

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 21 December 2020

CASE NO.: 2020-SCA-00002

In the Matter of:

**ESTH TRANS CORPORATION, INC.,
and EMIL IGWENAGU, PRESIDENT,**
Respondents.

DECISION & ORDER OF DEFAULT JUDGMENT

On November 30, 2020, I reluctantly issued an Order To Show Cause (“OSC”), it having appeared that Respondents were consistently failing to participate in this litigation. Specifically, they failed to participate in the Initial Conference, failed to participate in a scheduled conference call which they had previously confirmed they would attend, failed to make Initial Disclosures, failed to respond to the Department of Labor’s (“DOL”) correspondence regarding discovery and other matters, failed to comply with my Order Compelling Initial Disclosures and failed to respond to DOL’s motion for sanctions.

I ordered Respondents to file a response to the OSC within seven (7) days, directing them to explain: their non-participation; why they should not be adjudged in default; and why I should not issue an order granting DOL a default judgment against them. The order warned that failure to file an explanation would result in the sanction of default judgment against them, whether on motion by counsel for the DOL, or *sua sponte*.

To date, Respondents still have not filed any response to the OSC. Here, Respondents have defaulted by repeatedly failing to participate in discovery and in the litigation general, failed to comply with an order of the court and failed to respond to the OSC. Accordingly, I find that Respondents are in *default*, pursuant to 29 C.F.R. § 18.57(b)(1)(vi).

As part of its requested relief, DOL asks that I place Respondents “on the next list distributed to each agency by the Comptroller General of the Federal Government that bars those listed (as well as any entities in which any entity listed ‘has a substantial interest’) from being awarded a Federal Government contract ‘until 3 years have elapsed from the date of publication of the list.’” Complaint at 3. However, I do not appear to have the authority to place Respondents’ names on the list:

Where the respondent has been found to have violated the SCA, the ALJ's jurisdiction with regard to debarment is limited under the SCA's implementing regulations to "includ[ing] in his/her decision an order as to whether the respondent is to be relieved from the ineligible list as provided in section 5(a) of the Act [41 U.S.C.A. § 6706], and, if relief is ordered, findings of the unusual circumstances, within the meaning of section 5(a) of the Act, which are the basis therefor." 29 C.F.R. § 6.19(b)(2). Within ninety days following an ALJ's final decision, or the ARB's final decision if the ALJ's decision is appealed, the Administrator is required to forward the names of any respondent found in violation of the SCA to the Comptroller General "unless such decision orders relief from the ineligible list because of unusual circumstances." 29 C.F.R. § 6.21(a). Beyond the foregoing, neither the ALJ nor the ARB has authority with regard to disbarment.

Administrator, WHD v. 5 Star Forestry, LLC, ARB No. 14-021, 2015 WL 4071578 at *6 (June 24, 2015).¹ Rather, it appears to be DOL's responsibility to forward Respondents' names to the Comptroller General for inclusion on the ineligibles list. 29 C.F.R. § 6.21(a).

However, I find no grounds for *relieving* Respondents from the ineligible list. *See* 41 U.S.C.A. § 6706(a); 29 C.F.R. § 6.19(b)(2).

Accordingly, good cause having been shown, **IT IS HEREBY ORDERED** that:

1. Respondents' answers and defenses in their May 11, 2020, Answer and June 3, 2020, Amended Answer are **STRICKEN**, pursuant to 18 C.F.R. § 18.57(b)(1)(iii), and I will treat the matter as if no answers had been filed.
2. I adopt as Findings of Fact the material allegations of the Complaint, dated November 26, 2019, pursuant to 18 C.F.R. § 18.57(b)(1)(i) & 29 C.F.R. § 6.16(c).
3. Default judgment is entered against Respondents, pursuant to 29 C.F.R. § 18.57(b)(1)(vi) & 29 C.F.R. § 6.16(c).
4. Accordingly, I find that Respondents violated the SCA in the manner alleged in the complaint, and that Respondents are therefore jointly and severally liable for \$44,431.82, representing the amount, according to the Complaint, that Respondent underpaid in wages

¹ USDOL/OALJ Reporter at 8 (all ARB decisions are available at: <https://www.dol.gov/agencies/oalj/PUBLIC/ARB/REFERENCES/CASELISTS/ARBINDEX>)

and fringe benefits to its employees who provided mail hauling and related services under Respondents' contract with the U.S. Postal Service (Contract Number 01548).

5. The January 19, 2021, formal hearing is **CANCELLED**; and this matter is **CLOSED**.

SO ORDERED.

NORAN J. CAMP
Administrative Law Judge

Boston, Massachusetts

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within fourteen (14) days of the date of the administrative law judge’s decision.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1984.110(a).

Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1984.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and on the Associate Solicitor, Division of Fair Labor Standards. *See* 29 C.F.R. § 1984.110(a).

If no Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1984.109(e) and 1984.110(b). Even if a Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1984.110(b).

The preliminary order of reinstatement is effective immediately upon receipt of the decision by the Respondent and is not stayed by the filing of a petition for review by the Administrative Review Board. 29 C.F.R. § 1984.109(e). If a case is accepted for review, the decision of the administrative law judge is inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board unless the Board grants a motion by the respondent to stay that order based on exceptional circumstances. 29 C.F.R. § 1984.110(b).

IMPORTANT NOTICE ABOUT FILING APPEALS:

The Notice of Appeal Rights has changed because the Board has implemented a new eFile/eServe system (“EFS”) which is available at <https://efile.dol.gov/>. If you use the Board’s prior website link, dol-appeals.entellitrak.com (“EFSR”), you will be directed to the new system. Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

Filing Your Appeal Online

Registration with EFS is a two-step process. First, all users, including those who are registered users of the current EFSR system, will need to create an account at login.gov (if they do not have one already). Second, users who have not previously registered with the EFSR system will then have to create a profile with EFS using their login.gov username and password. Existing EFSR

system users will not have to create a new EFS profile. All users can learn how to file an appeal to the Board using EFS by consulting the written guide at <https://efile.dol.gov/system/files/2020-11/file-new-appeal-arb.pdf> and the video tutorial at <https://efile.dol.gov/support/boards/new-appeal-arb>.

Establishing an EFS account under the new system should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at <https://efile.dol.gov/contact>.

If you file your appeal online, no paper copies need be filed. **You are still responsible for serving the notice of appeal on the other parties to the case.**

Filing Your Appeal by Mail

You may, in the alternative, including the period when EFSR and EFS are not available, file your appeal using regular mail to this address:

U.S. Department of Labor
Administrative Review Board
ATTN: Office of the Clerk of the Appellate Boards (OCAB)
200 Constitution Ave. NW
Washington, DC 20210-0001

Access to EFS for Non-Appealing Parties

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and creating an EFS profile. Written directions and a video tutorial on how to request access to an appeal are located at: <https://efile.dol.gov/support/boards/request-access-an-appeal>

After An Appeal Is Filed

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered users of EFS will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail. At this time, EFS will not electronically serve other parties. You are still responsible for serving the notice of appeal on the other parties to the case.