

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **10-MSRC-020**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

v.

**ALVIN NOBLE, NOAH VANCE &
D & D MINING, INC.**

RESPONDENTS

**FINAL ORDER
FOR
ALVIN NOBLE, &
D & D MINING, INC.**

Procedural History

This matter comes before the Mine Safety Review Commission ("Commission" or "MSRC") upon a motion for Default at a scheduled hearing for failure of the Respondents Alvin Nobel and D & D Mining, Inc., ("Respondents") to participate in the proceedings. Respondent Noah Vance retained counsel and his hearing is scheduled for January 13, 2011. The Motion for Default was granted for the reasons contained herein with disciplinary measures as outlined below.

The procedural history is summarized in the Complaint filed for the record herein by the Commonwealth of Kentucky, Office of Mine Safety and Licensing ("OMSL") file number 10-MSRC-020. The Complaint contains numerous allegations regarding failing to supervise and operate the mine in a safe manner all of which are in the non-compliances of record herein and

violations of KRS 351.025(l)(a), KRS 351.194(5), KRS 352.390, 805 KAR 8:030, and 805 KAR 8:060.

The Complaint alleged that Respondents were at all relevant times citizens and residents of the Commonwealth of Kentucky holding various certifications regarding their qualifications to mine, and that at all times relevant hereto, Respondents were working in various capacities at the No. 5 mine of D & D Mining Inc., ("the Mine"), an underground coal mine located near Mousie, Knott County, Kentucky.

Jurisdiction for the action was based upon KRS 351.025(1) which requires OMSL to promulgate administrative regulations and enforcement of violations of mine safety laws that place miners in danger of serious injury and KRS 352.390 which provides that MSRC shall revoke, suspend, or probate certificates if it is established in the judgment of the Commission that the holder has become unworthy to hold the certificate by reason of violation of law, failure to comply with the mining laws of the Commonwealth of Kentucky, et cetera.

OMSL further alleged that the unsafe and unlawful conditions and practices at the mine created conditions where miners were placed willfully in imminent danger of death or serious injury, and that Respondents were therefore unworthy to hold mine certificates. These allegations are outlined in detail in the Complaint with copies of the non-compliances attached as exhibits filed for the record herein.

A probable cause hearing was held by MSRC on March 11, 2010, and the Commissioners reviewed the Complaint and found probable cause to believe the Respondents more likely than not had committed the alleged violations of

Kentucky mine safety laws. Subsequently, an Order finding probable cause was entered and a Notice of Administrative Hearing was filed.

The Notice and Order regarding Probable Cause and establishing various pre-hearing deadlines for an Answer, discovery and other pre-trial obligations was served upon Respondents via certified mail and regular mail postage pre-paid. Respondents did not request a pre-hearing conference.

Despite delivery of the Non-Compliances, Closure Orders, the Complaint and Probable Cause determination in different mailings, Respondents Alvin Nobel and D & D Mining, Inc., have not filed an Answer or other responsive pleadings or participated in any way.

At the call of the hearing today counsel for OMSL moved for a default Order citing the fact that Respondents Alvin Nobel and D & D Mining, Inc., failed to file an answer, defend or otherwise respond or participate in this proceeding in any way. OMSL states it has not received any response in regard to a defense on any issue of any type and none is of record with the Commission.

The Commission took the testimony under oath of Inspectors Nathan Moore and Robert Matthews by way of questioning regarding the existence and seriousness of the cited violations. Both inspectors gave testimony regarding the details of each Notice of Noncompliance, Closure order, Condition or Practice of record herein.

After considering the evidence in support of its motion for default the Commission submits the following Findings of Fact, Conclusions of Law, and Final Order.

