

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 05 April 2007

Case Number: 2006-RIS-00059

In the Matter of:

UNITED STATES DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY
ADMINISTRATION,

Complainant

v.

Plan Administrator,
STARR'S TRANSPORTATION,

Respondent

Before: JOHN M. VITTONI
Chief Judge

DECISION AND ORDER

This case arises under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C § 1100 et seq., and the regulations at 29 C.F.R. §§ 2560 and 2570.

On May 8, 2006, the Employee Benefits Security Administration of the United States Department of Labor (Complainant) notified Starr's Transportation (Respondent) of an assessment of a civil money penalty in the amount of \$180,000.00 for violations of ERISA. Complainant alleges that Respondent failed to file satisfactory 2003, 2004, and 2005 Form 5500 Annual Reports of its 401(K) Plan and Trust. Respondent filed a Statement of Reasonable Cause and on July 17, 2006, Complainant issued a Notice of Determination. Therein, Complainant found no reasonable cause to waive the assessed penalty.

On August 18, 2006, Respondent filed an answer to the Notice of Determination and a request for hearing before the Office of Administrative Law Judges (Office). This Office issued a Notice of Docketing on September 14, 2006, instructing the parties to exchange and submit certain information. On October 13, 2006, Complainant filed its Prehearing Exchange information.

Due to the failure of Respondent to comply with the Notice of Docketing, an Order to Show Cause was issued on October 31, 2006. Respondent was ordered to explain why a default decision should not be entered in this matter for its failure to comply with the Notice of Docketing. To date, Respondent has failed to comply with the Notice of Docketing or the Show Cause Order.

The regulations at 29 C.F.R. § 18.6(d) (2) (v) provide that:

If a party or an officer or agent of a party fails to comply with a subpoena or with an order, . . . or any other order of the administrative law judge, the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may . . . [r]ule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that decision of the proceeding be rendered against the non-complying party, or both.

After reviewing the record and considering Respondent's nonparticipation in this matter, a Judgment by Default is entered against Respondent. The findings are adopted as set forth in the Notice of Determination dated May 8, 2006.

In light of the foregoing, Respondent, the Plan Administrator of Starr's Transportation, is hereby ORDERED to pay the civil money penalty in the amount of \$180,000.00 to Complainant.

SO ORDERED,

A

JOHN M. VITTONI
Chief Judge

Washington, D.C.

JMV/jsp