

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 December 2014

Case No.: 2014-SCA-00007

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR,
Prosecuting Party,

v.

MIKE WASYLIC,
D/B/A MIKE'S TRANSPORTATION,
Respondent.

DECISION AND ORDER GRANTING DEFAULT JUDGMENT

This matter arises under the McNamara-O'Hara Service Contract Act of 1965 ("the Act"), as amended, 41 U.S.C. §§ 6702-6707 (SCA), and the regulations promulgated thereunder at 29 C.F.R. Part 4.

PROCEDURAL HISTORY

On March 13, 2014, the Department of Labor filed a Complaint against Mike Wasylk, d/b/a Mike's Transportation ("Mike Wasylk"), alleging that Respondent failed and refused to pay its service employees the minimum wages and fringe benefits as required by the contract provisions of the Act. On May 8, 2014, this matter was assigned to the undersigned administrative law judge for the purpose of conducting a formal hearing and issuing a decision and order pursuant to 29 C.F.R. § 6.30. On April 9, 2014, Counsel for complainant received a letter from Respondent, Mike Wasylk, dated March 26, 2014. Counsel forwarded the letter to me, which was received April 21, 2014. The letter appears to be an answer to the Complaint and challenges Complainant's basis for the action.

On June 12, 2014 I issued an Order Scheduling Teleconference for June 25, 2014. The Order requested Mr. Wasylk call the office and speak to my legal assistant. The Order was sent by Certified Mail to Mike Wasylk. At the time for the conference, counsel for the Complainant called in but Mike Wasylk did not call in to participate in the conference or call my legal assistant. On June 30, 2014, Complainant's counsel sent a letter to Mike Wasylk requesting he contact her at his earliest to participate in this matter, and to respond to Orders from the Court. He never responded to counsel's letter. On July 25, 2014, the Court received a letter from Don Wasylk, Mike's father, which stated "we have retained counsel who will be contacting you soon to settle this charge." I issued a Notice of Ex Parte Contact on August 20, 2014, forwarding a

copy of the letter to counsel for Complainant.

On August 25, 2014, I issued a second Order Scheduling Telephone Conference for September 3, 2014. On that date, counsel for Complainant called in to the conference, but neither Mike nor Don Wasylk nor an attorney acting on Respondent's behalf called in.

On September 11, 2014, Complainant filed a Motion for Order to Show Cause why a Default Judgment should not be issued against Respondent for failure to participate in the litigation of this matter and for failure to follow the Orders of this Court. On September 30, 2014, the Court issued an Order for the respondent, Mike Wasylk, d/b/a Mike's Transportation, to Show Cause in writing within ten days, why Default Judgment should not be issued in this matter for failure to participate in the litigation of this matter and for failure to follow the Orders of this Court. This motion was sent by Certified Mail, Return Receipt requested to Mike Wasylk. A return receipt, signed by Johanna Wasylk on September 16, 2014, was received by the Office. Following no response to the Order to Show Cause by Mr. Wasylk, a second Order to Show Cause Why Complainant's Motion for Default Judgment Should Not Be Granted was issued by the undersigned on November 12, 2014. The Order reiterated Respondent's requirement to file a response within ten day establishing just cause why Complainant's motion for default judgment should not be granted. That Order was sent Certified Mail, Return Receipt Requested, and signed as received by Johanna Wasylk on November 26, 2014. As of this date, no response to either Order to Show Cause from Respondent has been received.

DISCUSSION

Pursuant to established case law, failure to respond to a Court's Order to Show Cause is grounds for entry of a default judgment. *Charles D. Canterbury*, 2002-SCA-11 (ALJ, July 8, 2003), *aff'd*, ARB Case No. 03-135 (ARB, Dec. 29, 2004)(although a certain degree of latitude should be afforded the unrepresented party, the ALJ properly entered summary judgment against Respondent based on its repeated non-compliance with discovery requests and orders); *Supervan, Inc.*, 1994-SCA-47 (ALJ, Aug. 18, 1999), *aff'd*, ARB Case No. 00-008 (ARB, Sept. 30, 2002)(ALJ entered an order of default judgment based upon Respondent's failure to cooperate with any of his pre-hearing orders); *Coleman M. Wilbanks*, 1998-SCA-14 (ALJ, Dec. 3, 1998)(the ALJ issued a default judgment ordering the payment of back wages owed and debarment for three years, based upon the contractor's failure to file an answer to the Government's complaint and to respond to the show cause order).

