



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

Phone: (202) 606-5400
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SECRETARY OF LABOR
Complainant,

v.

MOISHE'S MOVING SYSTEMS
Respondent.

OSHRC DOCKET
NO. 94-2532

**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 June 22, 1995. The decision of the Judge will become a final order of the Commission on July 24, 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 July 12, 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: June 22, 1995

DOCKET NO. 94-2532

NOTICE IS GIVEN TO THE FOLLOWING:

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the Act, 29 U.S.C. 659(a), an employer must notify the Secretary that it intends to contest the citation or proposed penalty within fifteen working days of its receipt. The Respondent had until December 30, 1992 to file its notice of contest, but did not do so, instead sending a letter to the regional office of the Occupational Safety and Health Administration dated January 4, 1993, which was received on January 11, 1993 stating therein, "Please let this letter serve as our Notice of Intent to Contest the captioned citation issued on November 18, 1992, as well as the underlying violation, and the abatement date and penalty imposed in connection therewith."

Mr. Erez Shternlicht, the building manager for the Respondent testified that he was on vacation when the citation was received and found it in his box on his return and immediately filed a notice of contest. The evidence shows that the Respondent was since at least January 1992 in the process of reconditioning the building in question and moving into the building. There was a temporary office on the third floor and some office space elsewhere. Mr. Shternlicht testified at the time involved herein there were 30 to 40 employees at the building including "some office people." He further testified he called the office every day and had not been told of the receipt of the citation by anyone.

While I am sympathetic to the plight of the Respondent, it is apparent there is present no excusable neglect or mistake under Rule 60(b). What we have here is simple neglect on part of management to provide assistance and suitable management procedures when the person in charge is absent. Here, while the building manager was vacationing, no system was in place to see that important mail was processed promptly; actually, Mr. Shternlicht admitted he called daily, and still was not apprised of the certified mail waiting for perusal

and disposition. The Respondent's business procedures were both lacking and woeful. The Commission has held that employers whose improper business procedures has led to failure to file on a timely basis are not entitled to relief. See *Louisiana-Pacific Corp.*, 13 BNA OSHC 2020; *Stroudsburg Dyeing & Finishing Co.*, 13 BNA OSHC 2058. The office procedures of the Respondent, a going business with over thirty people present at the building herein should provide for reliable, continuous mail scrutiny. The reasons advanced by the Respondent for its failure to file in a timely manner do not constitute "excusable neglect" or "any other reason for justifying relief" under Rule 60(b) of the Federal Rules of Civil Procedure. Simple negligence will not establish entitlement to relief. *E.K. Construction Co.*, 15 BNA OSHC 1165, 1166; *Rebco Steel Corp.*, 8 BNA OSHC 1235.

Accordingly, the motion of the Secretary to dismiss is GRANTED.

ORDER

The citation issued to the Respondent on November 18, 1992 and proposed penalty is AFFIRMED in all respects.



IRVING SOMMER
Chief Judge

DATED: JUN 21 1985
Washington, D.C.