

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

**COMMISSIONER OF LABOR OF  
THE STATE OF NORTH CAROLINA,**

**COMPLAINANT,**

**DOCKET NO. OSHANC 2001-3980  
OSHA INSPECTION NO. 303832109  
CSHO ID NO. W8002**

**v.**

**TROGDON'S MASONRY, INC.**

**ORDER**

**RESPONDENT.**

**APPEARANCES:**

Complainant:

Ralf F. Haskell  
Special Deputy Attorney General  
North Carolina Department of Justice

Respondent:

Harold Trogdon  
Trogdon's Masonry Inc.  
Smithfield, North Carolina

**BEFORE:**

Hearing Examiner: Carroll D. Tuttle

**THIS CAUSE** came on for hearing and was heard before the undersigned, Carroll D. Tuttle, Administrative Law Judge for the Safety and Health Review Board of North Carolina, on March 7, 2002, at the YMCA Building, Room 124, 217 West Jones Street, in Raleigh, North Carolina.

The Complainant was present and represented by Mr. Ralf F. Haskell, Special Deputy Attorney General, North Carolina Department of Justice. The Respondent was present and represented by Mr. Harold Trogdon, President of Trogdon's Masonry, Inc.

Based upon the evidence presented at the hearing and with due consideration of the arguments and contentions of all parties, the undersigned makes the following Findings of Fact and Conclusions of Law and enters an Order accordingly.

### **FINDINGS OF FACT**

1. This case was initiated by a Notice of Contest dated February 9, 2001 which followed a citation issued to Respondent by Complainant on December 20, 2000, to enforce the Occupational Safety and Health Act of North Carolina (OSHANC or Act) (N.C.G.S. § 95-126 *et seq.*).
2. Complainant, the North Carolina Department of Labor, by and through its Commissioner, is an agency of the State of North Carolina charged with inspection for, compliance with, and enforcement of the provisions of the Act (N.C.G.S. § 95-133).
3. Respondent, a North Carolina Corporation with its principle office located at 2125-A Swift Creek Road, Smithfield, North Carolina, is subject to the provisions of the Act (N.C.G.S. § 95-128) and is an employer within the meaning of N.C.G.S. § 95-127(9).
4. The undersigned has jurisdiction over the case (N.C.G.S. § 95-135).
5. On December 12, 2000, Brent Webber, Health Compliance Officer (HCO), and Robert Ibarra, Safety Compliance Officer (SCO), employed by the North Carolina Department of Labor, inspected Respondent's work site located at 508 New Hope Road, in Raleigh, North Carolina, hereinafter referred to as "the site." Officers Webber and Ibarra properly entered onto Respondent's site and properly conducted the inspection pursuant to a referral made as a result of their plain view observation of employees working on a scaffold platform approximately 18 feet above ground level without standard railings or other appropriate fall protection. The inspection was also part of a valid special emphasis construction program.
6. At the time of the inspection the site was a multi-employer construction work site. Saieed Construction Systems Corporation (SCS) was the general contractor and Respondent was the primary masonry subcontractor performing masonry work. John Royal, T/A as R & R Masonry (RRM), was a masonry subcontractor hired by Respondent to assist Respondent in performing the masonry construction work at the

site. Respondent had overall responsibility for the masonry work performed and the masonry work site, including the quality of the work performed and the responsibility for the safety and health of all masonry employees at the site.

7. On December 12, 2000 HCO Webber and CSO Ibarra were returning to their office on the public highway (New Hope Church Road) in Raleigh when they noticed employees working from a scaffold which appeared to be in violation of OSH safety regulations. As a result, HCO Webber and CSO Ibarra pulled onto the construction site parking lot, took photographs, observed the employees climbing down from the scaffold, and walked over to the employees and asked who was in charge. The employees pointed out an individual to them. HCO Webber and CSO Ibarra then walked over to the individual, who identified himself as Ron Matthews, foreman for Trogden Masonry.

8. Prior to beginning an inspection, HCO Webber and SCO Ibarra conducted an opening conference with Mr. Matthews. They also conducted an opening conference with Barry Fogal, Superintendent of Saieed Construction Systems Corporation, and John Royal of R & R Masonry. Permission was granted to conduct an OSH inspection..

9. During the inspection, HCO Webber and SCO Ibarra took additional photographs, interviewed witnesses, and made notes.

10. On December 20, 2000, as a result of the inspection, Complainant issued to Respondent Citation Number One, Item 1a alleging a serious violation of 29 CFR 1926.20(b)(2), Item 1b, alleging a serious violation of 29 CFR 1926.454(a), and Item 1c, alleging a serious violation of 29 CFR 1926.454(b). The items were grouped with a proposed penalty of \$100.00.

11. Prior to and at the time of the inspection employees of R & R Masonry (RRM) were performing concrete block masonry veneer work over the steel frame of a building under construction at the site.

12. The employees were working on the platform of a fabricated frame scaffold system. The platform upon which the employees were standing as they performed masonry work was approximately 18 feet above the adjacent ground level.

