



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, D.C. 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

SJ PYO CORP.,

Respondent.

OSHRC Docket No. 16-0478

DECISION AND ORDER

Respondent, SJ Pyo Corp., through its Owner, Mr. Jum Pyo, has failed to respond to court communications and comply with court notices and orders on multiple occasions. As a result, the undersigned finds that there are sufficient grounds to find SJ Pyo Corp. to be in DEFAULT.

Language Access

Mr. Jum Pyo is a self-represented party to the above-captioned case who speaks Korean and has limited English proficiency. Executive Order (E.O.) 13166, 65 Fed. Reg. 50, 121 (Aug. 16, 2000), directs all federal agencies to provide persons with limited English proficiency meaningful access to services provided by the agency. In fulfillment of its obligations under E.O. 13166, the Occupational Safety and Health Review Commission (the Commission) has implemented its own language access plan to ensure that persons, like Mr. Jum Pyo, who have limited English proficiency are provided meaningful access to this court and its services.

Upon receipt of this case, the undersigned immediately noticed that Mr. Jum Pyo filed an Answer in English with his signature written using Korean symbols. As a result, the undersigned employed the services of a Korean interpreter for all conference calls and had all documents from the court translated and issued in Korean and English. The court has fulfilled its obligations under E.O. 13166 and the Commission's language access plan to ensure that Mr. Jum Pyo has had meaningful access to the Commission's services at all stages of this case.

Show Cause Orders

This court has issued two Show Cause Orders against Respondent, SJ Pyo, for the failure of its Owner, Jum Pyo, to communicate with the court.

The first Show Cause Order was issued on December 19, 2016, in response to an Expedited Motion to Postpone the Hearing Date and Request to Clarify the Pre-hearing Procedures filed by the Secretary of Labor (Secretary) on December 2, 2016. In the motion, Counsel for the Secretary represented that he made several failed attempts to reach Mr. Jum Pyo to discuss unresolved evidentiary and procedural matters before the hearing. Further, Counsel for the Secretary indicated that Jum Pyo's unresponsiveness and limited English proficiency prevented the Secretary from adequately preparing for the hearing. To address these concerns raised by the Secretary, the undersigned scheduled a conference call for December 7, 2016. The undersigned's legal assistant attempted to reach Mr. Jum Pyo, by phone using a Korean interpreter, to notify him of the conference call. The undersigned's legal assistant called both numbers on file for Mr. Pyo and left voicemail messages on each providing the information for the conference call. However, Jum Pyo neither responded to the voicemail messages nor did he participate in the conference call on December 7th. Following the conference call, the undersigned's legal assistant again tried to reach Mr. Jum Pyo, by phone, with no success. Again, with the aid of a Korean

interpreter, the legal assistant left voicemail messages on each of the phone numbers on file directing Mr. Pyo to contact the court no later than December 9, 2016. Mr. Pyo never responded. Another basis for the first Show Cause Order was Jum Pyo's failure to comply with the court's Notice of Hearing and Hearing Site, Scheduling Order and Special Notices issued on September 26, 2016. In that Order, the court directed the parties to "meet or confer" to discuss prehearing issues by or before Friday, December 2, 2016. However, as indicated in the Secretary's motion, Jum Pyo was unresponsive to attempts to contact him in fulfillment of the court's Order.

The second Show Cause Order was issued on February 21, 2017, via United State Postal Service (USPS) certified mail (tracking no. 7015 1520 0001 3098 1315). The court's reason for issuing the second Show Cause Order was due, in large part, to the fact that service of the first Show Cause Order was accomplished using USPS regular first-class mail and FEDEX express overnight with direct signature. Upon reflection, the undersigned determined that such service did not meet the requirements of Rule 101(d) of the Commission Rules of Procedure. 29 C.F.R. §2200.101. Additionally, Mr. Jum Pyo still had not responded to any of the court's prior communications as of the issuance of the second Show Cause Order.

Address of Record

Rule 6 of the Commission Rules of Procedure requires all parties to provide and update, among other things, its address in writing or risk waiving the right to notice and service. 29 C.F.R. §2200.6. The USPS online tracking for the 2nd Show Cause Order issued via certified mail (no. 7015 1520 0001 3098 1315) shows that the package was "undeliverable as addressed" when delivery was attempted at Respondent's address of record (50-11 20th St., Bayside, N.Y. 11361). Ex. A. Instead, the letter was forwarded and ultimately delivered to an individual at a

location in Oakland Gardens, N.Y. 11384.¹ This location appears to be a forwarding address. It is important to note that the 2nd Show Cause Order was also served to Respondent via USPS first-class mail and was not returned. It is telling that neither of the letters (by certified and regular first-class mail was returned by the postal service undelivered, and therefore are presumed to have been duly delivered to the Respondent. *See Legille v. Dann*, 544 F.2d 1 (D.C. Cir. 1976) (applying the rebuttable presumption that post office has delivered a properly mailed item). Altogether, these facts appear to indicate that Jum Pyo has either moved or had his mail forwarded to another address without informing the Commission. In either case, his failure to provide the Commission with a current address means that he has waived his right to notice and service under Commission rules.

