



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR
Complainant,
v.
WORONOFF'S FURNITURE
Respondent.

OSHRC DOCKET
NO. 94-2221

**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 January 12, 1995. The decision of the Judge will become a final order of the Commission on February 13, 1995 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 February 1, 1995 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: January 12, 1995

DOCKET NO. 94-2221

NOTICE IS GIVEN TO THE FOLLOWING:

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Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
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SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. 94-2221
	:	
WORONOFF'S FURNITURE,	:	
	:	
Respondent.	:	
	:	

Appearances:

Nancee Adams-Taylor, Esq.
 U.S. Department of Labor
 New York, N.Y.

Keith Woronoff, President
 Woronoff's Furniture
 Middletown, N.Y.

Complainant

Respondent

Before: Administrative Law Judge Irving Sommer

DECISION AND ORDER

The Respondent was issued two citations and notification of penalty on March 30, 1994. A hearing was held in New York, N.Y. on October 21, 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.

Mr. Garret Westerveld, the Assistant Area Director in the Albany, N.Y. office of OSHA testified that after an inspection of the Respondent's premises a citation and notification of proposed penalties were sent to him, together with a booklet (OSHA 3000),

which explained the employer rights and responsibilities (Exh C-2). The employer received the citation and accompanying booklet on April 4, 1994 and had until April 25, 1994 to file a contest to the citations issued(Tr.14). He further testified that no notice of contest was filed within said period, but that in response to a letter OSHA sent on April 13, 1994 concerning whether abatement of hazards had been carried he received a letter from Mr. Brennan a corporate officer, which said, "We would like to request an informal conference to discuss the corrective action taken." Since the Respondent was some distance from the OSHA office, Mr. Westerveld called Brennan on April 20, 1994 and discussed the corrective action he had taken. No discussions were had regarding filing of a notice of contest.(Tr 18). After a call to the Respondent on June 6, 1994 regarding the penalties due, Mr. Westerveld stated that OSHA received a copy of a letter allegedly sent on April 11, 1994 which stated, "Please let this letter serve as notification that we request an informal conference regarding the action taken on the citations and a request to contest the penalties imposed."He stated such letter was never received by OSHA during the contest period, and was not mentioned previously.

Mr. Keith Woronoff, the company president admitted receiving the citations and the booklet which explained employer rights and responsibilities on April 4, 1994, and that he had read the booklet.

He reiterated that the April 11, 1994 letter was sent which requested a conference and also was a contest.He further felt that the request for an informal conference was a request to contest the matter.

There is no corroborative evidence present, other than the Respondent's self-serving copy of an alleged letter dated April 11, 1994 which it deems was a notice of contest. OSHA records show no receipt of the same, and the Respondent offered no proof that it was sent. At no time during the discussions regarding abatement of the hazards did the Respondent bring up or call attention that it has filed a notice of contest herein. Mr. Woronoff admitted reading the OSHA 3000 which accompanied the citations. This states in plain english, "If you wish to contest any portion of your citation, a notice of intent to contest must be submitted in writing within 15 working days after receipt of the citation and notification of penalty even if you have orally stated your disagreement with a citation, penalty, or abatement date during a telephone conversation or an informal conference." He was further advised of the time period within which to file a contest on the face of the citations. Mr. Woronoff gave every sign of being an intelligent, articulate individual. "If(the employer) had carefully read even portions of the written instructions stated and reiterated on the face of the--citations, he would have known how to proceed-- "Keefe Earth Boring Co. Inc, 14 BNA OSHC 2187, 2192(No. 88-2521, 1991). While I am sympathetic to the plight of the Respondent, the failure of the Respondent to file a timely contest herein was due to their own negligence; while Mr. Woronoff read the OSHA booklet explaining his rights and responsibilities, he did so carelessly and failed to carried out his stated obligations. Simple negligence on his part will not establish entitlement to relief.

The motion of the Secretary to dismiss is granted.

ORDER

The citations issued to the Respondent on March 30, 1994 and proposed penalties are AFFIRMED in all respects.



IRVING SOMMER
Chief Judge

DATED: JAN - 9 1995
 Washington, D.C.