UNITED STATES OF AMERICA OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v. : Docket No. 03-1364

DANICA PLUMBING & HEATING, INC., :

Respondent.

APPEARANCES: Terrence Duncan, Esq.

For the Secretary

No Appearance by Respondent

Before: Chief Judge Irving Sommer

DECISION AND ORDER

This proceeding is before the Occupational Safety and Health Review Commission pursuant to section 10 of the Occupational Safety and Health Act of 1970, 29 U.S.C. sec. 651 et seq.

Following an inspection of the Respondent's work site in the Bronx, New York, the Occupational Safety and Health Administration issued a serious citation to the Respondent on April 24, 2003 which was returned undelivered. The citation was remailed and received by the Respondent on May 22, 2003. Pursuant to Section 10(a) of the Act, Respondent was required to notify OSHA of its intent to contest the citation within 15 working days of its receipt of the citation, and failure to file a timely notice of contest would result in the citation and penalty becoming a final judgement of the Commission by operation of law. Respondent failed to file a timely notice of contest and the Secretary filed a motion to dismiss the Respondent's late notice. The case was set down for trial on the facts concerning the late filing in New York, N.Y. on January 22, 2004. The Secretary appeared ready for trial and there was no appearance by the Respondent. The Secretary moved to hold the Respondent in default.

ORDER

Motion of the Secretary to dismiss the Respondent's late notice of contest. The motion for a default is GRANTED. The citation and proposed penalties are AFFIRMED as issued.

/s/ IRVING SOMMER Chief Judge

DATED: March 26,2004 Washington, D.C.