

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

Shirley I. Chase,
Commissioner of Labor and Industry,
Complainant

**ORDER DISMISSING NOTICE OF
CONTEST AND AFFIRMING
CITATION AND PENALTIES**

v.
DC Enterprises of Northeast Minnesota,
Inc.
Respondent

On June 14, 2001, the Respondent received a Citation and Notification of Penalty for violation of 29 C.F.R. §1926.200(g)(1) with a penalty of \$450, violation of 29 C.F.R. §1926.651(c)(2) with a penalty of \$750, a violation of 29 C.F.R. §1926.651(k)(1) with a penalty of \$600, and a violation of 29 C.F.R. §1926.652(a)(1) with a penalty of \$900.¹

On June 28, 2001, Complainant received Respondent's Notice of Contest and Service to Affected Employees ("Notice of Contest").²

On September 26, 2001, Complainant served a summons and Notice to Respondent and Complaint ("Summons and Complaint") upon Respondent by first-class mail.³

Although the Respondent received the Summons and complaint, it has failed to serve an Answer to that Summons and Complaint, as required by law and as specified in those documents.⁴

On April 3, 2002, the Complainant filed a Motion to Dismiss Respondent's Notice of Contest based on the Respondent's failure to file an Answer to the Summons and Complaint. The notice of that motion expressly stated that "[i]f you wish to contest this motion, you must file a written response with the judge and serve copies on all parties within ten (10) days after you receive this motion." Minnesota rules 1400.6600 requires parties to file and serve responses to motions "within ten working days after it is received." The Respondent has not filed and served a response to the Complainant's motion within the time specified by law.

¹ Affidavit of Rory H. Foley, Exhibits A and B.

² Affidavit of Foley, Exhibit C.

³ Affidavit of Foley, Exhibits D,E and F.

⁴ Affidavit of Foley.

Rory H. Foley, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, MN 55103-2106, filed the Motion to Dismiss on behalf of the Complainant. The last known address of the Respondent is DC Enterprises of Northeast Minnesota, Inc., 5197 Lavaque Road, Duluth, MN 55807.

The administrative law judge has jurisdiction to enter this order pursuant to Minn. Stat. §14.50 (2000), and Minn. R. 5210.0570, subp. 5 (2001). The Complainant has complied with all relevant statutory and rule requirements.

Based upon the record of these proceedings, IT IS HEREBY ORDERED:

1. That the Notice of Contest of DC Enterprises of Northeast Minnesota, Inc. is DISMISSED.

2. That the Citation and Notification of Penalty for Respondent's violations of 29 C.F.R. §1926.200(g)(1), 29 C.F.R. §1926.651(c)(2), 29 C.F.R. §1926.651(k)(1), and 29 C.F.R. §1926.652(a)(1) is AFFIRMED.

3. That Respondent shall pay a total penalty of \$2700 to the Minnesota Department of Labor and Industry at the following address:

Department of Labor and Industry
Minnesota OSHA Compliance
443 Lafayette Road North
St. Paul, MN 55155

4. That if the Respondent fails to comply with the terms of this Order:

(a) The Complainant may take action against the Respondent pursuant to the Minnesota Occupational Safety and Health Act of 1973 and may impose other remedies provided by law; and

(b) The Respondent will be liable to the Complainant for any collection fees and interest that the Complainant incurs in attempting to collect the amount due under paragraph three of this Order.

Dated this 2nd day of May 2002.

S/Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge