



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

SECRETARY OF LABOR,

Complainant,

v.

DELS EXTERIORS LLC,

Respondent.

Docket No. 25-1316

ORDER OF DEFAULT AND DISMISSAL

Pursuant to Commission Rule 101(a), 29 C.F.R. § 2200.101(a), the Respondent, Dels Exteriors LLC, is declared to be in default, and its notice of contest is dismissed. For the reasons described below, the citations issued to the Respondent on September 18, 2025, as a result of OSHA inspection number 1833565 are **AFFIRMED** in their entirety and their proposed penalties totaling \$33,195.00 are **ASSESSED** as issued.

Background

On or about June 23, 2025, the Arlington Heights, Illinois, area office of the Occupational Safety and Health Administration (OSHA) initiated OSHA inspection number 1833565 at a residential construction worksite at [redacted], Hoffman Estates, Illinois 60169. As a result of that inspection, OSHA issued to the Respondent on September 18, 2025, a two-item serious citation and a three-item “repeat-serious” citation, alleging violations of various OSHA construction industry safety and health standards (codified at 29 C.F.R. Part 1926) and proposing penalties for those alleged violations totaling \$33,195.00. (The citations noted that all five alleged violative conditions/practices had been corrected during the inspection.)

By typewritten letter dated October 14, 2025, from the Respondent’s owner/operator, Mr.

Kevin Delgado, and addressed to the area director of the OSHA area office in Arlington Heights, the Respondent timely contested the citations and the proposed penalties. The return address for that letter was the same address to which the OSHA area office had addressed the citations: [redacted], Elgin, IL 60124.

Mr. Delgado thereafter engaged Attorney Aaron R. Gelb, of the law firm Conn Maciel Carey LLP, to represent the Respondent in the matter. On January 28, 2026, Attorney Gelb entered his appearance in the matter on behalf of the Respondent pursuant to Commission Rule 23(a)(3). 29 C.F.R. § 2200.23(a)(3). Later that same day, the attorney for the Complainant filed and served on Attorney Gelb a *Notification of Settlement in Principle* reporting that the parties had “reached a settlement in principle to completely resolve this case.”

In response to the notification of settlement the Commission’s Chief Judge on February 10, 2026, issued an *Order Acknowledging Proposed Full Settlement* that directed the parties to file no later than March 12, 2026, the necessary documentation that would allow the issuance of an order terminating these Commission proceedings.

On February 25, 2026, the Commission’s Chief Judge assigned the matter to the undersigned Commission judge for disposition.

On March 11, 2026, Attorney Gelb filed an unopposed motion for a 30-day extension to April 13 for filing the necessary documentation. The body of the motion for extension stated in part as follows:

1. The Parties have reached an agreement as to the terms and conditions to be included in the settlement agreement.
2. Counsel for the Solicitor prepared a Stipulation and Settlement Agreement and transmitted a copy to undersigned counsel on January 27, 2026. That same day, undersigned counsel provided a copy to Respondent for review and signature by Mr. Kevin Delgado.

3. Counsel has made at least 5 attempts to contact Mr. Delgado since January 27, but has ... neither received a response, nor a signed copy of the Stipulation and Settlement Agreement.
4. Counsel requests an additional 30 days to review the Stipulation and Settlement Agreement and obtain Respondent's signature.

I granted the motion for the 30-day extension, but the required documentation was not filed by the extended April 13 deadline. In an email response on April 14 to an inquiry from my assistant, Attorney Gelb stated that he had "been unable to reach Mr. Delgado, the owner of Respondent, for many months despite numerous calls, emails and text messages," and that "[a]s such, I am going to have to withdraw as I am unable to continue in my representation."

On April 23, 2026, I conducted a telephone conference with the attorney for the Complainant and Attorney Gelb, during which Mr. Gelb described his unsuccessful attempts to communicate with Mr. Delgado. I determined to provide Attorney Gelb additional time to reconnect with Mr. Delgado, but after four weeks of no further case activity, I issued an order dated June 3, 2026, directing the Complainant to file and serve a complaint in the matter pursuant to Commission Rule 34(a).

