

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

STEPHEN K. KORSEN, D/B/A MDI
REMODELING AND CONSTRUCTION,

Respondent.

DOCKET NO. 04-1492

APPEARANCES:

Emily Goldberg-Kraft
U.S. Department of Labor
Arlington, Virginia
For the Complainant.

Stephen K. Korsen, President
MDI Remodeling and
Construction
Charleston, West Virginia
For the Respondent, *pro se*.

BEFORE: William C. Cregar
Administrative Law Judge

DECISION AND ORDER

This matter is before the Occupational Safety and Health Review Commission (“the Commission”) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 (“the Act”). On March 4, 2005, Complainant filed and served upon Respondent a Motion for Default for Failure to Proceed (“Motion”). To date, Respondent has failed to respond to the Motion. Finding good cause, I grant the Motion.

Statement of Facts

I adopt the following allegations, as set forth in the Secretary’s Complaint, as having been established:

1. Respondent, Stephen K. Korsen, D/B/A MDI Remodeling and Contracting, a corporation with a principal office and place of business at 743 W. Washington Street, Charleston, West Virginia, was in the business of remodeling and construction-related services.

2. Respondent employs more than 5 employees in its business activities at the above-listed place of business.

3. Respondent utilizes tools, equipment, machinery, goods and supplies that have originated in whole or in part from locations outside the State of West Virginia.

4. Respondent is an employer engaged in a business affecting commerce within the meaning of section 3(5) of the Act, 29 U.S.C. § 652(5).

5. On May 20, 2004, an authorized representative of the Secretary of Labor inspected a workplace located at 1454 4th Avenue, Charleston, West Virginia, where Respondent's employees performed work. On July 9, 2004, the Secretary issued to Respondent a Citation and Notification of Penalty. On April, 19, 2004, the Secretary received Respondent's Notice of Contest.

I further adopt the following allegations, as set forth in the Motion:

6. On September 10, 2004, the Secretary filed a complaint against Respondent for violations of section 5(a)(2) of the Act and the Occupational Safety and Health standards and regulations promulgated thereunder.

7. On October 21, 2004, the Commission's Chief Judge issued an Order to Show Cause Why Notice of Contest Should Not be Dismissed, because Respondent failed to answer the Complaint.

8. On November 6, 2004, Dan Blue, on behalf of Respondent, spoke to Counsel for the Secretary ("Counsel") via telephone explaining that he had been having problems with mail delivery and indicated that he wanted to settle the case. Counsel told Mr. Blue that she would not object, but that Respondent should make the request in writing to the Commission's Chief Judge. Mr. Blue provided Counsel two telephone numbers where Mr. Korsen could be reached.

9. On November 8, 2004, Counsel spoke with Sam Goldstein at the Commission via telephone, who said that Respondent would be given until November 17, 2004, to submit an Answer.

10. On November 12, 2004, Respondent submitted an Answer to the Commission on stationery with the company letterhead and phone number.

11. On December 16, 2004, I issued a Notice of Planning Conference to be held on January 11, 2005.

12. On January 10, 2005, Counsel asked that the conference be rescheduled due to a scheduling conflict. At that time, Counsel tried, without success, to reach Respondent via telephone about the conference.

13. The phone numbers provided by Respondent have recorded messages stating that the numbers are no longer in service. Multiple attempts since then have obtained the same result.

14. As of this date, Respondent has failed to respond to the Notice of Planning Conference or defend this case in any way.

Finally, the Certificate of Service attached to the Motion states that a copy was sent to Respondent at its address of record by certified mail, return receipt requested, postage prepaid.

Discussion

Section 2200.41(a) of Title 29 of the Code of Federal Regulations states:

When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge, he may be declared to be in default either: (1) on the initiative of the Commission or Judge, after having been afforded an opportunity to show cause why he should not be declared to be in default; or (2) on the motion of a party. Thereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party or strike any pleading or document not filed in accordance with these rules.

There is no requirement that a judge issue a show cause order before granting a party's motion for a default judgment. *See Schipper Constr., Inc.*, 18 BNA OSHC 1865, n.3 (No. 99-0253, 1865). The Secretary's Motion is accordingly GRANTED, and the Citation and Notification of Penalty is AFFIRMED in all respects.

Findings of Fact and Conclusions of Law

The foregoing decision constitutes my findings of fact and conclusions of law in accordance with Federal Rule of Civil Procedure 52(a).

ORDER

Based upon the foregoing, it is hereby ORDERED that:

1. Serious Citation 1, Item 1, alleging a violation of 29 C.F.R. 1926.503(a)(1), is affirmed, and a penalty of \$2,000.00 is assessed.

2. Repeat Citation 2, Item 1, alleging a violation of 29 C.F.R. 1926.503(b)(13), is affirmed, and a penalty of \$14,000.00 is assessed.

3. Repeat Citation 2, Item 2, alleging a violation of 29 C.F.R. 1926.20(b)(1), is affirmed, and a penalty of \$3,000.00 is assessed.

4. "Other" Citation 3, Item 1, alleging a violation of 29 C.F.R. 1904.29(a), is affirmed. No penalty was proposed, and none is assessed.

/s/

William C. Cregar
Judge, OSHRC

Dated: April 7, 2005
Washington, D.C.