



Issue Date: 04 April 2011

CASE NO.: 2011-TSC-1

IN THE MATTER OF

PAUL SETTA

Complainant

v.

JMH PRINTING COMPANY

Respondent

**ORDER GRANTING RESPONDENT'S MOTION TO DISMISS
APPEAL OF PAUL SETTA**

This proceeding arises under the Toxic Substance Control Act, (TSC), 15 U.S.C. §2622 and the regulations promulgated thereunder at 29 C.F.R. Part 24, which are employee protective provisions.

On April 1, 2011, Respondent, JMH Printing Company, (herein Respondent) filed a Motion to Dismiss Complainant's case for failure to file a timely Complaint as ordered by the undersigned in my March 11, 2011 Order Rescheduling Hearing and Revised Pre-Hearing Order.

On March 11, 2011, in an Order Rescheduling Hearing and Revised Pre-Hearing Order (herein Order), the undersigned ordered Complainant to file a Complaint alleging in detail the nature of his protected activity and each and every alleged violation of the Act as well as the relief sought in this matter by March 25, 2011.

29 C.F.R. § 18.6 provides, in pertinent part:

(d)(2) If a party or an officer or agent of a party fails to comply with . . . an order . . . of the administrative law judge, the administrative law judge . . . may take such action in regard thereto as is just, including but not limited to the following:

(v) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order . . . was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

On February 18, 2011, an Order to Show Cause issued to Complainant to show cause why his case should not be dismissed for failing to file a detailed complaint by January 21, 2011. On March 11, 2011, an Order Denying Motion to Dismiss issued based on Complainant's request for additional time which was granted. The Order Rescheduling followed with a new date for filing a detailed Complaint.

Complainant, Paul Setta, has not filed his Complaint. Accordingly, I find Paul Setta to be non-compliant with the March 11, 2011 Order.

Considering the foregoing, I find that Respondent is entitled to dismissal in this matter and its Motion to Dismiss the Appeal of Paul Setta is hereby **GRANTED**.

Accordingly,

IT IS HEREBY ORDERED that Respondent's Motion to Dismiss Appeal of Paul Setta be, and it is hereby, **GRANTED** and that Complainant Paul Setta's Complaint is hereby **DISMISSED** with prejudice.

IT IS FURTHER ORDERED that the formal hearing scheduled in this case on May 26, 2011, in Dallas, Texas be, and it hereby is, **CANCELLED**.

ORDERED this 4th day of April, 2011, at Covington, Louisiana.

A

LEE J. ROMERO, JR.
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. See 29 C.F.R. §§ 24.109(e) and 24.110.