

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

GEO HOME RENOVATIONS INC.,

Respondent.

OSHRC Docket No. 25-1182

**DECISION AND ORDER GRANTING SECRETARY'S
MOTION TO DISMISS LATE NOTICE OF CONTEST**

This proceeding is before the Occupational Safety and Health Review Commission (“Commission”) pursuant to § 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq. (“OSH Act”), due to the untimely filing of a Notice of Contest by Geo Home Renovations, Inc. (“Respondent”) with the Commission. On April 14, 2026, the Secretary filed *Secretary’s Motion to Dismiss Respondent’s Late Notice of Contest* (“Motion”), in which the Secretary requested that the notice of contest be dismissed as untimely. The Motion is GRANTED.

I. Background

The Occupational Safety and Health Administration (“OSHA”) inspected Respondent’s worksite located at 21 2nd Street, Athens, NY 12015 on April 17, 2024. The OSHA inspection number is 1742363. On October 7, 2024, a Citation and Notification of Penalty (“Citation”) was issued to Respondent for eight serious violations of OSHA standards and two other-than-serious violations of OSHA standards. Specifically, the Citation alleged serious violations of 29 C.F.R. §§ 1926.451(b)(5)(ii), 1926.451(b)(10), 1926.451(e)(8), 1926.451(f)(6), 1926.451(f)(7),

1926.454(a), 1926.454(b), 1926.451(g)(1), 1926.451(g)(4)(i), 1926.452(j)(2), and alleging other-than-serious violations of 29 C.F.R. §§1904.29(a), § 1904.40(a). The total penalty proposed for the alleged violations is \$53,460.

Respondent had fifteen working days from its receipt of the Citation to inform OSHA that it intended to contest the violations and/or the proposed penalty. 29 U.S.C. § 659(b). The Citation was delivered to Respondent on October 21, 2024. (Motion, Ex. B.) Thus, Respondent was required to submit its notice of contest on or before November 12, 2024.

Respondent did not file its Notice of Contest until more than ten months later, on September 15, 2025. The Notice of Contest states:

On behalf of Geo Home Renovations, we respectfully submit this letter as a Late Notice of Contest regarding Inspection Number 1742363.

We are requesting that this matter be accepted for review despite the delay in filing, as we seek to resolve and settle the case in good faith. Our company is committed to maintaining compliance with all OSHA standards and regulations, and we respectfully ask for consideration in allowing this late filing so that we may properly address and contest the citation.

Thank you for your time and understanding. Please let us know the next steps or if additional information is required.

The Notice of Contest indicates that Respondent's address is "365 Route 211, Middletown NY 10940." To date, Respondent has provided no further information to the Commission about the Citation or the delay in filing beyond what was in the Notice of Contest itself.

The Commission mailed a Notice of Docketing and Instructions to Employer ("Docketing Notice") to Respondent at the address provided in the Notice of Contest. The Docketing Notice was sent via first-class mail and has not been returned as undeliverable. The Docketing Notice was also posted to the Court's e-file system. The Docketing Notice included a postcard to be returned to the Commission to verify Respondent's compliance with the employee posting

requirements of Commission Rule 7, 29 C.F.R. § 2200.7. Respondent failed to return the postcard as required.

On December 2, 2025, Chief Judge Bell granted the Secretary's request to extend the time to plead or otherwise move. On December 19, 2025, the parties reported to the Commission that they had reached a settlement in principle. Chief Judge Bell granted them thirty days to finalize the settlement.

When the Joint Notification of Settlement was not timely filed, the Secretary first moved for additional time to finalize the settlement, which was granted. On April 14, 2026, after the extended deadline had elapsed, the Secretary filed the instant Motion and requested that the Notice of Contest be dismissed as untimely, and requested that the Court affirm the citations and proposed penalties as issued.

A “**mandatory** prehearing conference call” was scheduled for May 6, 2026, to discuss the Motion. (4/22/26 Order.) (emphasis in original). Respondent failed to appear for the conference as required.

Later that same day, May 6, 2026, the Court issued an Order to Show Cause and Order to File a Response to the Motion to Dismiss (“First Show Cause Order”). Thus, Respondent was ordered to show cause for its failure to appear for the conference. (First Show Cause Order at 1.) In addition, Respondent was ordered to file a response to the Motion by May 22, 2026. *Id.* The First Show Cause Order explained what the response to the Motion should contain. “At a minimum,” the written response to the Motion needed to address why Respondent failed to participate in the conference and,

- (1) Whether Respondent disagreed with the Secretary's claim that it did not file a notice [of] contest to the Citation issued as a result of OSHA inspection number 1742363, within the fifteen working day period specified in the OSH Act, 29 U.S.C. § 659(a).

(2) If Respondent agreed it did not timely file a notice of contest regarding OSHA inspection number 1742363, the written response was to state why Respondent believed it should be excused from the requirement to file a notice of contest within that 15-working-day period.

(3) Whether Respondent disagreed with any statements of fact in the Motion to Dismiss, including the attached exhibits, and was to identify the statements of fact Respondent believed were inaccurate or incomplete.

(4) Whether Respondent disagreed with any information in the First Show Cause Order. If the Respondent had a disagreement, it was directed to identify what it believed was inaccurate or incomplete. And,

(5) A brief description of why Respondent believed, in a hearing on the merits of the citation and penalty, Respondent could achieve a favorable outcome, at least in part. Respondent was directed to state the facts supporting any meritorious defense it had to the Citation.

See First Show Cause Order at 1-2. Respondent failed to file a response to the First Show Cause Order. Respondent did not explain its failure to appear or address any of the points for which more information was sought.

As Respondent is proceeding without legal representation, it was given another opportunity to explain its failure to appear for the May 6, 2026 conference and its failure to comply with the First Show Cause Order. Thus, the Court issued a Second Order to Show Cause on May 27, 2026 (“Second Show Cause Order”). The Second Show Cause Order required a response by June 18, 2026.

The Second Show Cause Order was served on Respondent electronically through the Commission’s e-filing system. In addition, it was mailed to Respondent via certified mail. The mailing was delivered on May 29, 2026. The delivery was signed for at Respondent’s address, and the Commission received the green return receipt. Again, Respondent failed to file a response.

For the reasons that follow, the Secretary’s Motion is **granted**.

II. Discussion

Assessing the Notice of Contest's timeliness requires evaluating whether the Citation was served correctly. Section 10(a) (29 U.S.C. § 659) of the OSH Act governs the service of citations. *See, e.g., B.J. Hughes, Inc.*, No. 76-2165, 1979 WL 8462, at *3 n. 6 (OSHRC June 29, 1979). The provision requires the Secretary to "notify the employer by certified mail of the penalty" 29 U.S.C. § 659(a). Service is proper when it "is reasonably calculated to provide an employer with knowledge of the citation and notification of proposed penalty and an opportunity to determine whether to abate or contest." 1979 WL 8462, at *3.

Postal records show that the Citation was mailed via UPS 2nd Day Air mail and delivered on October 21, 2024. (Motion at 4, Ex. B.) The Secretary's service of the Citation meets the test set out in *B.J. Hughes* and 29 U.S.C. § 659(a).

Under the OSH Act, Respondent had 15 working days to indicate it wished to contest the Citation or the penalties. 29 U.S.C. § 659. The Citation specifically warned Respondent of the requirement to contest the matter within that time frame. (Motion at 4, Ex. A at 1.) The fifteen-day response period ended on November 12, 2024.

It is undisputed that Respondent did not file a contest or seek an informal conference before the 15-day period elapsed. About two months after the contest period elapsed, on January 10, 2025, the Secretary sent a letter to Respondent, indicating that payment had not been received and that Respondent was now delinquent. (Motion, Ex. C.)