Discussion

Rule 101(a) of the Commission's Rules, 29 C.F.R. § 2200.101(a), provides in pertinent part:

Sanctions. When any party has failed to plead or otherwise proceed as provided by these rules or as required by the ... Judge, he may be declared to be in default ... on the initiative of the ... Judge, after having been afforded an opportunity to show cause why he should not be declared to be in default....Thereafter, the ... Judge, in [his] discretion, may enter a decision against the defaulting party....

It has been held that a judge has very broad discretion in imposing sanctions for noncompliance with the Commission's Rules or the judge's orders. *See Sealtite Corp.*, 15 BNA OSHC 1130, 1134 (No. 88-1431, 1991). However, although a judge has very broad discretion in imposing sanctions for noncompliance with the Commission's Rules of Procedure or his own orders, the judge must not impose a sanction that is too harsh under the circumstances of the case. "Reviewing courts universally recognize the harshness of dismissal with prejudice and

¹ The same method of delivery was used for the undersigned's December 27, 2016, Order Canceling Hearing (USPS certified and first-class mail). Both were served to Respondent at his address of record. Neither were returned; however, the certified mail online tracking for this letter (no. 7015 1520 0001 3096 1285) shows that delivery was left with an individual at a location in Oakland Gardens, N.Y. 11364. Ex. B.

generally require that lesser sanctions first be considered.” *Duquesne Light Co.*, 8 BNA OSHC 1218, 1222 (No. 78-5034, 1980). The Commission has held that a default judgment is “too harsh a sanction for failure to comply with certain prehearing orders unless the record shows contumacious conduct by the noncomplying party or prejudice to the opposing party,” or “where a party displays a ‘pattern of disregard’ for Commission proceedings.” *Architectural Glass & Metal Co.*, 19 BNA OSHC 1546, 1547 (No. 00-0389, 2001). Sanctions, however, are an appropriate tool to ensure compliance where the sanctioned party has engaged in a pattern of disregard for Commission rules, or where the party's conduct was contumacious. *See, e.g., Phila. Constr. Equip. Inc.*, 16 BNA OSHC 1128, 1130-31 (No. 92-899, 1993) (pattern of disregard for Commission proceedings found where Respondent was late for hearings twice, failed to certify posting of the citation and failed to file an answer until threatened with dismissal, failed to respond to a discovery request, and failed to respond to a pre-hearing order). The record in this case reveals that Respondent has repeatedly failed to act and communicate concerning this case. Respondent, Jum Pyo, failed to act in accordance with the court’s September 26, 2016, Order requiring the parties to meet or confer to, among other things, discuss the possibility of settlement and to exchange information for the preparation of a joint pre-hearing statement. As evidenced by the Secretary’s December 2, 2016, Expedited Motion to Postpone the Hearing Date and Request to Clarify the Pre-hearing Procedures, Respondent was unresponsive to attempts to communicate, by phone, to discuss pre-hearing matters as required by the court’s September 26th Order. In fact, Counsel for the Secretary represented that he made several unsuccessful attempts to contact Respondent, Jum Pyo, since September 9, 2016. Next, Respondent, Jum Pyo, should have communicated with this court in response to voicemails left by the undersigned’s legal assistant in an attempt to schedule a conference call for the parties to

take place on December 7th for the purpose of discussing the Secretary's motion. Again, Jum Pyo failed to respond to voicemails left by the undersigned's legal assistant following his failure to participate in the December 7, 2016, conference call and directing him to contact the court by or before December 9, 2016. Finally, Jum Pyo failed to communicate with this court by not filing a written response, by or before March 21, 2017, to the court's 2nd Show Cause Order dated February 21, 2017. To date, Respondent, Jum Pyo, has still not responded to any of the court's communications. I find that Respondent's failure to respond to the Order Canceling Hearing, phone calls/voicemails, and the Show Cause Order, reflects a pattern of disregard for this court, its orders, and is the very epitome of contumacious conduct. I also find that this *pro se* Respondent failed to exercise reasonable diligence by simply ignoring all communication from opposing counsel and this court. At a minimum, Respondent should have contacted the Commission if there was a problem understanding any of the documents sent.² Based on this behavior, it appears that Respondent has either abandoned this case or treats the Commission's Procedural Rules with disdain. In either case, such behavior cannot be tolerated as it seriously impedes the administration of justice. If Mr. Jum Pyo, or any representative of Respondent, had provided a response to the SCO or any of the other attempted communications (i.e. phone calls/voicemails), the undersigned would have imposed lesser sanctions. However, no such response has been provided and I find Respondent's repeated failure to communicate and participate in this case makes default an appropriate sanction.

² Interestingly, neither the OSHA Citations nor the Secretary's Complaint was issued in Korean. Yet, Respondent managed to file a timely Notice of Contest and Answer both in English.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent is declared in DEFAULT and its Notice of Contest is DISMISSED. The Citation, including all nine items, is AFFIRMED, and proposed penalties in this matter are ASSESSED.

/s/Keith E. Bell
Keith E. Bell
Judge, OSHRC

Dated: May 23, 2017
Washington, D.C.