Findings of Fact

Based upon the evidence admitted, and the record taken as a whole, the Commission finds the following facts as established by a preponderance of the evidence:

1. OMSL is the agency charged with administering the Commonwealth's safety laws as set forth in KRS Chapters 351 and 352 and the Kentucky Administrative Regulations adopted pursuant thereto.
2. Respondents, Alvin Nobel and D & D Mining, Inc., were at all times relevant to this action a residents of Kentucky, at the addresses provided in the Complaint and held the certificates as indicated above issued by the Commonwealth of Kentucky.
3. Respondents were at all relevant times licensees, supervisors or employees at the mine in the capacities as stated above.
4. Service of the Order and Complaint upon Respondents is determined to be perfected pursuant to 825 KAR 1:020 Section 5 (3) and KRS 13B.050.
5. Jurisdiction for this action is founded upon KRS 352.390, which provides that the "Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the Commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, incapacity, abuse of authority, failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause;" on KRS 351.025(1), which requires the Department of Mines and

Minerals (now the Office of Mine Safety and Licensing) to “promulgate administrative regulations...for the imposition and enforcement of sanctions against certified...personnel...whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death;” and on 805 KAR 8:030 (“Criteria for the imposition and enforcement of sanctions against certified miners”).

6. Respondents Alvin Nobel and D & D Mining, Inc., did not file an Answer or any other responsive pleading within the time limit established by the Commission and KRS 13B and have not filed an Answer or other responsive pleading on or before today’s hearing.
7. The factual circumstances detailed in the Complaint, Closure Orders and Notices of Non-Compliance as referenced above are found to be true and correct.

Conclusions of Law

KRS 352.390, “Revocation of Certificates”, provides as follows:

The Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, incapacity, abuse of authority, failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause. The same procedure provided in subsections (10) and (11) of KRS 351.102 shall apply to the certificate holder.

The criteria for the imposition and enforcement of sanctions against certified miners is contained in 805 KAR 8:030, which provides for the enforcement against certified miners whose intentional violation of mine safety laws places miners in imminent danger of serious injury or death. As defined in KRS 352.010(O),

“Imminent danger” means the existence of any condition or practice which could reasonably be expected to cause death or serious physical harm before the condition or practice can be abated.

This Commission’s criteria for imposing penalties against certified miners is set forth in 825 KAR 1:030, as follows:

- (1) Cooperation with investigators;
- (2) The severity of the harm done, such as whether the offense resulted in:
 - (a) Death;
 - (b) Serious physical injury; or
 - (c) The placement of an individual in imminent harm;
- (3) Acceptance of responsibility for actions;
- (4) History of violations;
- (5) Adjudicated violations in other states;
- (6) Mitigating circumstances; and
- (7) Aggravating circumstances. (29 Ky.R. 201; Am. 1272; eff. 11-12-02).

Based upon the evidence admitted, the failure of the Respondents to deny or otherwise defend or present any mitigation and the record taken as a whole, the Commission finds the foregoing facts are established by a preponderance of the evidence. By reason of their role in and responsibilities for the willful violations of Kentucky’s mine safety laws set out in the Complaint of record

herein the Commission finds that the alleged violations of law existed as stated above in the Complaint, Closure Orders and Notices of Non-Compliance and that Respondents Alvin Nobel and D & D Mining, Inc., are jointly and severally responsible for those violations.

Therefore, Respondents are subject to the imposition of sanctions as provided in KRS 351.025(l)(a), KRS 351.194(5), KRS 352.390, 805 KAR 8:030, and 805 KAR 8:060.

Final Order

The General Assembly has declared in KRS 351.101 (1) that the highest priority is the safety of the coal industry's most valuable resource, the miner. And in KRS 351.241(6), the Legislature recognized that the American zeal for work and productivity very frequently causes the miner to give second priority to normal safety measures and precautions.

Coal production is important to this state and high priority must be given to increasing productivity and competitiveness. Mine safety can be improved by enforcement of sanctions against certified personnel whose willful violation of mine safety laws place miners in imminent danger of serious injury or death.

