



IN THE MATTER OF:

Proposed debarment for labor standards violations by:

ARB CASE NO. 13-071

**WHITE STAR COMMERCIAL, INC.
d/b/a WHITE STAR PLUMBING, INC.
Subcontractor,**

ALJ CASE NO. 2012-DBA-010

DATE: August 20, 2013

and

**JOSEPH WALTER LEWIS, JR.,
Individually.**

RESPONDENTS.

With respect to employees and plumbers employed by the Subcontractor under Contract No. 5380 for construction services at the C.J. Peete public housing development located in New Orleans, Louisiana.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Respondents:

George M. Gates, IV, Esq.; New Orleans, Louisiana

For the Acting Deputy Administrator, Wage and Hour Division:

**Zara G. Khan, Esq.; Margaret Terry Cranford, Esq.; James E. Culp, Esq.;
M. Patricia Smith, Esq.; U.S. Department of Labor, Dallas, Texas**

Before: Paul M. Igasaki, Chief Administrative Appeals Judge; and Lisa Wilson Edwards, Administrative Appeals Judge

FINAL DECISION AND ORDER CLOSING CASE

This case arises under Reorganization Plan No. 14 of 1950 (64 Stat. 1267); the Davis-Bacon Act, as amended, 40 U.S.C.A. §§ 3141-3148 (Thomson West 2005 & Supp. 2012); the Housing and Community Development Act of 1974, 42 U.S.C.A. §§ 5310, 1440(g) (Thomson Reuters 2012), and the regulations at 29 C.F.R. Parts 5 and 6.¹ On April 9, 2013, a Department of Labor Administrative Law Judge (ALJ) entered a default judgment against White Star Commercial, Inc. *et al.* and Joseph Walter Lewis, Jr. (Respondents or White Star), and barred the Respondents from doing business with the United States Government as a contractor or subcontractor for three years.² For the following reasons, this case is closed and the ALJ's order of default judgment and order denying the Respondents' motion to vacate/set aside default judgment are the final orders of the Secretary.

BACKGROUND

In October 2011, the Acting Deputy Administrator (ADA) of the Wage and Hour Division notified the Respondents that they had breached a contract with the United States government and violated various labor standards provisions. The ADA filed an order of reference with the Office of Administrative Law Judges (OALJ) requesting debarment proceedings against the Respondents. Pending proceedings, the ALJ determined that the Respondents failed to comply with prehearing and other orders and requirements for responses.³ On April 9, 2013, the ALJ entered an Order of Default Judgment, and debarred the Respondents for three years. On May 24, 2013, the ALJ issued an Order Denying Respondents' Motion to Vacate/Set Aside Default Judgment.⁴

¹ *White Star Commercial, Inc.*, ALJ No. 2012-DBA-010 (Apr. 9, 2013)(ALJ Ord. I).

² 29 C.F.R. Part 5 *generally*, and §5.12(a)(1).

³ In finding the Respondents in default, the ALJ determined:

Respondents have consistently failed to respond to, or comply with, my prior Orders. No answer to Plaintiff's Prehearing Exchange information has been filed, and such answer is now approximately 6 months overdue. Similarly, Respondents have not responded to my November 16, 2012 Order to Show Cause[.] I expressly warned Respondents that failing to respond to, or comply with, my Orders could result in an entry of a default judgment against them. Despite repeated efforts to bring them into compliance, no responses from Respondents or their attorney have been forthcoming.

ALJ Ord. I, at 2.

⁴ *White Star Commercial, Inc.*, ALJ No. 2012-DBA-010 (May 24, 2013)(ALJ Ord. II).

Both Orders included a “Notice of Appeal Rights” stating:

To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within forty (40) days of the date of issuance of the administrative law judge’s decision. *See* 29 C.F.R. § 6.34. . . . The Petition must refer to the specific findings of fact, conclusions of law, or order at issue. *See* 29 C.F.R. § 6.34.^[5]

The Respondents failed to file a Petition for Review with the Board within 40 days of either the ALJ’s April 9, 2013, or May 24, 2013 Orders. On June 27, 2013, the Board received a letter from the ALJ stating that on June 18, 2013, “Respondents filed with this Office a ‘Motion’ to appeal my April 9, 2013 Default Judgment Order.” The Respondents’ Motion states in its entirety:

ON MOTION OF Petitioner, White Star Commercial, Inc. d/b/a, White Star Plumbing, Inc., subcontractor, et al, through undersigned counsel who respectfully moves this court to grant an appeal from the Order of Default Judgment issued on or about April 9, 2013 by the Honorable Stephen L. Purcell.

Plaintiff further request [sic] that this Honorable Court set a return date for the appeal.

On July 3, 2013, the ADA filed a Motion with the Board Opposing Respondent White Star’s Motion. The ADA asserts that the Respondents’ Motion should not be accepted because (1) it was not filed within a reasonable time from any final decision, and (2) does not state concisely the points relied upon and a statement setting forth supporting reasons, as required by 29 C.F.R. § 7.9(a), (b) (2012).⁶

On July 16, 2013, the Board entered an Order requiring the Respondents to show cause no later than July 25, 2013, whether the appeal should be denied for failure to file a timely and sufficient petition for review. Order To Show Cause (ARB July 16, 2013). The Order notified the Respondents that regardless whether 29 C.F.R. § 6.34 or 29 C.F.R. § 7.9 governs the filing of appeals from the ALJ’s Orders in this case, it appeared that the Respondents failed to perfect an appeal. The Order stated that failure to respond could result in denial of the Motion without further notice.