13. The scaffold upon which the employees were working did not have standard rails on the top working surface, and no other form of fall protection was provided; three of the four sections of the scaffold had cross braces, but did not have a midrail in place; one of the four sections of the scaffold had neither a cross brace nor a midrail in place; there were no toe boards in place on surfaces from which masonry work was being

performed; concrete block and mortar boats were being stored on the working surfaces of the scaffold; and, employees routinely passed below the base of the scaffold. In absence of the toe boards, a "barricade hazard area" was not established to keep employees out of the area where debris could fall. Additionally, ladders were not used by employees while ascending and descending the scaffold. Instead, they used the cross-braces of the scaffold, which is forbidden, and the fabricated frame supports which did not meet the requirements for a ladder (e.g., the rungs were only six inches wide and unevenly spaced).

14. The scaffold had been erected and used in this condition for approximately one week.

15. The scaffold had not been built under the direction of a competent person trained in all aspects of scaffold erection safety.

16. Respondent had masonry foreman at the jobsite who possessed the knowledge and skills necessary to do competent person inspections of scaffolds and who, in fact, performed these inspections for scaffolds built by his own company.

17. R & R Masonry (RRM) did not have a person at the worksite who possessed the knowledge and skills necessary to do competent person inspections of scaffolds.

18. Respondent was aware, or should have been aware, that R & R Masonry (RRM) did not have an employee on site who possessed the knowledge and skills necessary to do competent person inspections of scaffolds.

19. Respondent did not perform a competent person inspection of the subject scaffold at any time during its construction and use.

20. Respondent knew, or should have known, that the subject scaffold did not meet the requirements of subpart L of 29 CFR § 1926.450, *etc.*, the scaffolding standards.

21. Respondent knew, or should have known, that employees of R & R Masonry (RRM) were working on the subject scaffold at heights of up to 18 feet, which scaffold, as heretofore stated, did not meet the requirements of safety or construction set forth and as required by the scaffolding standards.

22. Not all employees of R & R Masonry (RRM) who worked from scaffolds at the site had been trained by a person qualified in the subject matter to recognize hazards associated with the type scaffold being used, and to understand the procedures to control those hazards as listed in 29 CFR § 1926.454(a)(1)-(5).

23. Respondent did not perform a competent person inspection as the subject scaffold was being erected, and did not provide for frequent and regular inspections of the job site, including the subject scaffold, materials and equipment.

24. As a result of Respondent's failure to provide frequent and regular inspections of the scaffold and work site; to assure that each employee working on the scaffold was trained by a person qualified in the subject matter (scaffold erection and safety) to recognize the hazards associated with the type of scaffold being used, and to understand the procedures to control or minimize those hazards as listed in 29 CFR § 1926.454(a)(1)-(5); and, to ensure that each employee who was involved in erecting, operating, maintaining or inspecting the scaffold was trained by a competent person to recognize any hazards associated with the work in question, R & R's employees working on the scaffold were exposed to the possibility of an accident such as falling, or being struck by a falling object, which would likely result in serious bodily injury.

25. By reason of its supervisory capacity as primary subcontractor responsible for performing the masonry work, including the work of its subcontractor, R & R Masonry, and the presence of its foreman at the site, Respondent could have reasonably seen, prevented or detected and abated the cited hazards. Respondent, therefore, is responsible under the multi-employer work site for the violations pursuant to the general contractor liability doctrine. *See, e.g. Commissioner v. Romeo Guest Associates, Inc.*, Docket No. 96-3513.

26. Respondent stipulated that the proposed penalty of \$100, the minimum penalty which can be assessed for a serious violation, has been properly calculated in accordance with the field operations manual.

Based upon the foregoing Findings of Fact, the undersigned Hearing Examiner concludes as a matter of law the following:

### **CONCLUSIONS OF LAW**

1. The foregoing findings of fact are incorporated by reference hereunder as Conclusions of Law to the extent necessary to give effect to the provisions of this Order;
2. The Review Board has jurisdiction of this case and the parties are properly before the Board;
3. Respondent is subject to the provisions of the Act (N.C.G.S. 95-128) and is an employer within the meaning of N.C.G.S. 95-127(9).

4. Respondent violated 29 CFR § 1926.20(b)(2) in that it failed to provide for frequent and regular inspections of the scaffold and work site.

5. Respondent violated 29 CFR §1926.454(a) in that it failed to ensure that each employee performing work while on the scaffold was properly trained by a qualified person to recognize hazards associated with the type of scaffolding being used, and to understand the procedures to control or minimize those hazards as listed in 454(a)(1)-(5).

6. Respondent violated 29 CFR §1926.454(b) in that it failed to have each person involved in erecting, operating, maintaining or inspecting the scaffold trained by a competent person to recognize any hazards associated with the work in question as required by the standard.

7. The violations were serious in that they could result in an accident which would likely result in serious bodily injury.

8. The proposed penalty of \$100 was calculated in accordance with the Department of Labor's field operations manual, and is appropriate.

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that

1. Citation One, Item 1a, alleging a serious violation of 29 CFR 1926.20(b)(2) is hereby affirmed; and,

2. Citation One, Item 1b, alleging a serious violation of 29 CFR 1926.454(a) is hereby affirmed; and,

3. Citation One, Item 1c, alleging a serious violation of 29 CFR 1926.454(b) is hereby affirmed; and,

4. The proposed penalty of \$100.00 is affirmed and shall be paid within ten (10) days of the filing date of this Order.

This the 17<sup>th</sup> day of June, 2002.

---

Carroll D. Tuttle  
Administrative Law Judge Presiding