



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.

J. R. CONSTRUCTION,

Respondent.

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OSHRC Docket No. 95-259

**ORDER**

BEFORE: WEISBERG, Chairman; and MONTOYA, Commissioner.

The issue is whether the judge erred in dismissing the notice of contest filed by J. R. Construction (“JR”) to the Secretary of Labor's citation. We affirm the judge's dismissal for the following reasons.

Following an inspection of JR's worksite at 521 Main Street, Kansas City, Missouri, the Secretary alleged that JR had violated several construction safety standards promulgated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651-78. JR timely filed a notice of contest (copy attached) that listed its address as “5212 N.W. 84th Terrace, Kansas City, MO 64154.”<sup>1</sup>

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<sup>1</sup>At the same time, JR filed a different, but substantially identical copy of its notice of contest, listing its address as the worksite from which the citation arose.

The Secretary then filed a formal complaint, which JR was required to answer within 20 days under the Commission's rules. That requirement also was explained to JR in the complaint itself. JR filed no answer, and after a month Chief Judge Irving Sommer issued to JR an order to show cause why the citation should not be affirmed based on that failure. Judge Sommer's order was sent by certified mail to JR's owner, Otto Nigro, Jr., at the address on 84th Terrace, Kansas City, mentioned above. It was returned to the Commission unclaimed.

The judge then dismissed JR's notice of contest and affirmed the Secretary's citation, finding that in the circumstances JR's failure to answer the complaint and the show cause order indicated that it "has abandoned the case or treats the Rules of Procedure of the Commission with disdain." The Commission's Executive Secretary sent JR a copy of the judge's dismissal order to the same address on 84th Terrace, Kansas City.

JR, acting without a lawyer and thus "pro se," then filed with the Commission two unusual documents, each entitled "Constructive Notice (By Affidavit)." The first document appears to challenge the Secretary's and the Commission's jurisdiction, mentioning that "you and yours are limited to certain federal territorial boundaries."<sup>2</sup> The

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<sup>2</sup>That document states:

The undersigned in propria persona, sui Juris (not: pro se) timely hereby challenge jurisdiction of this tribunal for good cause shown herein as follows:

Attached Exhibit A (Copy of Secretary of Labor Notice of Docketing of Administrative Law Judges Decision), (no filing and authentication!) is hereby timely refused for cause without dishonor (U.C.C. 3-501), due to the fact that once jurisdiction is challenged, it must be proven, that accord:

- A. JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES  
(APRIL 1956) (PART I)
- B. JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES  
(JUNE 1957) (PART II)

understanding you and yours are limited to certain federal territorial boundaries.  
You and yours have 10 (ten) days to rebut this notice.

(continued...)

second document states that “J. R. Construction is not and never was located at 5212 N.W. 84th Terrace, Kansas City, Missouri 64154.” It is signed by Aprille J. Schelhammer of that address, in what appears to be the same distinctive handwriting as the notice of contest that listed that address as JR's business address. Ms. Schelhammer also states that she “received and opened in error” at that address the Commission's notice of docketing of the judge's dismissal order.

Neither of JR's documents shows cause for reinstating its notice of contest. Neither document explains why it failed to answer the Secretary's complaint. Nor does JR satisfactorily explain its failure to respond to the show cause order. The assertion that JR never was located at the address to which the show cause order was sent is contradicted by its notice of contest.

In any event, JR has had a sufficient opportunity to show cause on review why its notice of contest should not be dismissed, and it has not done so. Its only apparent claim relates to jurisdiction. We will assume for present purposes that JR's jurisdictional claim is properly raised at this stage. *See, e.g., Ozark Wood Gallery*, Docket No. 94-3292 (June 9, 1995) (respondent who claimed not to be employer under Act was raising “a question of jurisdiction, which can be raised at any time during Commission proceedings.”)

However, JR has given us no basis to conclude that it may have a valid claim. The Secretary is authorized under the Act to inspect worksites generally in Missouri, because no state OSHA plan is in effect. *See, e.g., BNA Occupational Safety and Health Reporter*, § 81:1003; *CCH Employment Safety and Health Guide* ¶ 5003. JR has provided no basis to conclude that the Secretary lacked jurisdiction to inspect JR's construction worksite at

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<sup>2</sup>(...continued)

Failure to timely rebut this notice in law will result in a judgement by default on the issues herein discussed.

Respectfully submitted with explicit  
reservation of all absolute rights in all jurisdictions.

521 Main Street, Kansas City, Missouri. The Commission has jurisdiction to review all citations issued by the Secretary under the Act, when they are timely contested. 29 U.S.C. § 659(c). We are aware of no other valid jurisdictional challenge that JR has made to either the Secretary's or the Commission's jurisdiction in this case.<sup>3</sup>

Thus, we affirm the judge's order vacating JR's notice of contest and affirming the citation and proposed penalties.

Stuart E. Weisberg  
Stuart E. Weisberg  
Chairman

Velma Montoya  
Velma Montoya  
Commissioner

Dated September 13, 1995

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<sup>3</sup>We acknowledge receipt of JR's "Constructive Notice of Default," filed on July 15, 1995. That document is unauthorized in Commission proceedings and is a nullity.

