



UNITED STATES OF AMERICA  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
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SECRETARY OF LABOR  
Complainant,  
v.  
RESIDENTIAL CONTRACTING, INC.  
Respondent.

OSHRC DOCKET  
NO. 94-2049

**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 January 23, 1995. The decision of the Judge will become a final order of the Commission on February 22, 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 February 13, 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.*  
Ray H. Darling, Jr.  
Executive Secretary

Date: January 23, 1995

DOCKET NO. 94-2049

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.  
Counsel for Regional Trial Litigation  
Office of the Solicitor, U.S. DOL  
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Patricia Rodenhausen, Esq.  
Regional Solicitor  
Office of the Solicitor, U.S. DOL  
201 Varick, Room 707  
New York, NY 10014

Issac Indik, President  
Residential Contracting, Inc.  
30 Sherwood Avenue  
Ossining, NY 10562

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

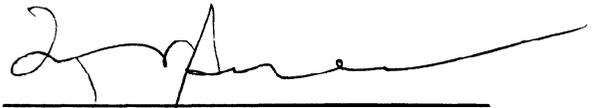
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for the respondent. The compliance officer, Ms. Smith testified that she delivered the citation to a Ms. Montalno on May 20, 1994, that Ms. Montalno contacted Mr. Indik on the CB and informed him that the OSHA compliance officer was delivering some mail and was told by him to accept same. Ms. Smith received a written acceptance of the delivery on May 20, 1994, thusly under section 10(a) of the Act, the Respondent was required to notify the Secretary that it intends to contest the citation or proposed penalty within fifteen working days of its receipt, or on or before June 13, 1994. The Respondent did not file a notice of contest within the 15 day period, sending a letter dated June 20, 1994, contesting the penalties herein. Mr. Indik, the president of the Respondent corporation admitted talking to Ms. Montalvo on May 20, 1994, and approving the receipt by her of the mail being delivered by the compliance officer from OSHA; his alibi for being late in sending the notice of contest was that he did not realize its importance, and that accordingly he waited a few weeks before picking the citation up from his mail drop. It is apparent that the Respondent's failure to file its notice in a timely fashion was due solely to his own carelessness and negligence. He knew that there was mail waiting for him from OSHA at a place where he indicated mail could be sent, yet did not go immediately to claim it. 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). The office procedure of Respondent, a going business should provided for reliable, continuous mail delivery procedures. The reasons advanced by the Respondent for its failure to file in a

timely manner do not constitute "excusable neglect" within Federal Rule of Civil Procedure 60(b).

Accordingly, the Secretary's motion to dismiss the notice of contest is GRANTED. The Secretary's citation and proposed penalties are AFFIRMED in all respects.



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IRVING SOMMER  
Chief Judge

DATED: JAN 19 1995  
Washington, D.C.