

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.

HEARTLAND BUILDERS LLC,

Respondent.

OSHRC DOCKET NO.: 26-0277

DECISION AND ORDER OF DISMISSAL

This matter comes before the Court because of Respondent's failure to engage in the litigation process, which Respondent, itself, initiated when it contested the *Citation and Notification of Penalty* ("Citation") issued by Complainant. At some point after filing its *Notice of Contest*, Respondent stopped communicating with Complainant, failed to timely file an Answer, and failed to respond to an *Order to Show Cause* from the Court. Accordingly, based on the analysis provided below, the Court finds Respondent in DEFAULT and AFFIRMS the *Citation*.

Background and Procedural History

On January 26, 2026, following an inspection of a worksite in North Canton, Ohio, Complainant issued a *Citation* to Respondent, alleging a repeat-serious violation of 29 C.F.R. § 1926.501(b)(13). Complainant proposed a penalty of \$29,790.

On February 18, 2026, Respondent submitted a *Notice of Contest* to the Cleveland OSHA Area Office, which then transmitted it and the *Citation* to the Occupational Safety and Health Review Commission (“the Commission”). On February 19, 2026, the Commission docketed this case and mailed to Respondent a *Notice of Docketing and Instructions to Employer* (“Docketing Notice”). It should also be noted that Respondent’s representative, Dan Neighbor, of D&D Safety registered as an active contact in the electronic filing system.

On March 10, 2026, Complainant filed a *Motion for Extension of Time to File Complaint*, requesting 45 days to “review the investigation file and to prepare a complaint”. Complainant also noted, for the first time, that “Respondent did not notify Complainant of its position on the Motion by the requested deadline.” The Court granted the *Motion* on March 11, 2026, and Complainant subsequently filed the *Complaint* on April 3, 2026. Based on the filing date of the *Complaint*, the *Answer* was due on April 24, 2026.

The Court did not receive an *Answer* from Respondent on the due date; however, it nevertheless issued an *Order to Confer and Submission of Joint Pretrial Recommendations* dated April 24, 2026, assuming the *Answer* would be forthcoming. Another twenty days later, after not receiving an *Answer*, the Court issued an *Order to Show Cause* to Respondent, directing Respondent to show cause why the Court should not issue judgment for failing to file the *Answer*.

On July 27, 2026, the Court reached out to Bruce Canetti, counsel for Complainant, to ascertain whether he had any communication with Respondent. Mr. Canetti indicated that he had not. To date, Respondent has not filed an *Answer*, nor has it conferred with Complainant as required by the *Order to Confer*.

Analysis

A Judge has broad discretion in imposing sanctions for noncompliance with the Judge's orders or the Commission's Rules of Procedure. *See Sealtite Corp.*, 15 BNA OSHC 1130, 1134 (No. 88-1431, 1001). Rule 101(a) of the Commission's Rules of Procedure provides, in relevant part:

(a) *Sanctions*. 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.

20 C.F.R. § 2200.101(a). The Commission has long held that dismissal is too harsh a sanction for failure to comply with certain prehearing orders unless the record shows contumacious conduct by the noncomplying party, prejudice to the opposing party, or a pattern of disregard for Commission proceedings. *Architectural Glass & Metal Co.*, 19 BNA OSHC 1546, 1547 (No. 00-0389, 2001).

Although Respondent initially participated by filing a *Notice of Contest* and registering as an electronic filer, neither the Court nor counsel for Complainant has heard from Respondent since that time. To date, Respondent has not filed an *Answer* or responded to the *Order to Show Cause*. Respondent was warned that failure to respond to the *Complaint* and show cause orders would result in the *Notice of Contest* being dismissed, the citation items affirmed as alleged, and the penalties assessed as proposed. Respondent has not responded to either the Court's or Complainant's attempts at contact in any way. The Court finds that Respondent's conduct displays a pattern of disregard for Commission proceedings and that Respondent has abandoned this matter.

For these reasons, Respondent is found to be in DEFAULT and its Notice of Contest is DISMISSED. Citation 1, Item 1, which was issued to Respondent on January 26, 2026, as a result of inspection number 1866640, is AFFIRMED as alleged, and a penalty of \$29,790 is ASSESSED.

SO ORDERED.

/s/ Joshua R. Patrick

Joshua R. Patrick
First Judge, OSHRC

Date: September 15, 2026
Denver, Colorado