



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.

E & E CONTRACTORS, INC.  
Respondent.

OSHRC DOCKET  
NO. 94-3545

**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 December 7, 1995. The decision of the Judge will become a final order of the Commission on January 8, 1996 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 December 27, 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

A handwritten signature in cursive script that reads "Ray H. Darling, Jr." followed by a flourish.  
Ray H. Darling, Jr.  
Executive Secretary

Date: December 7, 1995

DOCKET NO. 94-3545

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

Nicholas Gazotis, Vice-President  
E & E Contrators  
P. O. Box 1440  
Syracuse, NY 13201

Barbara Hassenfeld-Rutberg  
Administrative Law Judge  
Occupational Safety and Health  
Review Commission  
McCormack Post Office and  
Courthouse, Room 420  
Boston, MA 02109 4501

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UNITED STATES OF AMERICA  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
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SECRETARY OF LABOR,

Complainant

v.

E & E CONTRACTORS

Respondent.

OSHRC  
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**Appearances:**

Alan Kammerman, Esq.  
 Office of the Solicitor  
 U.S. Department of Labor  
 For Complainant

Nicholas Gazotis, Vice President  
 E & E Contractors  
 Syracuse, NY  
 For Respondent

Before: Administrative Law Judge Barbara L. Hassenfeld-Rutberg

**DECISION AND ORDER**

This proceeding arises under § 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et. seq.*, ("the Act"), to review citations issued by the Secretary of Labor ("Secretary") pursuant to § 9(a) of the Act and a proposed assessment of penalty thereon issued pursuant to § 10(c) of the Act.

The Secretary alleged 46 items with a total proposed penalty of \$39,600.00 in three citations; Serious citation 1 had a proposed penalty of \$34,600.00, Repeat citation 2 had a proposed penalty of \$4000.00, and Other citation 3 had a proposed penalty of \$1000.00.

Originally, on March 29, 1995, Attorney James A. Gosier as general counsel for the Respondent, filed a motion on behalf of the Respondent to file the Answer late. This motion was granted by Chief Judge Irving Sommer, who gave an extension to the Respondent until April 28, 1995. When the Answer was filed on April 28, 1995, Nicholas Gazotis, vice president, signed the Answer. On June 30, 1995, Jeffrey McCook, a non-attorney representative, filed his appearance in the case. After several conference calls among Mr. Kammerman, Mr. McCook and the undersigned Judge, it became apparent that the matter could not settle as the Respondent had debts in the amount of approximately \$30,000.00 due to the Occupational Safety and Health Administration for past settlement agreements.

On July 3, 1995, the case was set for trial for September 18-22, 1995 in Syracuse, New York. That trial was rescheduled on July 17, 1995 for October 30-November 3, 1995 in Syracuse, and the parties were noticed on October 20, 1995 of the actual site. On October 5, 1995, Jeffrey McCook moved to withdraw his appearance as a non-attorney representative, and in accordance with the

Occupational Safety and Health Review Commission Rule § 2200.23(3)(b), the undersigned Judge issued an ORDER on October 10, 1995 in which I allowed that motion. That ORDER was both faxed and mailed to the Secretary and to Nicholas Gazotis, for the Respondent. In that ORDER, the Respondent was Ordered to forthwith notify the undersigned Judge of any appearance of counsel, notified that the trial would not be postponed and Ordered to be available for a conference call on Wednesday, October 11, 1995 at 10:30 am with the undersigned Judge and Mr. Kammerman. When the Mr. Kammerman placed the call on October 11, 1995 at 10:30 am to the Respondent's place of business, Mr. Gazotis was not present, rather his secretary, Carol Davis participated in the call wherein the undersigned Judge reiterated the terms of my October 10, 1995 ORDER. Ms. Davis confirmed that the fax had been sent to the correct number, which was in accordance with the confirmation of the fax that the undersigned Judge received on October 10, 1995.

On October 30, 1995, the undersigned Judge, a court reporter, Mr. Kammerman for the Secretary along with his witnesses appeared at noticed site, the Onondaga Legislature, 407 Courthouse, 401 Montgomery Street, Legislature Chambers, Syracuse, New York. The case was to commence at 1:00 pm, the undersigned Judge and her court reporter arrived at 12:50 pm. The Secretary had timely filed his pre-trial exchange, but none was ever received from the Respondent, which resulted in the Secretary's filing a Motion for Sanctions against the Respondent. No ruling was made by the undersigned Judge on that motion. When the Respondent was not present at the hearing site by 1:30 pm, the undersigned Judge opened the record and the Secretary made two motions. The first Motion concerned the Secretary's withdrawal of items: Citation 1, items # 16a-d, #17, #18, #19 a & b, #20 a & b, and Citation 3, items #6 & #7 for a reduced total penalty of \$32,600.00. The undersigned Judge allowed that motion. Then the Secretary made a Motion to Default the Respondent, but the undersigned Judge indicated that I would wait until 1:45 pm to rule on that motion. When the Respondent did not show at 1:50 pm, the undersigned Judge opened the record again and granted the Secretary's Motion to Default the Respondent.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

All findings of fact relevant and necessary to a determination of the contested issues have been found specially and appear herein. See Rule 52(a) of the Federal Rules of Civil Procedure. Proposed findings of fact or conclusions of law inconsistent with this decision are denied.

#### **ORDER**

A default judgment is entered against the Respondent. In addition, the Respondent's Notice of Contest and Answer are dismissed. The Citations and Complaint as amended, are Affirmed except as to the items Withdrawn by the Secretary at the hearing stated hereinabove.

  
BARBARA L. HASSENFELD-RUTBERG  
Judge, OSHRC

Date: **November 28, 1995**  
Boston, MA