



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1825 K STREET NW
4TH FLOOR
WASHINGTON, DC 20006-1246

FAX:
COM (202) 634-4008
FTS (202) 634-4008

SECRETARY OF LABOR,

Complainant,

v.

B & F MECHANICAL CO.,

Respondent.

Docket No. 92-2226

NOTICE OF COMMISSION DECISION

The attached order by the Occupational Safety and Health Review Commission was issued on April 22, 1993. **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

April 22, 1993
Date

Ray H. Darling, Jr.
Executive Secretary



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SECRETARY OF LABOR,

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B & F MECHANICAL CO.,

Respondent.

OSHRC Docket No. 92-2226

ORDER

Before: FOULKE, Chairman; WISEMAN and MONTOYA, Commissioners.

BY THE COMMISSION:


On April 1, 1993, the Commission issued an order giving B & F Mechanical Co. ("B & F") a further opportunity to submit a fully executed settlement agreement with the Secretary. B & F has done so. Its President also submitted a letter to the judge giving numerous reasons that contributed to its failure to submit the agreement earlier.


Among those reasons, its President states that she was hospitalized with cracked vertebrae due to an automobile accident and was not aware of the judges' orders that led to dismissal of B & F's notice of contest below. She also states that her staff was reduced to one part-time employee (her sister) due to business developments beyond its control, and that her sister went to Florida to help their parents, who lost everything in the recent hurricane there. B & F's President further states that the company "in no way deliberately caused the chain of events" that caused Judge Schoenfeld to dismiss the case.


The Secretary forwarded to the Commission the partially executed settlement agreement after that dismissal, and has expressed no objection to permitting the case to be settled based on that agreement. Under the circumstances as outlined by the Respondent,

we will approve the settlement agreement, and it will become the final order of the Commission in this case.

SO ORDERED.


Edwin G. Foulke, Jr.
Chairman


Donald G. Wiseman
Commissioner


Velma Montoya
Commissioner

Dated: April 22, 1993

NOTICE OF ORDER

The attached Order by the Occupational Safety and Health Review Commission was issued and served on the following on April 22, 1993.

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

Marshall H. Harris, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
14480 Gateway Building
3535 Market Street
Philadelphia, PA 19104

Fraya Kerns
B & F Mechanical Co., Inc.
P.O. Box 465
Bladensburg, MD 20710

Michael H. Schoenfeld
Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 417/C
1825 K Street, N.W.
Washington, D.C. 20006-1246

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

LYNN MARTIN, SECRETARY OF LABOR, :
UNITED STATES DEPARTMENT OF LABOR : OSHRC DOCKET
 : No. 922226
Complainant, :
 : INSPECTION
v. : No. 17735671
 :
B & F MECHANICAL CONTRACTORS, INC. : REGION III
and its successors, :
Respondent. :

STIPULATION OF SETTLEMENT

The parties hereto, in order to resolve this case amicably without the necessity of further litigation, hereby agree and stipulate as follows:

1. The Complainant, by her attorneys, hereby moves to amend the citation and notification of penalty issued on March 17, 1992 as follows:

SERIOUS CITATION NUMBER 1:

a. Citation Number 1, Items 1-5, 6a, 6b and 7. Items 1-5, 6a, 6b and 7 and the penalties proposed therefor are vacated.

b. Citation Number 1, Item 8. The penalty proposed for Item 8 is reduced from the original amount of \$600.00 to \$300.00.

As grounds therefor, Complainant avers that the modifications and reduced penalties more accurately reflect the statutory criteria for penalty calculation set forth in Section

17 of the Occupational Safety and Health Act of 1970 ("the Act"),
29 U.S.C. § 666.

2. Citation 1, Item 9 and the penalty proposed therefor shall remain as set forth in the Notice of Citation.

3. Respondent hereby moves the Commission for an Order allowing it to withdraw its Notice of Contest to the Citations and Notifications of Proposed Penalty as amended. In support thereof, Respondent represents:

a. that the reduced penalty of \$900.00 will be paid in full upon approval of this Stipulation of Settlement by the Administrative Law Judge;

b. that complete abatement of the conditions noted in the Citations as amended has been accomplished;

c. that Respondent has posted its Notice of Contest;

d. that a copy of this Stipulation of Settlement has been posted in accordance with the requirements of 29 C.F.R. § 2200.100(c) and 29 C.F.R. § 2200.7(g) so as to provide notice to all affected employees at Indians Air Force Base (location at which all affected employees will receive notice) on June 24, 1992;

e. that in addition to the foregoing posting, a copy of this Stipulation was served on Steamfitters Local 602 on June 24, 1992, in accordance with the requirements of 29 C.F.R. § 2200.100(c) and 29 C.F.R. § 2200.7(c) (postage pre-paid first-class mail or personal delivery).


f. that Respondent agrees to continue to comply with the applicable provisions of the Act, and the applicable health and safety standards promulgated pursuant to the Act; and

g. that within thirty (30) days after the execution of the Stipulation of Settlement, respondent will submit to the Harrisburg, Pennsylvania Area Office a letter containing a concise description of the actions taken to abate the hazards alleged in each of the items of the Citations to be affirmed by the Administrative Law Judge pursuant to this Stipulation of Settlement and the date on which such action occurred.

4. The Citation and Notification of Proposed Penalty as amended by this Stipulation shall become a final order of the Commission and the parties consent to the entry of the attached Consent Order Approving Settlement.

5. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

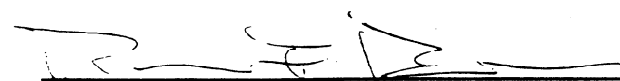
6. Respondent shall forward payment to the Baltimore Area Office of OSHA at the Federal Building, Room 1110, 31 Hopkins Plaza, Baltimore, Maryland 21201, made payable to "OSHA-Labor".



Fraya Kerns
B & F Mechanical Contractors,
Inc.
Respondent

Marshall J. Breger
Solicitor of Labor

Marshall H. Harris
Regional Solicitor



Richard T. Buchanan
Attorney

U.S. DEPARTMENT OF LABOR

Attorneys for Complainant.



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Complainant,
v.
B & F MECHANICAL CONTRACTORS, INC.
Respondent.

OSHRC DOCKET
NO. 92-2226

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 March 24, 1993. The decision of the Judge will become a final order of the Commission on April 23, 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 April 13, 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
1825 K St. N.W., Room 401
Washington, D.C. 20006-1246

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) 634-7950.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: March 24, 1993

DOCKET NO. 92-2226

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

Marshall H. Harris, Esq.
Regional Solicitor
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14480 Gateway Building
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Michael H. Schoenfeld
Administrative Law Judge
Occupational Safety and Health
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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

B & F MECHANICAL CO., INC.,

Respondent.

Docket No. 92-2226

ORDER
DISMISSING NOTICE OF CONTEST
AND
AFFIRMING CITATION AND NOTIFICATION OF PROPOSED PENALTIES

On January 14, 1993, an Order to Show Cause Why Notice of Contest Should Not be Dismissed was issued by Judge Irving Sommer. The Order was addressed to Respondent at the mailing address of record and was sent by certified mail, return receipt requested.

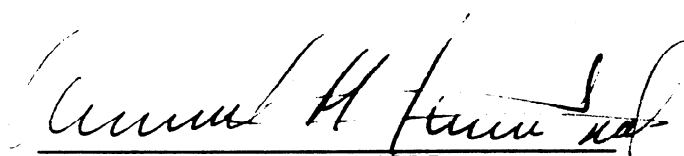
The unopened envelope has been returned to the Commission by the United States Postal Service noting that despite two notices (January 16, 1993 and January 22, 1993) the envelope remained unclaimed. Notwithstanding Respondent's failure to accept delivery of the certified mail, the office of this Judge spoke to the representative of Respondent on at least one occasion and left telephone messages on at least two others. Despite repeated assurances that Respondent would sign and return a settlement agreement, the terms of which had apparently been agreed to, it has not done so.

I find that Respondent's failure to reply to the Show Cause Order is of its own making in that the order which was sent to Respondent as required by Rule 41(d),

29 C.F.R. § 2200.41(d) (1992)¹, remained unclaimed despite United States Postal Service notification. That Respondent's conduct is deliberate is confirmed by its continued failure to be responsive in the face of telephone contacts and assurances that it would cooperate. I conclude that such conduct is contumacious and intentionally disrespectful of the Commission and its procedures. Thus, dismissal of the Notice of Contest filed by Respondent is appropriate as is affirmance of the violations and the penalties as proposed.

Accordingly, IT IS ORDERED THAT:

1. Respondent's Notice of Contest of June 5, 1992 is DISMISSED.
2. Citation No. 1, initially issued to Respondent on or about March 17, 1992, is AFFIRMED in its entirety.
3. The penalties proposed, \$6,300.00, are AFFIRMED.


MICHAEL H. SCHOENFELD
Judge, OSHRC

Dated: March 23, 1993
Washington, D.C.

¹ Rules of Procedure of the Occupational Safety and Health Review Commission, 29 C.F.R. §§ 2200.1-.212, as amended, 57 Fed. Reg. 41676-689 (September 11, 1992).