United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
U.S. Customs House
721 19th Street, Room 407
Denver, CO 80202-2517

SECRETARY OF LABOR, Complainant, v. BCG GLASS INDUSTRY, INC., Respondent.	OSHRC Docket No. 25-1097

Before: Administrative Law Judge Brian A. Duncan

DECISION AND ORDER

This proceeding is before the U.S. Occupational Safety and Health Review Commission ("the Commission") pursuant to Section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 *et seq*. ("the Act"). The Occupational Safety and Health Administration ("OSHA") conducted an investigation of Respondent's worksite in Flushing, New York between March 4, 2025 and August 28, 2025. As a result of the investigation, OSHA issued a *Citation and Notification of Penalty* to Respondent alleging three serious and two willful violations of the Act with a total penalty of $243,305.00. Respondent contested the violations on September 3, 2025.

On August 18, 2026, Respondent's counsel withdrew from representation. On August 31, 2026, Complainant unilaterally filed a previously ordered *Joint Status Report* concerning outstanding discovery responses due from Respondent to Complainant.[1] Complainant's unilateral

[1] During a conference call with the Court on July 15, 2026 regarding Complainant's two *Motions to Compel*, Respondent committed to supplementing various discovery responses. As a result, the Court ordered the parties to jointly file an updated status report by August 31, 2026.

Status Report stated that Complainant "contacted Respondent three times in an attempt to confer regarding the content of the status report, but Respondent did not respond to any of those communications." Complainant also stated that Respondent cancelled two previously agreed and scheduled depositions, and has ignored repeated attempts by Complainant to reschedule those depositions. Complainant further stated that Respondent has failed to supplement discovery responses as ordered during the parties' conference call with the Court on July 15, 2026.

Therefore, to address these issues, the Court ordered the parties to appear for another conference call on September 10, 2026. Complainant appeared for the call, ready to proceed. Respondent failed to appear on the call.

The Court subsequently issued an *Order to Respondent to Show Cause and Order Canceling Trial*, to provide Respondent with an opportunity to explain: (1) why Respondent failed to appear for the court-ordered conference call on September 10, 2026; (2) why Respondent failed to respond to Complainant's repeated attempts to communicate regarding the *Joint Status Report* due from the parties; (3) why Respondent failed to respond to Complainant's repeated attempts to communicate regarding the re-scheduling of agreed depositions cancelled by Respondent; and (4) why Respondent failed to produce agreed supplemental discovery responses pursuant to the conference call with the Court on July 15, 2026.[2]

Respondent was warned that "If Respondent does not respond to this *Order to Respondent to Show Cause*, or fails to establish good cause, it may result in sanctions, including the issuance of default judgment against Respondent dismissing its *Notice of Contest* and affirming the citations proposed in this case, pursuant to Commission Rules 52, 67 and 101." Respondent's response was

[2] The *Order to Respondent to Show Cause* incorrectly references the discovery conference call as occurring on July 20, 2026. However, the conference call on discovery issues was conducted on July 15, 2026, but the Court's order summarizing the conference call was issued on July 20, 2026.

due by September 25, 2026. To date, Respondent has never filed any type of response to the *Order to Respondent to Show Cause*, nor communicated with the Court about any of these outstanding issues.

Commission Rule 101(a) provides "[w]hen any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge, he 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 he should not be declared in default ... [t]hereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party ..." 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 court-ordered conference call on September 10, 2026; (2) failing to respond to Complainant's repeated communication attempts to jointly submit the court-ordered *Joint Status Report*; (3) failing to respond to Complainant's repeated communication attempts to re-schedule agreed depositions cancelled by Respondent; (4) failing to produce agreed supplemental discovery responses as ordered during the conference call with the Court on July 15, 2026; and (5) failing to respond to the Court's September 10, 2026 *Order to Respondent to Show Cause.* Respondent's repeated failure to timely participate in this proceeding constitutes abandonment, and/or contumacious conduct justifying sanctions. *Philadelphia Construction Equipment, Inc*., 1993 WL 127953 (OSHRC, 1993); *Sealtite Corporation*, 1991 WL 132733 (OSHRC, 1991).

Accordingly, Respondent's *Notice of Contest* is hereby VACATED in Docket No. 25-1097, and the violations and penalties alleged in the *Citation and Notification of Penalty* are AFFIRMED.

SO ORDERED.

/s/ *Brian A. Duncan*

Judge Brian A. Duncan
U.S. Occupational Safety and Health Review Commission

Dated: October 19, 2026
Denver, Colorado