

SECRETARY OF LABOR,  
Complainant,

v.

OSHRC Docket No. 97-778

SOUTHEAST STEEL ERECTORS, INC.,  
Respondent.

(EZ)

**ORDER DISMISSING NOTICE  
OF CONTEST AND DECISION**

This proceeding arises under the Occupational Safety and Health Act of 1970, 29 U.S.C. §651, *et seq.* After filing its notice contest to a serious citation issued on April 9, 1997, Southeast Steel Erectors, Inc. (Southeast Steel), refuses to respond to the court's orders directing it to furnish a current telephone number and address. The court concludes that Southeast Steel abandons its notice of contest. Therefore, the citation issued on April 9, 1997 is affirmed.

**Background**

Based on the court's record, the following constitutes the undisputed facts.

1. On March 21, 1997, the Occupational Safety and Health Administration (OSHA) inspected the Konover worksite at 6901 Okeechobee Boulevard, West Palm Beach, Florida. As a result of OSHA's inspection, Southeast Steel received a serious citation on April 9, 1997. The citation alleges that Southeast Steel violated 29 C.F.R. §1926.1052(c)(12) for failing to guard the roof deck and §1926.1053(b)(1) for using a portable ladder which did not extend at least 3 feet above the upper landing surface. OSHA proposes penalties totaling \$3,000.

2. The citation was mailed certified to Southeast Steel at 5729 S. W. 40th Street, Hollywood, Florida 33023. John Galmish signed the return receipt.

3. On May 14, 1997, Pat Galmish, on Southeast Steel's fax letterhead, notified OSHA that "[I]n response to your letter Citation and Notification of Penalty dated 4/09/97 Inspection #116514787; As of 3/22/97 Southeast Steel Erectors, Inc. has not been conducting any business as the Corporation is dissolved. Please know that I resigned as President of this Corporation in March of 1997 as did the secretary Michael Freygang."

4. Also, on May 14, 1997, Patricia Galmish, by fax, notified OSHA that "Southeast Steel Erectors, Inc. wishes to contest the Citation of Issuance Date 4/09/97 @ Inspection Site:

6901 Okeechobee Blvd., West Palm Beach, Fl. 33402. Job Cited was completed 3/25/97 - NOT 3/22/9 - and all corrections were made. Southeast Steel is no longer a company.”

5. Southeast Steel’s notice of contest was docketed by the Review Commission and on July 10, 1997, was assigned to E-Z trial proceedings pursuant to § 2200.200, *et seq.*, of the Commission’s Rules of Procedures.

6. On July 17, 1997, the undersigned judge issued an order setting hearing and prehearing conference. The telephone prehearing conference was scheduled for July 31, 1997, at 10:00 a.m. and the hearing was scheduled for August 19, 1997, in West Palm Beach, Florida.

7. After failing to locate a working telephone number for Southeast Steel on July 30, 1997, the court, by certified letter to Southeast Steel, advised that because the telephone number in the court’s files has been disconnected, “[I]t is necessary to reschedule the telephone conference which was previously scheduled in the above matter for Thursday, July 31, 1997, at 10:00 a.m. Therefore, please let us know if your telephone number and company address have changed by no later than August 11, 1997.” This letter was received by John Galmish on August 4, 1997.

8. There was no response from Southeast Steel Erectors, Inc., to the letter.

9. On August 11, 1997, the Secretary filed a motion for show cause order. She states that she “has made several attempts to contact Respondent at its last known address without success and is concerned that Respondent may not appear at trial.”

10. On August 13, 1997, the scheduled hearing was canceled, and Southeast Steel was ordered to show cause why its notice of contest should not be dismissed because of its failure to provide the court with a current address and telephone number. Southeast Steel was advised that failure to respond to the show cause order would indicate a lack of interest in pursuing its contest of the citation. Southeast Steel was also advised that failure to comply with the order would result in the dismissal of its notice of contest, the citation affirmed, and the penalties totaling \$3,000 assessed.

11. To date, Southeast Steel has not responded to the court’s order to show cause.

#### Discussion

Commission Rule 6 requires a party to provide the court its representative’s name, current

address, and telephone number. If there is any change in such information, the party is required to communicate such changes “promptly in writing to the Judge.” Further, Rule 6 provides that “[A] party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.”

The court has repeatedly requested Southeast Steel to provide a current address and telephone number in order to conduct a prehearing conference as required under E-Z trial proceedings by Commission Rule 207. The court’s order to show cause specifically directed Southeast Steel to provide the requested information. The Secretary has also attempted to contact Southeast Steel without success. Southeast Steel’s failure to provide the information indicates an intent not to participate further in this case.

Commission Rule 41 provides that any party who fails to comply with the Commission’s rules and orders of the court may be declared in default and subject to sanctions. The efficient adjudication of cases allows for no lesser sanction in this case than dismissal of Southeast Steel’s notice of contest. *See e.g., Imageries*, 15 BNA OSHC 1545, 1991-93 CCH OSHD ¶ 29,639 (No. 90-378, 1992); *Keefe Earth Boring Co.*, 14 BNA OSHC 2187, 1991-93 CCH OSHD ¶ 29,277 (No. 88-2521, 1991). Southeast Steel was repeatedly requested to provide information necessary to proceed in this case. It failed to respond although clearly receiving the court’s letter and order to show cause.

A review of the record indicates that Southeast Steel may no longer be in business. However, even if Southeast Steel is not currently in business, the citations and proposed penalties issued by the Secretary are not rendered moot. *Kenny Niles, d/b/a Kenny Niles Constr. & Trucking Co.*, 17 BNA OSHC 1940, 1997 CCH OSHD ¶ 31,300 (No. 94-1406, 1997).

Accordingly, Southeast Steel’s notice of contest is dismissed and the citation is affirmed.

### ORDER

Based upon the foregoing decision, it is hereby ORDERED:

1. Southeast Steel’s notice of contest dated May 14, 1997, is dismissed.
2. Citation No. 1, item 1, issued on April 9, 1997, alleging a serious violation of §1926.1052(c)(12), is affirmed and a penalty of \$2,000 is assessed.
3. Citation No. 1, item 2, issued on April 9, 1997, alleging a serious violation of

§1926.1053(b)(1), is affirmed and a penalty of \$1,000 is assessed.

Dated this 16th day of September, 1997.

KEN S. WELSCH  
Judge