



**Issue Date: 15 June 2020**

Case No.: **2017-STA-12**

*In the Matter of:*  
THOMAS LANDON,  
Complainant,

v.

KRUGER COMMODITIES, INC.,  
Respondent.

**ORDER GRANTING DEFAULT JUDGMENT**

Thomas Landon (“Complainant”), filed a complaint with the Department of Labor, Occupational Safety and Health Administration (“OSHA”), alleging that Respondents, Kruger Commodities, Inc. (“Respondent”) retaliated against him in violation of the Surface Transportation Assistance Act (“STAA”), 49 U.S.C. § 31101 *et seq.* On October 11, 2016, an OSHA investigator determined that Respondents did not violate the STAA and dismissed the complaint. Complainant objected to the OSHA investigator’s determination and, thereafter, the claim was transferred to the Office of Administrative Law Judges (“OALJ”) for hearing.

On August 16, 2017, I held a telephone conference in this matter, and issued a subsequent scheduling Order on August 18, 2017. Pursuant to this Order, Discovery in this case was to be concluded by October 2, 2017 and Dispositive Motions filed by October 30, 2017. Complainant was represented at the time by Katie Steffes, Esq. However, a subsequent conference call was held with the parties on October 27, 2017 to discuss possible improper actions of the Complainant contacting and harassing the Respondent. At that time Complainant’s attorney Ms. Steffes withdrew from the case. Further, the Respondent indicated that it was requesting Dismissal of the claim, or in the alternative that Complainant be compelled to respond to discovery and a stay of proceedings to file a Motion for Summary Decision. The undersigned held the Motion to Dismiss the claim in abeyance and extended the discovery dates for the claim. Complainant was provided additional time to obtain new counsel. Complainant was specifically ordered to refrain from direct contact or harassment of the Respondent and informed that failure to cooperate with Discovery could lead to dismissal of his claim. On December 6, 2017, Respondent filed a Motion to Dismiss the claim for continuing discovery violations. The

Respondent renewed this Motion on January 8, 2019, and Complainant filed correspondence in response on January 9, 2019.

After the filing of the Motion and Response, staff from this office attempted to contact the parties for a further phone conference regarding the case's status and Complainant's representation status. After being unable to contact Complainant after multiple attempts, this matter was mistakenly administratively marked as closed.

Respondent avers that the Complainant served a set of interrogatories on the Respondent on August 23, 2017. (*Resp. Br.* at 3). Partial responses were received on October 5, 2017 and the Complainant's Deposition was scheduled for October 5, 2017. (*Id.*). Complainant arrived at the deposition on October 5, 2017, but departed before it began, asserting an illness in his family. (*Resp. Br.* at 4). Respondent rescheduled the Complainant's deposition for November 30, 2017, and requested that Complainant supplement his previous responses to discovery by bringing missing documents to the deposition. (*Resp. Br.* at 5). Complainant spoke with Respondent's counsel on November 27, 2017, and informed him that he would not be attending the deposition or providing the missing documents. (*Id.*).

A party may serve written interrogatories upon any other party and the party served is required to answer each interrogatory separately and in writing, or object in writing, in which case the reasons for objection should be stated.<sup>1</sup> A party may likewise request any other party to produce any document for inspection and copying, providing the party seeking production describes each item with reasonable particularity.<sup>2</sup> The party served may either comply with the request to produce documents or supply responses to interrogatories within 30 days of the request of service or object to it, giving the reasons for any objection.<sup>3</sup> The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges state that parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense.<sup>4</sup> Relevant information need not be admissible at the hearing if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.<sup>5</sup> The Rules of Practice and Procedure further provide for deposition of parties with proper notice. 29 C.F.R. § 18.64.

If a party fails to attend a properly noticed deposition, answer interrogatories or to produce documents sought, objects, or fails to respond adequately, the discovering party may move for an order compelling discovery. Pursuant to 29 C.F.R. § 18.57(a), "[o]n notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The Respondent in this claim attempted to resolve this conflict by requesting supplemental responses to discovery and requesting that Complainant attend a deposition after he left the initial deposition scheduled on October 5, 2017. Based on the foregoing, I find that the Respondent attempted in good faith to confer with the Complainant and obtain responses to its requested Interrogatories and Request for the Production of Documents, as well as conduct the

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<sup>1</sup> 29 C.F.R. § 18.60.

<sup>2</sup> 29 C.F.R. § 18.61.

<sup>3</sup> 29 C.F.R. §§ 18.60(b)(2); 18.61(b)(2).

<sup>4</sup> 29 C.F.R. § 18.51(a).

<sup>5</sup> *Id.*

Complainant's deposition. Despite this, the responses to these requests remain outstanding and the Complainant did not attend the rescheduled deposition.

On October 27, 2017, I specifically ordered the Complainant to comply with Respondents discovery requests and to attend a deposition. Despite this, Complainant has never complied and provided the missing information or given deposition testimony. Complainant's January 9, 2018 letter to the undersigned, responding to Respondent's Motion to Dismiss, does not contain any information about why the Complainant has not complied with my discovery order or refused to attend a deposition but instead focuses on continuing allegations about Respondent's business practices and activities.

29 C.F.R. § 18.57(b)(1)(v) provides in pertinent part that for failure to obey a discovery order the Judge may issue an order "[d] ismissing the proceeding in whole or in part." As noted, the Complainant, despite my order to comply with discovery, has refused to provide the requested discovery material or deposition testimony, and further has not stated any objection to the requested discovery.

As Complainant has failed to comply with my October 27, 2017 Order, the undersigned finds that, pursuant to 29 C.F.R. § 18.57(b)(1)(v), that dismissal of Complainant's claim is warranted.

Accordingly, the Respondent's *Motion* is GRANTED, and the Complainant's claim is Dismissed.

**SO ORDERED.**

PETER B. SILVAIN, JR.  
Administrative Law Judge

**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 issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status

of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov).

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. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1982.110(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, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. See 29 C.F.R. § 1982.110(a).

If filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded.

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 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 may include 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. If you e-File your responsive brief, only one copy need be uploaded.

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 you e-File your reply brief, only one copy need be uploaded. 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. §§ 1982.109(e) and 1982.110(a). 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. §§ 1982.110(a) and (b).