In the case now before the Commission, Respondents demonstrated negligence and disregard as detailed in violations outlined in the Complaint, some but not all of the most serious were; numerous electrical violations such

as improper grounding and splicing, lack of safety switches and covers, nonfunctional lighting, coal float dust accumulation in the power centers, having no way to stop the conveyor belt, malfunctioning methane detector de-energizers on machinery, and many others wherein Alvin Nobel and D & D Mining, Inc., were deemed responsible. These events occurred while conducting or otherwise participating in underground coal mining and thus demonstrated a willful violation of mine safety laws that placed miners in imminent danger of serious injury or death.

IT IS THEREFORE ORDERED, that pursuant to KRS 351.194 (5) and (6); 805 KAR 8:030,

1. That **Alvin Noble's** specialty certifications be permanently revoked, including: drill operator (MN-745-82), electrical worker (MN-146-99), first aid (MN-132-84), gas detector (MN182-82), MET (MN-032-05), shot firer conventional (MN-98-82) and solid blasting (MN-745-82), surface mine foreman (S-796-85), and underground mine foreman (A167-84), in accordance with penalties authorized under KRS Chapters 351 and 352 and the Kentucky Administrative Regulations adopted pursuant thereto.
2. That **Alvin Noble's** remaining certificates be probated for a period of (5) years, in accordance with penalties authorized under KRS Chapters 351 and 352 and the Kentucky Administrative Regulations adopted pursuant thereto.

3. That Respondent **Alvin Noble** be require to attend eight hours of special safety training at the District Office of the Office of Mine Safety and Licensing in accordance with penalties authorized under KRS Chapters 351 and 352 and the Kentucky Administrative Regulations adopted pursuant thereto.
4. That **D & D Mining, Inc.**, license to operate this mine be revoked and a monetary penalty in the amount of five thousand dollars (\$5,000.00) be assessed in accordance with KRS 351.025(2) and 351.194(7).
5. Further after any revocation period of any miner's certifications imposed herein by the Commission have expired that any Respondent shall be required to re-take and pass the applicable Kentucky examination(s) before re-applying to the Kentucky Mining Board to be re-certified.
6. That the final order issued herein by the Commission regarding Respondent Nobel, constitute a "first offense", as that term is defined in 805 KAR 8:0 10, Section 1(5); and that any future adjudication against these Respondents by the Commission — regarding a separate alleged offense — be deemed a "subsequent offense" as defined at 805 KAR 8:0 10, Section 1(13).

7. Further during probation of any certification any Respondent shall be required to comply with all state and federal mine safety laws and regulations and any willful violation of any said laws or regulations may result in OMSL filing a motion with the Commission to revoke the Respondent's remaining certificates;

THIS IS A FINAL AND APPEALABLE ORDER, after considering the evidence presented at the hearing and the pleadings and exhibits of record the Commission renders the forgoing Findings of Fact, Conclusions of Law, and this Final Order. Pursuant to KRS 351.194(8), an appeal of this Final Order shall be filed in the Franklin Circuit Court within thirty (30) days of the entry of this order.

SO ORDERED, this the 14TH day of October, 2010.



HON. JOE F. CHILDERS, CHAIR
MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT, KENTUCKY 40601
(502) 573-0316
FAX (502) 573-0344

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 15th day of October 2010.

Mr. Alvin Noble
P.O. Box 661
McDowell, Kentucky 41647

D & D Mining, Inc.
P.O. Box 460
McDowell, Kentucky 41647

And by regular mail to:

HON. BILLY SHELTON
151 N. EAGLE CR. DR.
STE 310
LEXINGTON, KY 40509

Counsel for Vance

And by messenger mail to:

HON. C. MICHAEL HAINES
OFFICE OF GENERAL COUNSEL
#2 HUDSON HOLLOW
FRANKFORT KY 40601
502/ 564- 2356
FAX 502/ 564 - 9212

And the original shall be kept on file:

BRYON ALAN THOMPSON, GENERAL COUNSEL
MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT, KENTUCKY 40601


BRYON ALAN THOMPSON