



UNITED STATES OF AMERICA  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
One Lafayette Centre  
1120 20th Street, N.W. — 9th Floor  
Washington, DC 20036-3419

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SECRETARY OF LABOR  
Complainant,  
v.  
KENNETH J. HERMAN, INC.  
Respondent.

OSHR DOCKET  
NO. 93-0397

**NOTICE OF DOCKETING  
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on September 30, 1993. The decision of the Judge will become a final order of the Commission on November 1, 1993 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before October 20, 1993 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary  
Occupational Safety and Health  
Review Commission  
1120 20th St. N.W., Suite 980  
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.  
Counsel for Regional Trial Litigation  
Office of the Solicitor, U.S. DOL  
Room S4004  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.  
Executive Secretary

Date: September 30, 1993

DOCKET NO. 93-0397

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.  
Counsel for Regional Trial Litigation  
Office of the Solicitor, U.S. DOL  
Room S4004  
200 Constitution Ave., N.W.  
Washington, D.C. 20210

Patricia Rodenhausen, Esq.  
Regional Solicitor  
Office of the Solicitor, U.S. DOL  
201 Varick, Room 707  
New York, NY 10014

Kenneth J. Herman, President  
Kenneth J. Herman, Inc.  
151 Dixon Avenue  
Amityville, NY 11701

Irving Sommer  
Chief Administrative Law Judge  
Occupational Safety and Health  
Review Commission  
One Lafayette Centre  
1120 20th St. N.W., Suite 990  
Washington, DC 20036 3419

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SECRETARY OF LABOR,

Complainant,

v.

KENNETH J. HERMAN, INC.,

Respondent.

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Docket No. 93-0397

**Appearances:**

Evan R. Barouh, Esq.  
 U.S. Department of Labor  
 New York, New York

Kenneth J. Herman, Pres.  
 Kenneth J. Herman, Inc.  
 Amityville, New York

For Complainant

For Respondent

Before: Administrative Law Judge Irving Sommer

**DECISION AND ORDER**

This is a proceeding under Section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. section 651 et seq., (the Act), to review citations issued by the Secretary of Labor pursuant to section 9(a) of the Act, and the proposed assessment of penalties therein issued, pursuant to section 10(a) of the Act.

Following an inspection of the Respondent's business site at Roslyn Heights, N.Y., the Secretary of Labor issued two citations charging a serious violation of the standard at

29 C.F.R. 1926.451(a)(13) and an other than serious violation of the standard at 29 C.F.R. 1903.2(a)(1). A hearing was held in New York, New York. No jurisdictional issues are in dispute, the parties having pleaded sufficient facts to establish that the Respondent is subject to the Act and the Commission has jurisdiction of the parties and of the subject matter.

At the commencement of the hearing the Secretary withdrew citation no. 1 alleging a violation of 1926.451(a)(13).

### DISCUSSION

#### Alleged violation of 29 C.F.R. 1903.2(a)(1)

The other than serious citation alleged a violation of the stated standard, for failure to keep posted a OSHA notice informing employees of the protections and obligations provided for in the Act. Compliance officer Andree testified that he observed no OSHA poster informing employees of the protections and obligations provided for under the Act on the premises; he asked Kolkowski, an employee if one was available and after a search was told "I can't find it". In being questioned by Mr. Herman in the Respondent's direct case Kolkowski admitted he was not able to find the poster, but said he later found it behind the seat in the truck. It is undisputed that the compliance officer did not see such poster and was told it was not present. The violation was established. Taking into consideration the factors set forth in section 17(j) of the act and all the surrounding circumstances and evidence herein, a penalty of \$100 is appropriate herein for the violation.

#### Findings of Fact and Conclusions of Law

All findings of fact relevant and necessary to a determination of the contested issues have been found specifically and appear herein. See Rule 52(a) of the Federal Rules of Civil Procedure. Proposed Findings of Fact and Conclusions of Law inconsistent with this decision are denied.

#### Order

Based upon the Findings of Fact, Conclusions of Law, and the entire record, it is hereby ORDERED:

Citation No. 2 alleging an other than serious violation of 29 C.F.R. 1903.2(a)(1) is  
AFFIRMED, and a penalty of \$100 is ASSESSED.



IRVING SOMMER  
Judge

DATED: SEP 29 1993  
Washington, D.C.