



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.
PRINCE CARPENTRY, INC.
Respondent.

OSHRC DOCKET
NO. 95-0248

**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 August 3, 1995. The decision of the Judge will become a final order of the Commission on September 5, 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 August 23, 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: August 3, 1995

DOCKET NO. 95-0248

NOTICE IS GIVEN TO THE FOLLOWING:

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

John Jasinowski, Vice-President
Prince Carpentry, Inc.
1035 Second Avenue
New York, NY 10022

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

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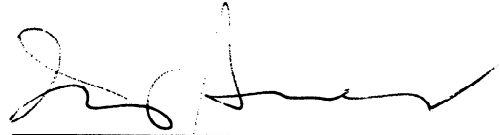
The Respondent was issued a serious citation and notification of proposed penalty on November 17, 1994 which was received on November 21, 1994. Under section 10(a) of the Act, 29 U.S.C. 659(a), an employer must notify the Secretary that it intends to contest the citation or proposed penalty within fifteen working days of its receipt. The Respondent had until December 14, 1994 to file its notice of contest, but did not do so, instead sending a letter to the regional office of OSHA dated January 31, 1995 requesting a "post contest review of the aforementioned citation due to the fact that a new office employee of ours had misfiled the citation papers in November of 1994 and we were not aware of it until we received your January 23, 1995 letter regarding payment past due for this citation."

Mr. Jasionowski, the Respondent vice-president admitted the receipt of the citation but that it had been misfiled by a secretary, and after receipt of the delinquent notice, "we tore the office apart. We looked in invoice folders, bills and basically we found it in one of the folders--." While I am sympathetic to the plight of the Respondent, it is apparent that there is present no excusable neglect or mistake under Rule 60(b). What is present is simple neglect on part of management to provide suitable and correct business procedures for the receipt of important mail. 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, 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). What is indicated here is simple negligence, slovenly business practice and lack of diligence in policing good business follow-up. Such conduct will not establish grounds for relief. *E.K. Construction Co.*, 15 BNA OSHC 1165-6.

The motion to dismiss is GRANTED.

ORDER

The citation and proposed penalties are AFFIRMED in all respects.



IRVING SOMMER
Chief Judge

DATED: **AUG - 1 1995**
Washington, D.C.