

A copy of a letter, dated June 26, 1995, from the Secretary to Respondent's counsel was received in this office on June 29. The letter indicated that the parties had reached a settlement agreement and requested that the agreement enclosed with the letter be signed and returned to the solicitor's office for submission to the judge.

On August 2, 1995, counsel for the Secretary was informed by Respondent's attorney, Herman W. Lester, Esquire, that he no longer represented the company. Consequently, on August 15, counsel sent another copy of the agreement directly to D & E Coal Company, requesting a response by August 31, 1995. Not receiving a response by that date, the Secretary filed a motion for default judgment on September 1, 1995. The company did not respond to the motion.

Commission Rule 66(a), 29 C.F.R. ' 2700.66(a), requires that "[w]hen a party fails to comply with an order of a Judge . . . an order to show cause shall be directed to the party before the entry of any order of default or dismissal. Rule 66(c), 29 C.F.R. ' 2700.66(c), provides that "[w]hen the Judge finds a party in default in a civil penalty proceeding, the Judge shall also enter an order assessing appropriate penalties and directing that such penalties be paid."

Accordingly, on September 25, 1995, an Order to Show Cause was issued ordering the Respondent to show cause within 15 days of the date of the order why a Default Decision finding that it violated Sections 75220(a)(1), 75203(a), 75.370(c), 75.1725(a), 75.334(c)(3) and 75.364(b)(4) of the Secretary's Regulations, 30 C.F.R. ' 75220(a)(1), 75.203(a), 75.370(c), 75.1725(a), 75.334(c)(3) and 75.364(b)(4), and assessing and directing payment of the proposed penalty of \$35,000.00 should not be entered pursuant to Commission Rule 66, 29 C.F.R. ' 2700.66.

The order to show cause was sent to the Respondent's president by certified mail-return receipt requested. On October 17, 1995, the order was returned to this office in its original envelope by the U.S. Postal Service with the notation that it had been refused.

ORDER

Based on the above facts, I find that the Respondent, D & E Coal Company, is in default in this matter. Accordingly, Order Nos. 4003887, 4011787, 4011788, 4012381, 4012385, 4012392 and 4012394 are AFFIRMED. D & E Coal Company, Inc., is ORDERED TO PAY a civil penalty of \$35,000.00 within 30 days of the date of this decision. On receipt of payment, this proceeding is DISMISSED.

T. Todd Hodgdon
Administrative Law Judge

Distribution:

Anne T. Knauff, Esq., Office of the Solicitor, U.S. Department of Labor, 2002 Richard Jones Rd., Suite B-201, Nashville, TN 37215 (Certified Mail)

Mr. B.W. Harris, D & E Coal Co. Inc., 189 Pond Fork Rd., Kimper, KY 41539 (Certified Mail)

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