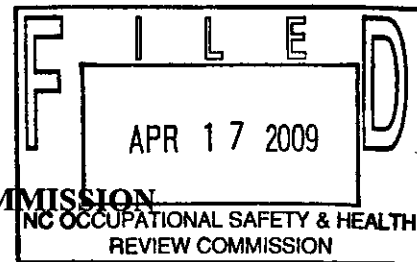


BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

Complainant,

v.

CHARLES SMITH, d/b/a SMITH & SONS
ROOFING
and its successors,

Respondent.

) DOCKET NO.: OSHANC 2008-4785

) INSPECTION NO.: 312116189

) CSHO ID.: S8606

APPEARANCES: Complainant:

Jane T. Hautin
Special Deputy Attorney General
North Carolina Department of Justice

Respondent:

Charles Smith
Charles Smith, d/b/a Smith & Sons Roofing

BEFORE:

Hearing Examiner:

Carroll D. Tuttle

THIS MATTER came on for consideration by the undersigned pursuant to a Notice of Hearing dated March 2, 2009. The hearing was held in Lenoir, North Carolina on April 7, 2009. Complainant was represented by Special Deputy Attorney General Jane T. Hautin. Respondent was represented by Charles Smith.

Counsel for the Complainant made an oral motion for summary judgment at the hearing pursuant to Rule .0308(a) of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission and Rule 56 of the North Carolina Rules of Civil Procedure. Based upon the evidence presented at the hearing and with due consideration of arguments and contentions of counsel for the Complainant and of the pro se Respondent, the undersigned makes the following

DATABASE

4/17/09 mld

Findings of Fact and Conclusions of Law and enters an Order accordingly:

FINDINGS OF UNDISPUTED FACT

1. This case was initiated by a Notice of Contest which followed a citation issued to enforce the Occupational Safety and Health Act of North Carolina (hereinafter referred to as "OSHANC").

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 OSHANC.

3. Respondent, a sole proprietorship, is a roofing business and, as an employer, is subject to the provisions of OSHANC.

5. Beginning on April 16, 2008, Misty Branch, a Safety Compliance Officer for Complainant's Occupational Safety and Health Division, inspected the Respondent's worksite at Berea Baptist Church at 1392 Highway 70 in Connelly Springs, Caldwell County, North Carolina (hereinafter referred to as the "site").

6. As a result of the inspection, on April 25, 2008, a citation was issued to Respondent alleging a Repeat Serious Violation of 23 CFR 1926.501(b)(13) and imposing a \$2000.00 penalty for same upon the Respondent.

7. Respondent timely filed its Notice of Contest, and this Commission has jurisdiction over the subject matter and the parties to this action.

8. On August 18, 2008, Respondent filed with the North Carolina Occupational Safety and Health Review Commission its Statement of Position, which included a written statement by Charles Smith on behalf of the Respondent. In the latter, Charles Smith stated on behalf of the

Respondent that he had been fined once before for a violation of "this" (i.e., the fall protection standard set forth in 29 CFR 1926.501(b)(13)) because he did not know about the harness requirement, so he went and bought three. Mr. Smith further stated on behalf of Respondent that at the time of the inspection, they were at the job site working on the roof with the harnesses on, but that they had to take the rope off to be able to reach the bundles of shingles. Mr. Smith also stated on behalf of the Respondent that the roof of the church was about a 5 pitch.

9. The Respondent previously was issued a citation for a Serious violation of 29 CFR 1926.501(b)(13) and assessed a \$ 100.00 penalty therefor on March 17, 2008 as a result of inspection number 310981865, which took place on March 11, 2008. The Respondent did not contest the citation, and the case file was closed on April 2, 2008.

CONCLUSIONS OF LAW

1. This action was properly brought, and the undersigned has jurisdiction to hear this matter.

2. There are no disputed issues of material fact in this action, and the Complaint is entitled to judgment as a matter of law.

3. The Complainant's issuance of a citation to the Respondent for a Repeat Serious violation of 29 CFR 1926.501(b)(13), and its imposition of a \$2000.00 penalty upon the Respondent for said violation, were proper, and are supported by the undisputed facts and the law.

4. The Complainant has met its burden of proof of a Repeat Serious violation of 29 CFR 1926.501(b)(13), as required by Rule .0514(a) of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission, by proving by a preponderance of the evidence that the Respondent's employees were working on the church roof at the jobsite without properly

attached fall protection equipment, as described in the citation item, and that the Respondent had previously been cited for a serious, and substantially similar, violation of the same standard just over a month earlier.

5. There are no abatements at issue in this proceeding.

ORDER

1. The Complainant's Motion for Summary Judgment is hereby GRANTED.
2. Citation 1, Item 1 is affirmed as a Repeat Serious violation of 29 CFR 1926.501(b)(13) with a penalty of \$2,000.00.
3. The \$2,000.00 penalty shall be paid within thirty (30) days of the date of this Order.

This is the 15th day of April, 2009.



Carroll D. Tuttle
Administrative Law Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

CHARLES E. SMITH
SMITH & SONS ROOFING
2965 BEREA CHURCH ROAD
CONNELLY SPRINGS NC 28612

by depositing same the United States Mail, Certified Mail and regular mail, postage prepaid at Raleigh, North Carolina, and upon:

JANE HAUTIN
NC DEPARTMENT OF JUSTICE
Labor Section
P O Box 629
Raleigh NC 27602-0629


by depositing a copy of the same in the United States Mail, First Class;

NC DEPARTMENT OF LABOR
Legal Affairs Division
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 21st DAY OF April, 2009.

OSCAR A. KELLER, JR.
Chairman



Nancy Swaney
Administrative Assistant,
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
(919) 733-3589 FAX: (919) 733-3020