The Complainant filed the complaint and served it on Attorney Gelb on June 4, 2026. The certificate of service indicates further that the complaint was served also on Mr. Delgado via email at the following email address: [delkevin122@gmail.com].

On June 5, 2026, Attorney Gelb filed a motion to withdraw as counsel for the Respondent that conformed with the requirements of Commission Rule 23(b).

By order dated June 10, 2026, I issued an order granting Attorney Gelb's motion to withdraw from representation of the Respondent. This order was served on Mr. Delgado at the address in Elgin, Illinois, that Mr. Delgado had provided. Also, an electronic courtesy copy of the order was sent to Mr. Delgado addressed to the email address that both Attorney Gelb and the

attorney for the Complainant had used, as described above. The order granting Attorney Gelb's withdrawal provided in part as follows:

The Commission now **deems the Respondent, Dels Exteriors LLC, to be self-represented** in this matter by Mr. Kevin Delgado. **The Respondent's status as self-represented shall continue** unless and until some other third-party representative (whether an attorney or non-attorney) files and serves an entry of appearance in the matter on behalf of the Respondent pursuant to Commission Rule 23(a)(3).

The order further informed Mr. Delgado of the requirement that self-represented employers register with and utilize the Commission's electronic filing system (or seek and obtain an exemption from this requirement). The order also reminded Mr. Delgado that the Respondent's responsive pleading to the complaint was due no later than June 25, 2026. The order further notified both Mr. Delgado and the attorney for the Complainant of a mandatory telephone conference that I would conduct on July 1, 2026, at 9:30 a.m. Central Time.

Mr. Delgado did not file a responsive pleading to the complaint and he did not call in for the telephone conference on July 1, 2026.

On July 1, 2026, I issued an Order to Show Cause to the Respondent requiring the Respondent to show cause no later than July 23, 2026, why the Respondent "should not be declared to be in default and its notice of contest dismissed." The order to show cause also scheduled another mandatory telephone conference for July 30, 2026, at 9:00 a.m. Central Daylight Time. The order to show cause stated further the following:

If the Respondent's representative participates in the telephone conference (even if he fails to file a written response to this Order to Show Cause), I will likely find that that the Respondent has shown cause to avoid default and dismissal of his notice of contest. In that event, I intend to address other matters during the telephone conference, such setting a hearing date and establishing a pre-hearing schedule.

The final paragraph of the Order to Show Cause stated:

Compliance. THE FAILURE OF THE RESPONDENT’S REPRESENTATIVE TO RESPOND TO THIS ORDER TO SHOW CAUSE AND HIS FAILURE TO PARTICIPATE IN THE TELEPHONE CONFERENCE ON JULY 30, 2026, WILL LIKELY RESULT IN THE RESPONDENT BEING FOUND IN DEFAULT AND ITS NOTICE OF CONTEST BEING DISMISSED. THESE ACTIONS WOULD RESULT IN THE ALLEGED VIOLATIONS BEING AFFIRMED AND THE PROPOSED PENALTIES TOTALING \$33,195.00 BEING ASSESSED AGAINST THE RESPONDENT WITHOUT A TRIAL.

The Order to Show Cause was sent to Mr. Delgado in two separate mailings addressed to him at his address in Elgin. One mailing was sent by regular mail and the other mailing was sent by certified mail. An electronic courtesy copy of the order to show cause was also sent to Mr. Delgado to the email address described above.

The regular mailing containing the order to show cause was not returned by the postal service undelivered and is thus presumed to have been delivered. *See Legille v. Dann*, 544 F.2d 1 (D.C. Cir. 1976) (noting that there is a rebuttable presumption that the postal service has delivered to the addressee a properly addressed, stamped, and deposited mailing). As for the separate certified mailing, U.S. Postal Service returned that mailing undelivered, with a printed sticker on the face of the envelop dated 08/05/26 that stated: “RETURN TO SENDER[;] UNCLAIMED[;] UNABLE TO FORWARD.”

The Respondent did not file a response to the Order to Show Cause by the time specified in the order to show cause or at any time thereafter.