ORDER

By reason of Respondent's failure to respond to this Court's Order to Show Cause, a Default Judgment is hereby entered against Respondent. The Court finds, in accordance with 29 C.F.R. 6.16(c), and as set out in the Complaint, the following:

1. The provisions of the McNamara-O'Hara Service Contract Act of 1965, as amended (79 Stat. 1034, 86 Stat. 789; 41 U.S.C. § 51 et seq.), hereinafter referred to as the Act, and the regulations issued thereunder (29 C.F.R. Part 4), have been violated.

2. Respondent Mike Wasyk is, and at all times hereinafter mentioned was, an individual operating a sole proprietorship doing business as, Mike's Transport. Respondent had a principal place of business located at 1080 St. Patrick Drive, Chapman, Kansas from which address he was at all times hereinafter mentioned was, engaged in mail transportation.

3. Respondent Mike Wasyk was responsible for the employment practices and management policies of Mike's Transport during the period from June 5, 2010 through June 2, 2012.

4. The government of the United States of America awarded Respondent, Mike's Transport, the following contracts, which were subject to, and contained the representations and stipulations required by the Act, and aforesaid regulations:

<u>Contract Number</u>	<u>Contract Period</u>	<u>Amount</u>
674L7	7/1/10 - 6/30/14	\$41,800
636B1	7/1/10 - 6/30/14	\$33,323
638A0	7/1/09 - 6/30/13	\$65,789
636B9	7/1/09 - 6/30/12	\$59,582

5. The services specified in these contracts identified in paragraph 4 called for the furnishing of all labor, materials and equipment to perform the transportation of United States mail, through the use of service employees, as defined by § 8(b) of the Act (41 U.S.C. § 357(b)).

6. During the period of performance of the contracts identified in paragraph 4, Respondent failed and refused to pay service employees employed in the performance of work on the aforesaid contracts the minimum wages and fringe benefits as required by the contract provisions, §§ 2(a) (1) and 2(a) (2) of the Act (41 U.S.C. §§ 351(a) (1) and 351(a) (2)) and § 4.6 of the regulations promulgated by the Secretary of Labor (29 C.F.R. § 4.6).

7. By reason of the aforesaid breaches of said contracts and the violations of the Act and regulations, Respondent has become liable for a sum equal to the amount of fringe benefits and wage underpayments due to his employees in the amount of \$7,180.20, as provided by § 3(a) of the Act (41 U.S.C. § 352(a)).

8. Respondent has become subject to § 5(a) of the Act (41 U.S.C. § 354(a)), whereby Respondent and any firm, corporation, partnership, or association in which he has a substantial interest, may be denied the award of any contract with the United States until three years have elapsed from the date of publication by the Comptroller General of the list naming them as having been found to have violated the Act.

WHEREFORE, it is hereby **ORDERED** that Respondent is liable for \$7,180.20 in unpaid wages and fringe benefits. If there are any funds currently being withheld by the Postal Service from payment on contract numbers 674L7, 636B1, 638A0, 636B9, these funds should immediately be released to the United States Department of Labor, Wage and Hour Division, for payment to Respondent's employees as such employees' interests may appear. To the extent the Postal Service or other federal departments, agencies or entities are in or become in possession of funds otherwise payable to Respondent, they are hereby ordered to turn over such funds, up to the amount due under this Order, to the United States Department of Labor, Wage and Hour Division. Respondent's name is to be placed on the list maintained by the Comptroller General of the United States, of persons or firms having been found to have violated the Act, and therefore having become ineligible, for the period of three years from the date of publication on the list, for the award of any contract of the United States.

SO ORDERED.

JOSEPH E. KANE
Administrative Law Judge