsburg Dyeing & Finishing Co.*, 13 BNA OSHC 2058, 1987-90 CCH OSHD par. 28, 433 (No. 88-1830, 1989). The evidence does not establish excusable neglect or mistake under Rule 60(b)(1). What is indicated is simple negligence on Respondent's part in carrying out its everyday business activities. Simple negligence will not establish entitlement to relief. *E.K. Construction Co.*, 15 BNA OSHC 1165, 1166, 1991 CCH OSHD par. 29,412 (No. 90-2460, 1991). Accordingly, the motion of the Secretary to dismiss is granted.

**ORDER**

The citation issued to the Respondent on June 29, 1993 and the proposed penalty is AFFIRMED in all respects.

  
IRVING SOMMER

Judge

DATED: