

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
	:	
v.	:	OSHRC DOCKET NO. 99-0710
	:	
EXTERIOR INSULATION & STUCCO, INC.	:	
	:	
Respondent.	:	
	:	

ORDER

The Secretary has filed a motion to dismiss Respondent's notice of contest. In support of her motion, the Secretary notes that she filed her First Set of Interrogatories and Request for Production of Documents and Request for Admissions on June 29, 1999, and that although Respondent was to answer the requests by August 9, 1999, it failed to do so. The Secretary also notes that she filed a motion to compel discovery on August 11, 1999, and that the order granting her motion, issued September 3, 1999, stated that if "proper, fully responsive replies" were not timely received, then Respondent's contest and answer would be dismissed and the citations and penalties affirmed without need for the Secretary to file another motion.

The Secretary received Respondent's responses on September 14, 1999. However, as the Secretary contends, the responses are evasive and incomplete and do not comply with my order or the Commission's Rules of Procedure. For example, in response to the interrogatory requesting the identity of all persons having knowledge of the facts relating to the cited allegations and the substance of their knowledge, Respondent provided only the name and address of its president and none of the names and addresses of the employees at the site, stating that those would "be provided upon receipt of same."¹ In response to the interrogatories asking for its gross and net revenues since January 1, 1996, Respondent provided copies of its tax returns for 1996 and 1997 but nothing for 1998. In the interrogatories requesting the factual basis, in detail, of its denials that the alleged

¹Respondent gave no information about the substance of the knowledge of employees.

violations occurred and that they could have caused serious injuries, Respondent's answers were that it "did not commit the allegations," that the "facts upon which the inspector relied ... [were] erroneous," and that it "complied with the OSHA regulations." Many of Respondent's answers refer to prior responses, which, as the Secretary points out, were inadequate in the first place, and several state only that information will be provided or supplied.

The foregoing are merely examples of the inadequacy of Respondent's answers, and my review of all of the responses set out in the Secretary's motion convinces me that Commission Rule of Procedure 52(e) applies in these circumstances. That rule states as follows:

Failure to cooperate; Sanctions. A party may apply for an order compelling discovery when another party refuses or obstructs discovery. For purposes of this paragraph, an evasive or incomplete answer is to be treated as a failure to answer. If a Judge enters an order compelling discovery and there is a failure to comply with that order, the Judge may make such orders with regard to the failure as are just. The orders may issue upon the initiative of a Judge, after affording an opportunity to show cause why the order should not be entered, or upon the motion of a party. The orders may include any sanction stated in Fed.R.Civ.P. 37, including the following: ... (4) An order dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

In considering this matter, I note that Respondent did not answer the Secretary's discovery requests until it was compelled to do so. I note further that when it did answer, the responses, as set out above, were evasive and incomplete. Finally, I note that although 30 days have now elapsed since the Secretary filed her motion to dismiss, Respondent has not filed any reply. Based upon my order of September 3, the Secretary's motion, and the language of Rule 52(e), *supra*, Respondent's contest and answer are DISMISSED and the citations and penalties are AFFIRMED in all respects.² So ORDERED.

Irving Sommer
Chief Judge

Date: 1 NOV 1999

²See also Commission Rule 41(a).