

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

Steve Sviggum, Commissioner,
Department of Labor and Industry,
State of Minnesota,

**DECISION AND ORDER GRANTING
MOTION FOR DEFAULT JUDGMENT**

Complainant,

vs.

Great Ideas Home Improvement,
Inc.,

Respondent.

This matter came on before Administrative Law Judge (ALJ) Kathleen D. Sheehy on Complainant's Notice of Motion and Motion for Default Judgment, dated November 18, 2008. The Respondent did not file or serve any written response to the motion.

Jackson Evans, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared for the Department of Labor and Industry (Department). Great Ideas Home Improvement, Inc., 4121 Maciver Avenue NE, St. Michael, MN 55376, did not appear in response to the motion.

Based on all the files, records, and proceedings, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

- (1) That the contested citation and notification of penalty against Respondent are affirmed, and default judgment in favor of the Department is GRANTED;
- (2) That the Respondent's Notice of Contest is DISMISSED;
- (3) That the Respondent shall abate any uncorrected conditions within ten days of this Order;

- (4) That, within 30 days after this Order is issued, the Respondent is ORDERED to pay a total penalty of \$9,800 to the Minnesota Department of Labor and Industry at Minnesota OSHA Compliance, 443 Lafayette Road N, St. Paul, MN 55155; and
- (5) If the sum of \$9,800 is not paid within 60 days after the penalty becomes a final order, it must be increased to 125 percent of the originally assessed amount. After 60 days, unpaid fines shall accrue an additional penalty of 10 percent per month compounded monthly until the fine is paid in full, or until the fine has accrued to 300 percent of the original assessed amount, as required by Minn. Stat. § 182.666, subd. 7 (2008).

Dated: December 11, 2008

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 182.661, subd. 3 (2008), this Order is the final decision in this case. Under Minn. Stat. §§ 182.661, subd. 3, and 182.664, subd. 5, the employer, employee or their authorized representatives, or any party, may appeal this Order to the Minnesota Occupational Safety and Health Review Board within 30 days following service by mail of this Decision and Order.

MEMORANDUM

Respondent is an employer engaged in the business of making wood kitchen cabinets. On June 12, 2007, the Department conducted an occupational safety and health inspection of Respondent's place of employment in accordance with Minn. Stat. § 182.659 (2006).¹ As a result of the inspection, the Department found that Respondent had failed to comply with certain OSHA standards, as required by Minn. Stat. § 182.653, subd. 3 (2006).

On August 6, 2007, the Commissioner issued Citations and Notifications of Penalty against Respondent for violations of state and federal OSHA regulations found during the inspection.² These items concern Respondent's alleged failure, among other things, to have automatic sprinklers or another type of automatic fire extinguishing system near a spray booth; alleged electrical violations; and alleged failure to implement a training program for employees exposed to hazardous substances and a Workplace Accident and Injury

¹ Complaint ¶ 4.

² *Id.*

Reduction (AWAIR) program. Several of these violations were deemed serious, and the Department proposed a total penalty in the amount of \$9,800.³

On August 24, 2007, the Respondent filed a timely Notice of Contest challenging the citation and penalties for Citation 1, Items 1-4 and 7-11, and Citation 2, Items 1-4; and the penalty for Citation 1, Items 5 & 6.⁴

On November 21, 2007, the Department served a Summons and Complaint on the Respondent by mail.⁵ The Summons informed Respondent that it was required to serve an Answer to the Complaint on the Commissioner within 20 days after service of the Summons. Respondent was further informed that failure to file an Answer might constitute a waiver of Respondent's right to further participation in this proceeding. Respondent did not file an Answer to the Complaint.

On the same date, the Department informed the Respondent by letter that it was in the process of drafting a settlement agreement based on an agreement reached at an informal conference on November 14, 2007. The Department indicated the Respondent would not have to answer the Complaint until two weeks after the postmark date on the proposed Settlement Agreement and Order. In the event the Respondent decided not to sign the Settlement Agreement, the Department advised him he must file an Answer within two weeks of the postmark date.⁶

On or about December 19, 2007, the Department forwarded to the Respondent a proposed Settlement Agreement and Order that reduced the penalty amount to \$5,000.⁷ The Respondent did not sign the Settlement Agreement and Order, and he did not file an answer to the Complaint.

On July 22, 2008, the Department issued a Notice and Order for Prehearing Conference, notifying the Respondent that a prehearing conference would be held on September 9, 2008. The Respondent's manager, Brad Asp, appeared for the Respondent at the prehearing conference. The Respondent was advised that if the matter was not resolved by agreement, the Respondent was required to file a written answer to the Complaint by November 7, 2008, so that the Department could begin preparing for the hearing, which was scheduled to take place on January 9, 2009.⁸ The Department mailed another settlement offer to the Respondent, but the Respondent failed to respond to it. The Respondent has not filed an Answer to the Complaint.⁹ On November 18, 2008,

³ Complaint, Ex. A.

⁴ Notice of Contest (Aug. 24, 2007).

⁵ Affidavit of Jackson Evans ¶ 3 (Nov. 18, 2008).

⁶ Letter dated November 21, 2007 (attached to Complaint).

⁷ Settlement Agreement and Order and Notice to Affected Employees (Dec. 19, 2007) (not signed by Respondent).

⁸ Prehearing Order (September 11, 2008); Evans Aff. ¶ 4.

⁹ Affidavit of Jackson Evans ¶¶ 5 & 6.

the Department mailed to the Respondent a Notice of Motion and Motion for Default Judgment. Pursuant to Minn. R. 1400.6600, a written response to the motion was due within ten working days of receipt of the motion. The Respondent has not filed any written response to the motion.

Analysis

The Department argues that Respondent's failure to file an answer to the Complaint is grounds for default judgment under Minn. R. 5210.0570, subps. 4 and 5 (2007). Subpart 4 provides:

Within 20 days after service of the complaint, the party . . . against whom the complaint was issued shall file with the commissioner an answer and serve the answer on every other party.

The answer must contain a short and plain statement denying those allegations in the complaint that the party intends to contest and assert any and all affirmative defenses. Any allegation not denied is deemed admitted and any affirmative defense not asserted is deemed waived.¹⁰

If the respondent fails to file a timely answer, subpart 5 permits the Administrative Law Judge, upon motion by a party, to enter an order affirming the contested citation and notification of penalty.

Although the Respondent was effectively given a ten-month extension of time to answer the Complaint, it has failed to do so. Because the Respondent did not file an Answer, the allegations contained in the Complaint are deemed admitted, and any affirmative defenses are deemed waived pursuant to Minn. R. 5210.0570, subp. 4 (2007). Accordingly, the Administrative Law Judge must conclude that the Respondent committed the violations alleged; that the violations were properly classified as serious under Minn. Stat. § 182.651, subd. 12; that the proposed penalty was properly issued pursuant to Minn. Stat. § 182.661, subd. 1; and that the amount of the penalty is appropriate and reflects consideration of the employer's size, the employer's good faith, the employer's violation history, and the gravity of the violation alleged, as required by Minn. Stat. § 182.666, subd. 6. The contested citation and notification of penalty are affirmed.

K.D.S.

¹⁰ Minn. R. 5210.0570, subp. 4 (2007).