

THIS CASE IS NOT A FINAL ORDER OF THE REVIEW COMMISSION AS IT IS PENDING
COMMISSION REVIEW



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
U.S. CUSTOM HOUSE
721 19TH STREET, ROOM 407
DENVER, COLORADO 80202-2517

SECRETARY OF LABOR,

Complainant,

v.

ACHTENHAGEN SERVICES, INC., dba ASI,

Respondent.

OSHRC DOCKET NO.: 24-1583

DECISION AND ORDER DISMISSING NOTICE OF CONTEST

This proceeding is before the U.S. Occupational Safety and Health Review Commission pursuant to Section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* Specifically, this matter concerns Respondent's late-filed Notice of Contest. In response, Complainant filed an *Opposition to Relief Under Rule 60(b)*. Based on what follows, the Court finds Respondent: (1) engaged in contumacious conduct warranting dismissal of its Notice of Contest; and (2) abandoned its Notice of Contest by failing to engage in the litigation process.

Procedural History

On June 4, 2024, the Occupational Safety and Health Administration began its inspection of Respondent's worksite located at W219 S7768 Crowbar Drive, Muskego, Wisconsin, 53150. On October 25, 2024, Complainant issued a *Citation and Notification of Penalty*, alleging one serious violation of the Act with a penalty of \$8,067.00. Respondent filed its *Notice of Contest* on

November 7, 2024. The *NOC* was forwarded to the Commission, which docketed this matter on November 22, 2024.

On December 5, 2024, this matter was assigned to this Court by Chief Judge Bell. The next day, the undersigned issued a *Simplified Proceeding – Pretrial Conference Order*, which directed the parties to appear for a telephone conference call on January 17, 2025, at 11:00 a.m., Mountain Time. At that time, Respondent had not registered for the Commission’s electronic filing system, so the Order was sent via first-class mail to Respondent’s P.O. Box in Big Bend, Wisconsin. Counsel for Complainant, Suzanne Dunne, appeared on behalf of Complainant; however, Respondent failed to appear. During the initial call, Complainant’s counsel indicated she was unable to reach Respondent in order to confer prior to the call. The Court established the trial date and pretrial deadlines based on the information provided by Complainant and issued a *Notice of Trial and Scheduling Order* on January 17, 2025.

On the same date, the Court issued an *Order to Show Cause*, directing Respondent to provide a reason why it failed to appear for the conference call scheduled for January 17, 2025, and providing 10 days to submit a response. Respondent never submitted a response. Around the time of the due date, however, Respondent contacted the Court’s legal assistant, Kate Sydney, who provided information regarding registration for the electronic filing system. Shortly after that, Aaron DeKarske, on behalf of Respondent, submitted his electronic registration. As an alternative to issuing an additional Order to Show Cause, and in recognition of Respondent’s electronic registration, the Court issued an *Order to Appear for Telephone Conference* on February 20, 2025. The telephone conference was scheduled for March 7, 2025.

Respondent, yet again, failed to appear for the telephone conference. The Court waited for ten minutes to ensure Mr. DeKarske was not having trouble with his phone or with logging onto

the telephone system. After that period of time was up, the Court asked Complainant's counsel whether she had any contact with Respondent since the previously scheduled telephone conference on January 17, 2025. Ms. Dunne indicated Respondent had not responded to telephone calls that she or her client had made to Mr. DeKarske.

Analysis

Over a period of roughly three months, aside from registering for the e-file system, Respondent failed to appear or otherwise participate in the litigation process. Even though Respondent failed to respond to the Court's *Order to Show Cause*, which threatened dismissal of the case for failure to respond, the Court nevertheless gave Respondent another chance to engage by setting a second telephone conference call. Respondent failed to appear for a second time.

Commission Rule 101(a) provides:

When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or the Judge, the party may be declared to be in default either on the initiative of the Commission or the Judge, after having been afforded an opportunity to show cause why the party should not be declared to be in default, or on the motion of a party. Subsequently, the Commission or the 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.

29 C.F.R. § 2200.101(a). The Court finds that Respondent has either abandoned its contest in this case or demonstrated a pattern of disregard for the procedural requirements and authority of the Commission by: (1) failing to appear for the initial simplified proceedings conference call; (2) failing to file a response to the *Order to Show Cause*; (3) failing to respond to calls from Complainant; and (4) failing to appear for a second conference call. Respondent's repeated failure to timely participate in this proceeding constitutes abandonment, and/or contumacious conduct justifying sanctions. *Philadelphia Construction Equipment, Inc.*, 16 BNA OSHC 1128 (No. 92-0899, 1993) (holding judge did not abuse his discretion in issuing a default order in light of the

“pattern of disregard” for Commission proceedings); *Sealtite Corporation*, 15 BNA OSHC 1130 (No. 88-1431, 1991).

Accordingly, Respondent’s *Notice of Contest* is hereby VACATED in Docket No. 24-1583, and the violation and penalty alleged in the *Citation and Notification of Penalty* for OSHA Inspection No. 1752453 are AFFIRMED.

SO ORDERED.

Dated: March 24, 2025
Denver, Colorado

/s/ Joshua R. Patrick

Joshua R. Patrick
Judge, OSHRC