Nine months after that, on September 15, 2025, Respondent filed a "Late Notice of Contest," bringing the matter before the Commission. The matter was docketed with the Commission, and the Commission issued Notice of Docketing and Instructions to Employers. The Docketing Notice included a postcard to return to the Commission to verify Respondent had

complied with the employee posting requirements of Commission Rule 7 for the Citation and Notice of Contest. Respondent failed to return the postcard as required.

When a citation is not contested within fifteen working days, it then becomes a final order of the Commission. 29 U.S.C. § 659. Generally, final orders of the Commission are not subject to review by any court or agency. 29 U.S.C. § 659(a); *Chao v. Russell P. Le Frois Builder, Inc.*, 291 F.3d 219, 229-30 (2d Cir. 2002).

In rare circumstances, under Commission precedent, a party can obtain review if it can meet the criteria set out in Federal Rule of Civil Procedure 60(b) (Rule 60(b)). *David. E. Harvey Builders, Inc., v. Sec’y of Labor*, 724 F. App’x 7, 8 (D.C. Cir. 2018) (“Relief under Rule 60(b)(1) motions is rare”). Respondent is in New York, and the inspection occurred there as well. Thus, Respondent can appeal the denial of Rule 60(b) relief to the Second or D.C. Circuit. 29 U.S.C. § 660. The Second Circuit has held that the Commission lacks the authority to grant relief under Rule 60(b) for a late-filed notice of contest. *LeFrois*, 291 F.3d at 229-30. The D.C. Circuit has not affirmatively concluded that the Commission has the authority to grant such relief. *See TH Constr. Grp.*, No. 22-0739, 2023 WL 1223909, at *2 (OSHRC Jan. 24, 2023). In such circumstances, the Commission has applied its own precedent, rather than the Second Circuit’s, and found that relief under Rule 60(b) may be granted when appropriate. *Id.* at 3.

Rule 60(b) permits relief from final orders when the party seeking relief meets one of the six specified grounds and the request is made within a reasonable time. *See* Fed. R. Civ. P. 60(c). In addition, under Rule 60(b), the request must be made no more than a year after the final order date if the request is based on mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence; or the fraud, misrepresentation, or misconduct by an opposing party. *Id.* Grounds for relief under Rule 60(b) include “mistake, inadvertence, surprise, or excusable

neglect.” Fed. R. Civ. P. 60(b)(1); *Kemp v. United States*, 596 U.S. 528, 533 (2022). To assess whether a party’s neglect should be excused, “the Commission takes into account all relevant circumstances surrounding the party’s omission, including: the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *Elan Lawn & Landscape Serv., Inc.*, No. 08-0700, 2008 WL 4377607, at *2 (OSHRC Sept. 8, 2008) (quoting and applying the test set out in *Pioneer Inv. Servs. Co. v. Brunswick Assocs., Ltd. P’ship*, 507 U.S. 380, 395 (1993) (internal quotations omitted)).

Respondent has been given multiple opportunities to show that it is entitled to relief under Rule 60(b). It has not done so. Respondent has not disputed that its Notice of Contest was late. Its Notice of Contest gives no indication why it was filed late, and Respondent has not explained why it believed it should be excused from the requirement to file a contest within the 15-working-day period. 29 U.S.C. § 659. Respondent was twice directed to indicate whether it disagreed with any of the facts in the Motion, including those set out in the Exhibits attached to the Motion. It has not identified any statement of fact it believes is inaccurate or incomplete. It has not stated any facts supporting a meritorious defense to the Citation. Further, it has failed to provide any description of why, if there was a hearing on the merits of the Citation and proposed penalty, it believes it could achieve a favorable outcome, at least in part. Thus, the record evidence is insufficient to support granting Rule 60(b) relief here. *See Kemp*, 596 U.S. at 533; *Elan*, 2008 WL 4377607, at *2.

