



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

PERDOMO NATIONAL WRECKING CO.,
LLC, DBA PERDOMO OF NY, LLC

Respondent.

OSHRC DOCKET NO. 21-0704

ORDER OF DEFAULT FOR FAILURE TO FILE AN ANSWER

On March 19, 2021, following an inspection of a worksite in Piscataway, New Jersey, the United States Occupational Safety and Health Administration (“OSHA”) issued two Citations and Notifications of Penalty (“Citations”) to Perdomo National Wrecking Co., LLC (“Respondent”) for alleged violations of the Occupational Safety and Health Act. The Citations, which resulted from OSHA inspection number 1520677, consisted of: a two-item citation alleging serious violations of 29 C.F.R. §§ 1926.252(a) and 1926.850(g), and a second one-item Citation alleging a repeat violation of 29 C.F.R. § 1926.852(a). The Citations proposed a total penalty of \$20,284.

The Citations were mailed to Respondent at 202 W. 40th Street, New York, New York, 10018 (“40th Street Address”). On July 8, 2021, Mr. Anwar Minni, Respondent’s CFO, filed a Notice of Contest with OSHA challenging the Citations on Respondent’s behalf. The Notice of Contest contained a different address for Respondent, namely: 450 W. 42nd Street, 49S, New York, New York, 10036 (“42nd Street Address”). The Secretary does not argue that the Notice of Contest was untimely.

After receiving the Notice of Contest, the Commission mailed a Notice of Docketing and Instructions to Employer (“Notice of Docketing”) to Respondent’s 40th Street Address. The Notice of Docketing included a guide to the Commission’s procedures and a postcard that was to be returned to the Commission to verify Respondent had complied with the employee posting requirements of Commission Rule 7 for the Citations and Notice of Contest. *See* 29 C.F.R. § 2200.7. To date, this postcard has not been returned to the Commission.

The Secretary filed his Complaint on September 13, 2021. The Certificate of Service for the Complaint indicates it was served on Respondent via First-Class Mail to both the 40th Street and 42nd Street Addresses. Respondent was required to respond to the Complaint within 21 days of service. 29 C.F.R. § 2200.34(b)(1). To date, over seven months since the Complaint was filed, Respondent has not filed an Answer or otherwise responded to the Complaint.

On October 19, 2021, the undersigned issued an Order to Show Cause Why Notice of Contest Should Not Be Dismissed (“First Show Cause Order”) for failure to file an Answer. The First Show Cause Order directed Respondent to show cause, on or before November 2, 2021, as to why it should not be declared in default for not filing an Answer to the Complaint. The First Show Cause Order explained that if there was no response, all of the alleged violations set out in the Citations would be affirmed and the proposed penalties would be assessed without a hearing.

The First Show Cause Order was served on Respondent’s representative, Mr. Minni, via email. Two additional copies of the First Show Cause Order were served on Respondent via First-Class Mail sent to both the 40th Street and 42nd Street Addresses. Two other copies of the First Show Cause Order were sent via Certified Mail with return receipt requested to both the 40th Street and 42nd Street Addresses.

Neither copy of the First Show Cause Order sent by First-Class Mail was returned to the

Commission's office, and they are therefore presumed to have been delivered by the Postal Service. *See Minor v. Clinton Cnty., NY*, 541 F.3d 464, 472-73 (2d Cir. 2008); *Lavelle Constr.*, 19 BNA OSHC 1149, 1151 n.4 (No. 99-1921, 2000) (view of Chairman Rogers).

The return receipt for the copy of the First Show Cause Order sent to Respondent's 40th Street Address was returned to the Commission on November 4, 2021. The return receipt contains a signature in the signature block but does not contain a delivery date. However, the tracking information (tracking number 7020 1810 0002 2835) indicates it was delivered on October 25, 2021. The copy of the First Show Cause Order sent to the 42nd Street Address was returned to the Commission's office on January 10, 2022 and was marked "Return to Sender" and "Unclaimed."

In light of this, on February 15, 2022, another Show Cause Order ("Second Show Cause Order") was sent to Respondent, again directing it to show cause, this time on or before March 1, 2022, as to why it should not be declared in default for not filing an Answer to the Complaint. The Second Show Cause Order again explained that if there was no response, all of the alleged violations set out in the Citations would be affirmed and the proposed penalties would be assessed without a hearing.

The Second Show Cause Order was served on Respondent's representative, Mr. Minni, by email. Two additional copies were sent by First-Class Mail and Certified Mail with return receipt requested. The return receipt for the Certified Mail was received by the Commission on March 4, 2022. Although there is no delivery date, the tracking information (tracking number 7020 3160 0000 5556 8963) indicates it was delivered to Respondent's 40th Street Address on March 1, 2022. The copy of the Second Show Cause Order sent by First-Class Mail was never returned to the Commission's office and is therefore presumed to have been delivered by the Postal Service.

See Minor, 541 F.3d at 472-73; *Lavelle Constr.*, 19 BNA OSHC at 1151 n.4 (view of Chairman Rogers).

The Commission expects a business to maintain “orderly procedures for handling important documents.” *Louisiana-Pacific Corp.*, 13 BNA OSHC 2020, 2021 (No. 86-1266, 1989) (citations omitted). A Commission judge has very 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, 1991). However, 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. *See Architectural Glass & Metal Co.*, 19 BNA OSHC 1546, 1547 (No. 00-0389, 2001).

The undersigned finds the conduct of Respondent to be contumacious and demonstrative of a pattern of disregard for these proceedings. Respondent has been served with two Show Cause Orders by multiple methods, including email, First-Class Mail, and Certified Mail. The record evidence indicates Respondent has received one or both of the Show Cause Orders at its 40th Street and 42nd Street Addresses. From the deadline set forth in the First Show Cause Order, November 2, 2021, to the deadline set forth in the Second Show Cause Order, March 1, 2022, Respondent was given an extension of nearly four months to respond to the Show Cause Orders. In spite of all of the foregoing, Respondent has not filed an Answer or responded in any way to the multiple forms of correspondence that have directed its attention to this matter. Indeed, no one has filed anything with regard to this matter on behalf of Respondent since July 8, 2021, when Respondent filed its Notice of Contest. The undersigned therefore finds that this matter has been abandoned. *Cf. Sealtite Corp.*, 15 BNA 1130 (88-1431, 1991) (contumacious

conduct established where party engaged in a “consistent pattern” of failure to respond to judge’s orders).

For these reasons, Respondent is found to be in DEFAULT, its Notice of Contest is DISMISSED, and the Citations issued to Respondent on March 19, 2021, as a result of OSHA inspection number 1520677 are AFFIRMED in their entirety and \$20,284 in penalties are ASSESSED.

SO ORDERED.

/s/Covette Rooney
COVETTE ROONEY
Chief Judge, OSHRC

Dated: May 13, 2022
Washington, D.C.