RECEIVED  
KANSAS CITY AREA OFFICE

95 JAN 24 AM 11:39

us letter 12/21/94

JR Construction  
and its Successors  
5212 N.W. 84<sup>th</sup> Terrace  
Kansas City Mo 64154

U.S. DEPARTMENT OF LABOR  
Occupational Safety & Health Administration  
6200 Connecticut Av, Suite 100  
Kansas City Area Office  
Kansas City, Mo 64120  
Attn: Cynthia Dearing  
James E. Wood

January 21 1995

Notice

This is timely Notice that if the recorded charges are not dismissed in the time frame as stipulated by the same that AN and ALL Charges will be contested.

Respectfully

OTTO NIQUI  
c/o 532 Harrison  
Kansas City, Missouri  
64106 P.C./T.O.C.

Copies sent to:

- 1.) U.S. Department of Labor
- 2.) Cynthia Dearing (for OSHA)
- 3.) James E. Wood (for OSHA)
- 4.) Occupational Safety & Health Administration  
(Call 4 at the Heading Address as same above)



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SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. 95-0259
	:	
J. R. CONSTRUCTION,	:	
	:	
Respondent.	:	

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**NOTICE OF COMMISSION DECISION**

The attached order by the Occupational Safety and Health Review Commission was issued on September 13, 1995. **ANY PERSON ADVERSELY AFFECTED OR AGGRIEVED WHO WISHES TO OBTAIN REVIEW OF THIS DECISION MUST FILE A NOTICE OF APPEAL WITH THE APPROPRIATE FEDERAL COURT OF APPEALS WITHIN 60 DAYS OF THE DATE OF THIS DECISION.** See Section 11 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 660.

FOR THE COMMISSION

September 13, 1995  
 Date

*Ray H. Darling, Jr.*  
 Ray H. Darling, Jr.  
 Executive Secretary

Docket No. 95-0259

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

Tedrick A. Housh, Jr., Esq.  
Regional Solicitor  
Office of the Solicitor, U.S. DOL  
1210 City Center Square  
1100 Main Street  
Kansas City, MO 64105

Otto L. Nigro  
c/o J. R. Construction  
532 Harrison  
Kansas City, Missouri 64106

Irving Sommer  
Administrative Law Judge  
Occupational Safety and Health  
Review Commission  
One Lafayette Centre  
1120 20th Street, Suite 990  
Washington, D.C. 20036-3419



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Complainant,  
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J. R. CONSTRUCTION  
Respondent.

OSHRC DOCKET  
NO. 95-0259

**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 June 9, 1995. The decision of the Judge will become a final order of the Commission on July 10, 1995 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 June 29, 1995 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:

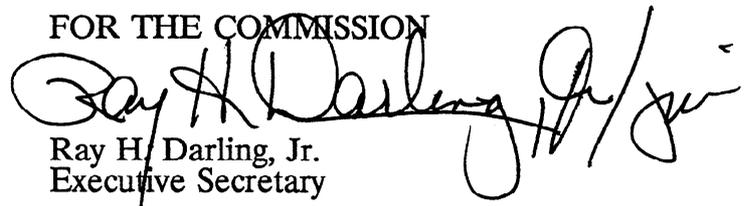
Executive Secretary  
Occupational Safety and Health  
Review Commission  
1120 20th St. N.W., Suite 980  
Washington, D.C. 20036-3419

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: June 9, 1995

Docket No. 95-0259

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

Tedrick A. Housh, Jr., Esq.  
Regional Solicitor  
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1210 City Center Square  
1100 Main Street  
Kansas City, MO 64105

Otto L. Nigro  
c/o J. R. Construction  
532 Harrison  
Kansas City, Missouri 64106

Irving Sommer  
Administrative Law Judge  
Occupational Safety and Health  
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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

Secretary of Labor,

Complainant,

V.

J.R. CONSTRUCTION

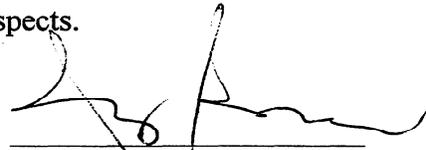
Respondent.

OSHRC DOCKET NO. 95-0259

**ORDER**

On 4/19/95 the undersigned issued an **ORDER TO SHOW CAUSE** to the Respondent as to why his Notice of Contest should not be dismissed for failure to file an answer to the complaint as required by the Commission Rules of Procedure. The Respondent failed to reply to the ORDER. His actions demonstrate either that he has abandoned the case or treats the Rules of Procedure of the Commission with disdain. This cannot be countenanced as it seriously impedes the administration of justice.

Accordingly, the Notice of Contest filed by the Respondent is dismissed. The Secretary's citation(s) and proposed penalties are **AFFIRMED** in all respects.



IRVING SOMMER  
Chief Judge, OSHRC

DATE: **JUN 09 1995**  
Washington, D.C.