Further, even if Respondent had stated grounds for relief from the final judgment under Rule 60(b), dismissal would still be warranted due to its failure to participate in the conference call and respond to two subsequent Orders to Show Cause. The First Show Cause Order specifically

warned Respondent that the failure to file a response would result in the issuance of a judgment affirming the Citation and the imposition of a \$53,460 penalty without a hearing. (First Show Cause Order at 4.) Respondent was also ordered to file a response to the Motion to Dismiss by May 22, 2026. *Id.* at 1.

Respondent registered with the e-file system to file its Notice of Contest and has not sought to be excused from the e-filing requirements. Commission Rule 8(c), 29 C.F.R. § 2200.8(c) (requiring e-filing for self-represented parties unless the party receives an exemption). The First Show Cause Order was served on Respondent electronically through the Commission's e-filing system (Micropact). The transmission of the First Show Cause Order was not returned as undelivered and there is no record that it was not received. Service of the First Show Cause was completed on May 6, 2026. *See* 29 C.F.R. § 2200.7(o)(1) (service of show cause orders is deemed completed by service through the Commission's e-file system for self-represented parties who have not been exempted from using the system). In the months since, nothing has been filed, and no one has contacted the Commission on Respondent's behalf.

As Respondent is proceeding without representation, and mindful of the latitude afforded to pro se litigants, the Court issued the Second Show Cause Order. The Second Show Cause Order plainly states that Respondent is being given a "final opportunity" to respond to the Motion. In the first and final paragraphs, the Second Show Cause Order warns that failing to file "a written response by **June 18, 2026**, will result in dismissal" of the Notice of Contest and the imposition of "a **\$53,460** penalty." (Second Show Cause Order at 2 (emphasis in original).)

The Second Show Cause Order was served electronically on May 27, 2026. *See* 29 C.F.R. § 2200.7(o)(1). In addition, a copy was sent to Respondent via first-Class United States mail and first-class United States certified mail. The mailing was delivered to the Middleton, NY address

included on the Notice of Contest. It was signed for on May 29, 2026. To date, Respondent has failed to file a response. Moreover, Respondent has not contacted the Commission in writing or by phone.

A Commission judge has very broad discretion in imposing sanctions for noncompliance with the judge's orders or the Commission's Rules of Procedure. *See Sealtite Corp.*, No. 88-1431, 1991 WL 132733, at *1, 6 (OSHRC June 28, 1991). Dismissal is appropriate when the record shows contumacious conduct, prejudice to the opposing party, or a pattern of disregard for Commission proceedings. *See Architectural Glass & Metal Co.*, No. 00-0389, 2001 WL 1041005, at *2 (OSHRC Sept. 6, 2001).

The undersigned finds Respondent's conduct to be contumacious and demonstrative of a pattern of disregard for these proceedings. First, Respondent failed to return the postcard that was included with the Notice of Docketing. *See* Commission Rule 7, 29 C.F.R. § 2200.7. Second, Respondent failed to appear for the May 6, 2026, mandatory prehearing conference. Respondent did not contact the Commission to indicate any issues with the conference date or time, and Respondent further failed to explain its absence from the mandatory conference. Third, Respondent has not disputed any aspect of the Motion. It was first directed to participate in a conference call regarding the Motion and was then twice ordered to file a written response to the facts the Secretary set out in the Motion. Fourth, and most critically, after being repeatedly warned, it failed to respond to either the First Show Cause Order or the Second Show Cause Order.

The undersigned finds that based on its actions after being warned in multiple orders that failing to respond would result in the Citation being affirmed and penalties assessed, Respondent has abandoned this matter.

For these reasons, Respondent is found to be in DEFAULT, its Notice of Contest is DISMISSED, and the Citation issued to Respondent on October 7, 2024, as a result of inspection number 1742363, is AFFIRMED in its entirety and a penalty of \$53,460 is ASSESSED.

SO ORDERED.

/s/ Christopher D. Helms

Christopher D. Helms
Judge, OSHRC

Date: September 8, 2026
Denver, Colorado