Mr. Delgado did not call in for the telephone conference that was conducted as scheduled on July 30, 2026.

On July 30, 2026, I issued a *Notice of Intent to Issue Order of Default and Dismissal* that provided in part:

The purpose of this notice is to inform the Respondent that I intend to issue an order of default or dismissal after August 14, 2026. However, if the Respondent wishes to avoid its contest being dismissed without a trial, the Respondent's representative should send a written request addressed to me (at the address reflected in the caption) requesting that I schedule a telephone conference for the purpose of scheduling a trial date (for a trial to be conducted in Chicago) and establishing a pre-trial schedule. If the Respondent does not make such a request by August 14, 2026, I will issue an order of default and dismissal thereafter.

Mr. Delgado has not since requested that I schedule a telephone conference as the notice had invited him to do, nor has he otherwise contacted my office in any manner. Consequently, this order of default and dismissal is issued.

Discussion

Commission Rule 101(a), codified at 29 C.F.R. § 2200.101(a), provides in part as follows:

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

The Commission “follows the policy in law that favors deciding cases on their merits.” *DHL Express, Inc.*, 21 BNA OSHC 2179, 2180 (No. 07-0478, 2007). Rule 101(a) nevertheless permits the harsh sanction of dismissal of a notice of contest where a respondent has displayed a “pattern of disregard” of Commission proceedings. *Philadelphia Constr. Equip., Inc.*, 16 BNA OSHC 1128, 1131 (No. 92-899, 1993); *Architectural Glass & Metal Co.*, 19 BNA OSHC 1546, 1547 (No. 00-0389, 2001); *see also* Commission Rule 101(b), 29 C.F.R. § 2200.101(b) (a default sanction may be set aside “[f]or reasons deemed sufficient by the Commission or the Judge and upon motion . . . expeditiously made”).

The failures of Mr. Delgado, the Respondent's representative, (1) to participate in two scheduled telephone conferences, (2) to register with the Commission's electronic filing system or seek and exemption from the mandatory use of that system, (3) to file a response to the Order to Show Cause, and (4) to accept the invitation to avoid default by simply requesting a third telephone conference (after having failed to appear for two telephone conferences), altogether reflect a pattern of disregard of Commission proceedings that warrants an order of default. The Order to Show Cause and the subsequent notice of intent to issue an order of default and dismissal both made it abundantly clear that if the Respondent continued to fail to participate I would issue an order of default that would have the effect of affirming the citations and proposed penalties in their entirety.

It is impossible to move this case forward to a hearing in view of the Respondent's failure to engage in the process and participate in the proceedings. There is no reasonable basis to conclude that the Respondent intends to begin engaging in the adjudicative process by participating in prehearing proceedings or appearing at a hearing to defend the matter. *Cf.* Commission Rule 64(a), 29 C.F.R. § 2200.64(a) (providing that "[t]he failure of a party to appear at a hearing may result in a decision against that party"). The only reasonable conclusions to be drawn from the Respondent's failures to engage in the process and to participate in these Commission proceedings are that the Respondent (1) has willfully abandoned its case before the Commission, or (2) is disdainful of the orders of the Commission, or (3) both.

The Respondent's failure to engage in the process and participate in Commission proceedings is prejudicial to the administration of justice and to the Secretary's enforcement responsibilities under the OSH Act. The Commission cannot countenance the prejudicial effects of his continuing failures. Dismissal of the Respondent's notice of contest is the necessary and

appropriate remedy to cure the prejudicial impact of its apparent abandonment of its contest of the citations and their proposed penalties.

ORDER

For these reasons, the Respondent, Dels Exteriors LLC, is determined to be in DEFAULT, and its notice of contest is DISMISSED. The Citation and Notification of Penalty issued to the Respondent on September 18, 2025, in connection with OSHA inspection number 1833565 is AFFIRMED in its entirety, and the proposed penalties set forth therein are ASSESSED.

SO ORDERED.

/s/ *William S. Coleman*
WILLIAM S. COLEMAN
Administrative Law Judge

DATED: August 31, 2026