

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD
OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

OSHANC NO. 2000-3933
INSPECTION NO. 303636435
CSHO ID NO. P2687

v.

JOEL BETANCOURT dba J A K ROOFING

ORDER

RESPONDENT.

THIS MATTER was heard by the undersigned on May 30, 2001 in Concord, North Carolina. The complainant was represented by Jane Gilchrist, Assistant Attorney General; the respondent was unrepresented and did not appear.

From reviewing the official file and from the statements of counsel, it appears to the undersigned that the respondent received oral and written notice of the hearing date and time. An English-Spanish interpreter employed by complainant spoke with the respondent by telephone and advised him of the hearing date and time. This telephone call was initiated by the respondent as a result of information obtained on respondent's whereabouts from respondent's family and his contractor on this inspection, Sonny Garmon of Custom Roofing. Counsel for the complainant then sent a confirming letter to respondent at his address at 7550 Brancy Street, Kannapolis, North Carolina on May 25, 2001.

After hearing and receiving the evidence and reviewing the file, the undersigned makes the following:

FINDINGS OF FACT

1. The complainant is charged by law with responsibility for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").
2. The respondent is an individual doing business as JAK Roofing and is a roofing contractor employing five persons.
3. On June 6 and 7, 2000, Michael L. Peacock, a safety compliance officer employed by complainant, conducted an inspection of a residential construction jobsite at 12504 Vantage Point Lane in Huntersville, North Carolina.

4. This inspection was conducted pursuant to complainant's construction emphasis program.
5. On the site a two-story house was being constructed. Don Galloway Homes, Inc. was the general contractor.
6. The roofing contractor was Sonny Garmon, dba Custom Homes. Mr. Garmon was cited for violations of the Act as a result of this inspection, which matters are contained in OSHANC 2000-3924.
7. The respondent was a roofing subcontractor to Mr. Garmon. The respondent had a crew of five employees, including himself, on the site installing shingles on the roof of the house.
8. The working areas of the roof were from 12 to 20 feet above the ground. The respondent and his employees were working on these areas. None of these men had fall protection in place while working.
9. During the inspection, the respondent told Mr. Peacock that neither he nor his employees had received any training in fall protection and that he did not have any programs, policies or procedures for fall protection.
10. The respondent's employees were using a portable ladder, which did not extend at least three feet above the upper landing surface.
11. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

Based on the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. The respondent is subject to the provisions of the Act.
3. The respondent has violated the cited provisions of the Act as proposed.
4. The respondent is in default for failure to attend the hearing after receiving sufficient notice.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED as follows:

1. Citation 1, Item 1a is affirmed as a serious violation of 29 CFR 1926.20(b)(2) with a penalty of \$700.00.
2. Citation 1, Item 1b is affirmed as serious violation of 29 CFR 1926.21(b)(2) with a penalty grouped with Item 1a above.
3. Citation 1, Item 1c, is affirmed as serious violation of 29 CFR 1926.20(b)(1) with a penalty grouped with Item 1a above.
4. Citation 1, Item 2a, is affirmed as serious violation of 29 CFR 1926.501(b)(13) with a penalty of \$700.00.
5. Citation 1, Item 2b is affirmed as serious violation of 29 CFR 1926.502(a)(2) with a penalty grouped with Item 2a above.
6. Citation 1, Item 2c is affirmed as serious violation of 29 CFR 1926.502(d) with a penalty grouped with Item 2a above.
7. Citation 1, Item 2d is affirmed as serious violation of 29 CFR 1926.503(a)(1) with a penalty grouped with Item 2a above.
8. Citation 1, Item 2e is affirmed as serious violation of 29 CFR 1926.503(b)(1) with a penalty grouped with Item 2a above.
9. Citation 1, Item 3a is affirmed as serious violation of 29 CFR 1926.1053(b)(1) with a penalty of \$500.00.
10. Citation 1, Item 3b is affirmed as serious violation of 29 CFR 1926.1060(a) with a penalty grouped with Item 3a above.
11. Citation 2, Item 1 is affirmed as nonserious violation of 29 CFR 1926.28(a) with no penalty.
12. The respondent shall pay to the complainant the amount of the penalties within ten (10) days of the date of this Order.
13. All violations not previously abated shall be immediately abated.

This 18th day of June, 2001.

RICHARD M. KOCH
HEARING EXAMINER