



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

Phone: (202) 606-5100
Fax: (202) 606-5050

SECRETARY OF LABOR
Complainant,
v.
TREND-LINE FURNITURE
Respondent.

OSHRC DOCKET
NO. 95-0631

**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 September 20, 1995. The decision of the Judge will become a final order of the Commission on October 20, 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 October 10, 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: September 20, 1995

DOCKET NO. 95-0631

NOTICE IS GIVEN TO THE FOLLOWING:

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

Barry Sussman, President
Trend-Line Furniture Corp.
35 Drexel Drive
Bay Shore, NY 11706

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

00112876958:02



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

Phone: (202) 606-5405

Fax: (202) 606-5409

SECRETARY OF LABOR,

Complainant,

v.

TREND-LINE FURNITURE,
CORPORATION

Respondent.

Docket No. 95-0631

Appearances:

Luis Micheli, Esq.
Ms. Sabina Rezza

Barry Sussman, President
Trend-Line Furniture Corp.

For the Secretary

For the Respondent

BEFORE: Chief Judge Irving Sommer

DECISION AND ORDER

The Secretary moved to dismiss the Respondent's notice of contest as not being timely filed under section 10 of the Act. A hearing was held in New York, N.Y., on August 9, 1995 concerning the merits of the motion at which time testimony and evidence were profert by both parties.

The Respondent was inspected on August 9, 1994 at which time citations were issued concerning alleged violations. A follow up inspection was held on November 8, 1994 at which time the compliance officer found previous violations had not been abated. Accordingly, on January 4, 1995 citations and proposed penalties for the failure to abate were issued to the Respondent which

1995 citations and proposed penalties for the failure to abate were issued to the Respondent which were received on January 6, 1995. 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 January 30, 1995 to file its notice of contest, but did not do so, instead responding to a March 1, 1995 dunning letter requesting payment with a letter dated March 20, 1995 stating it had forwarded information on November 14, 1995 regarding abatement, and furthermore noting that its financial condition made it unable to afford "those huge fines."

Mr. Barry Sussman, President of the corporation testified that they are in the business of manufacturing dining room furniture; he admitted knowledge of the original inspection and of the re-inspection and had received notice of the failure to abate citation. The corporation has a total of eight people in the plant, with two employees in the office doing clerical jobs. His main allegation is that he believed all violations had been abated and was not able to contact OSHA with this information until November 15, 1994, after the follow up inspection which at that time according to the compliance officer the violations were still in existence. The record plainly shows that the respondent filed an untimely notice of contest herein. The issue is whether said filing may be excused in the circumstances. The citation "plainly state(s) the requirement to file a notice of contest within the prescribed time period." *Roy Kay*, 13 BNA OSHC 2021, 2022, 1987-90 CCH OSHD, par. 28,406 No. 88-1748, 1989. *Accord, Acrom Construction Services*, 15 BNA OSHC 1123, 1126, 1991 CCH OSHD, par 29,393 (88-2291, 1991). The evidence does not establish excusable neglect or mistake under Rule 60(b)(1). What is indicated here is neglect and poor business practices on the part of the respondent. There are two employees working as clericals whose duties encompass, among others

of receiving the mail and forwarding it to those in control, and in this situation, to Mr. Sussman. He also had a responsibility as the president to follow up on important mail such as the citation received from a government source. This was neglected and the resultant failure to file in a timely manner. 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; *Stroudsburg Dyeing & Finishing Co.* 13 BNA OSHC 2058. The office procedures of the respondent, a going business with plant and clerical employees should provide for reliable, continuous mail scrutiny. Simple negligence will not provide entitlement to relief. 15 BNA 1165, 1166.

While I am not unsympathetic to the respondent's plight, I have no alternative but to hold it responsible for its failure to carefully read and act upon the unambiguous instructions set forth in the documentation and other papers accompanying the citation.

ORDER

The Secretary's motion to dismiss is granted, and the citations for failure to abate and the notification of proposed penalty are AFFIRMED in all respects.



IRVING SOMMER
Chief Judge

DATED: **SEP 19 1995**
Washington, D.C.