⁵ ALJ Ord. I at 3; ALJ Ord. II at 5.

⁶ As indicated above, the ALJ relied on 29 C.F.R. § 6.34 as establishing the procedure for filing an appeal from the ALJ’s Orders.

The Respondents failed to respond by July 25th as ordered, and instead requested an enlargement of time to file until July 29, 2013. No response was filed. On July 30, 2013, the Respondents requested a second enlargement of time until August 5, 2013, citing a family emergency. Recognizing that dismissing an appeal is a serious sanction, the Board entered an Order on August 1, 2013, granting the Respondents an extension of time to August 5, 2013. The August 1 Order stated:

The Board will grant no further extensions of time to the Respondents absent a demonstration of extraordinary circumstances precluding the timely filing of the response.

No response was filed. On August 12, 2013, seven days after the August 5 due date, the Respondents requested a three-week enlargement of time, stating that counsel for the Respondents was sick.

DISCUSSION

The ALJ's default judgment against the Respondents entered on April 9, 2013, barred the company from "doing business with the United States government as contractor or subcontractor under any of the Acts listed in 29 C.F.R. 5.1 for a period of three (3) years from the date of publication by the Comptroller General of the Respondents' names."⁷ The regulations at 29 C.F.R. Part 6 provide the rules of practice under the Davis-Bacon Act and related statutes in § 5.1 of Part 5 of Title 29, which include the statutes that this case arises under. Subpart C of Part 6 provides the procedures for enforcement proceedings in cases involving DBA debarments. The regulation at 29 C.F.R. § 6.34(a) states that a party aggrieved by an ALJ's decision shall petition for review with supporting reasons with the Board within 40 days (or such other period as the Board grants) of the date of the decision of which review is sought. The petition shall be transmitted as provided in Part 7 of Title 29 and shall include specific findings of fact, conclusions of law, or order at issue. In debarment cases, the petitioner must also explain "the aggravated or willful violations and/or disregard of obligations to employees and subcontractors, or lack thereof as appropriate."⁸

The Respondents failed to petition the Board for review within 40 days of the date on which the ALJ issued either the April 9 or May 24, 2013 decision. The Board, in any event, granted the Respondents two requests for enlargements of time to respond to the Board's Show Cause Order. The Respondents failed to respond. The record shows that the Respondents have demonstrated a continuing pattern of recalcitrant refusal to timely respond to orders of the ALJ, and now this Board.

⁷ 29 C.F.R. § 5.12(a)(1).

⁸ 29 C.F.R. § 6.34.

Courts possess the “inherent power” to dismiss a case for lack of prosecution.⁹ This power is “governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”¹⁰ Like the courts, this Board necessarily must manage its docket in an effort to “achieve the orderly and expeditious disposition of cases.”¹¹ Based on the Respondents’ failure to respond to orders of the ALJ and the Board, any further enlargements of time would needlessly prolong the litigation without good reason to believe that the Respondents will adhere to the Board’s procedural orders. Given the Respondents’ failure to submit a petition for review as provided in the relevant regulations, and refusal to respond to the Board’s Order to Show Cause, we conclude that the Respondents have failed to prosecute their case.¹²

CONCLUSION

This case is **CLOSED**. The Respondents are “barred from doing business with the United States government as a contractor or subcontractor under any of the Acts listed

⁹ *Tri-Gems Builders, Inc.*, ARB No. 99-117, ALJ No. 1998-DBA-017, slip op. at 3 (ARB Feb. 25, 2000)(citing *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962)).

¹⁰ *Tri-Gems Builders, Inc.*, ARB No. 99-117, slip op. at 3 (quoting *Link*, 370 U.S. at 630-31), citing *Link*, 370 U.S. at 630-631.

¹¹ *Id.*

¹² Parties are ultimately responsible for the acts and omissions of their freely chosen representatives. *Dumaw v. International Brotherhood of Teamsters, Local 690*, ARB No. 02-099, ALJ No. 2001-ERA-006, slip op. at 5 (ARB Aug 27, 2002), *aff’d sub nom. Dumaw v. U.S. Dep’t of Labor*, 75 Fed. App. 679, 2003 WL 22170693 (9th Cir. 2003). “Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have ‘notice of all fact, notice of which can be charged upon the attorney.’” *Link*, 370 U.S. at 633-634 (1962) (quoting *Smith v. Ayer*, 101 U.S. 320, 326 (1879)).

in 29 C.F.R. § 5.1 for a period of three (3) years” as mandated by the ALJ’s Order of Default Judgment. The ALJ’s Order of Default Judgment (dated Apr. 9, 2013), and Order Denying Respondent’s Motion To Vacate/Set Aside Default Judgment (dated May 24, 2013) shall be the final orders of the Secretary.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge