

<b>IN THE MATTER OF</b>	*	<b>BEFORE THE COMMISSIONER</b>
<b>COMMERCIAL ROOF COATINGS OF MARYLAND, INC.</b>	*	<b>OF LABOR AND INDUSTRY</b>
	*	<b>MOSH CASE NO. M3373-056-99</b>
	*	<b>OAH NO.DLR-MOSH-41-9900000105</b>
	*	<b>HEARING DETERM.NO.00-3</b>

\* \* \* \* \*

**FINAL DECISION AND ORDER**

This matter arose under the Maryland Occupational Safety and Health Act, Labor and Employment Article, Title Five, *Annotated Code of Maryland*. Following an inspection, the Occupational Safety and Health Unit of the Division of Labor and Industry (“MOSH”) issued citations to Commercial Roof Coatings of Maryland, Inc. (“employer”) alleging violations of MOSH safety standards. The Employer contested the citations. Following an evidentiary hearing, Cornelia Bright Gordon, Hearing Examiner, issued a Determination affirming the citations. The Employer filed a request for review of the Hearing Examiner’s Determination. The Commissioner set the Employer’s request for hearing but, at the appointed time, no one appeared on behalf of the Employer. For the reasons set forth below, the Commissioner has determined to affirm the Hearing Examiner’s deposition of this matter.

**FINDINGS OF FACT**

1. On March 28, 2000, Hearing Examiner Cornelia Bright Gordon issued a Determination affirming citations MOSH issued to the Employer in this case.
2. On April 17, 2000, the Employer, by counsel, R. Stewart Barroll, filed with the Commissioner a request for review of the Hearing Examiner’s Determination. The request did not set forth the grounds upon which the Employer based its request.

3. On April 25, 2000, the Office of the Commissioner sent the Employer's counsel, by certified mail, return receipt requested, a notice setting the matter for hearing on June 7, 2000, at 10:00 a.m., and giving the address of where the hearing would be held. A representative of the Employer's counsel acknowledged receipt of this correspondence on April 27, 2000.

4. On June 7, 2000, counsel for the Employer sent the Commissioner a notice of withdrawal of appearance as counsel in this matter.

5. On June 21, 2000, the Commissioner convened the hearing at 11:15 a.m. The Commissioner waited one hour and fifteen minutes beyond the scheduled time because a representative of the Employer had neither appeared at the scheduled time nor contacted the Office of the Commissioner or MOSH to seek a postponement.

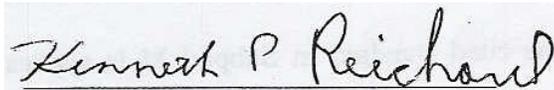
### **CONCLUSIONS OF LAW**

As shown above, the Employer received notice of the hearing on its request for review yet failed to appear to present arguments supporting its request. The notice of hearing clearly advises that an employer's failure to appear for a hearing on its request for review will be deemed a withdrawal of the request and the citations at issue will be deemed final. Moreover, given that the Employer set forth no grounds for reversal of the Hearing Examiner's Determination in its written request for review, this hearing would have been its opportunity to specify those grounds. Having failed to avail itself of this opportunity, the Employer has in fact left the Hearing Examiner's Determination uncontested. Accordingly, the Employer's request for review is deemed withdrawn, and the citations are affirmed as uncontested on review.

**ORDER**

The Commissioner of Labor and Industry hereby **ORDERS**, this 7 day of September, 2000, that:

1. Citation One, Item 1a alleging a **SERIOUS** violation of MOSH Standard 29 C.F.R. 1926.501(b)(10), is **AFFIRMED**, together with the proposed penalty of \$1225.00;
2. Citation One, Item 1b, alleging a repeat, **SERIOUS** violation of MOSH Standard 29 C.F.R. 1926.503(a)(1), is **AFFIRMED**;
3. Citation Two, Item One, alleging an **OTHER THAN SERIOUS** violation of MOSH Standard 29 C.F.R.1926.20(b)(2), is **AFFIRMED**; and
4. Citation Two, Item Two, alleging an **OTHER THAN SERIOUS** violation of MOSH Standard 29 C.F.R. 1926.503(b)(1) is **AFFIRMED**.
5. This Order becomes final 15 days after it issues. Judicial review may be requested by filing a petition for judicial review in the appropriate circuit court. Consult Labor and Employment Article, Section 5-215, *Annotated Code of Maryland*, and Maryland Rules, Title 7, Chapter 200.



Kenneth P. Reichard  
Commissioner of Labor and Industry