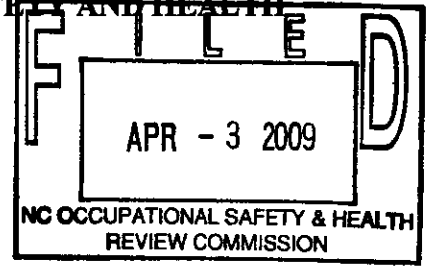


BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR )  
THE STATE OF NORTH CAROLINA )

COMPLAINANT, )

v. )

RED CARPET CINEMAS, d/b/a )  
EASTLAND MALL CINEMAS, )

RESPONDENT. )

ORDER

OSHANC NO. 2008-4814  
INSPECTION NO. 312426604  
CSHO ID NO. T4075

THIS MATTER was heard by the undersigned on January 14, 2009 in Charlotte, North Carolina.

The complainant was represented by Jane T. Hautin, Special Deputy Attorney General; the respondent was unrepresented and did not appear, despite being duly notified of the hearing date, time and place by the Commission and the complainant.

Because the respondent was not present for the hearing, the complainant submitted a certified copy of the investigative file in this matter, along with an affidavit of complainant's counsel concerning her contacts with the respondent concerning attendance at and conduct of the hearing. Absent objection from the respondent, these documents were admitted into evidence. See, Commissioner v Eagle A, Inc. OSHANC No. 2002-4200 (2004).

After consideration of the evidence presented, the undersigned makes the following:

**FINDINGS OF FACT**

1. The complainant as Commissioner of Labor is charged with the responsibility for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").

2. The respondent Red Carpet Cinemas is an entity of undetermined status with its principal place of business in Salt Lake City, Utah. It did business in North Carolina as Eastland Mall Cinemas.

3. The respondent managed the motion picture theaters at Eastland Mall in Charlotte, North Carolina pursuant to a lease/management agreement with Glimcher Properties, LP, Manager of Charlotte Eastland Mall.

4. Eastland Mall Cinemas is located at 5432 Central Avenue, in Charlotte, North Carolina and consists of three theaters, a kitchen and upstairs projection booth comprising approximately 30,000 square feet of space. The respondent employed ten employees at this location.

5. The lease/management agreement for the theaters requires the respondent to maintain all equipment in the theaters and to be responsible for the expense of repairing any electrical, plumbing and HVAC equipment.

6. On July 2, 2008, complainant's compliance officers conducted a complaint inspection of respondent's facility.

7. During the course of the inspection, the officers discovered that the electrical panel box in the projection booth was missing its cover.

8. This electrical panel contained 120 volt energized electrical circuits.

9. Employees working in the projection booth were exposed to those energized circuits.

10. The complainant's officers also determined that the respondent had not performed an assessment of the projection booth to determine the existence of any hazards to employees which might require personal protective equipment.

11. The energized electrical panel box in the projection booth was a hazard to which employees of respondent could be or were exposed.

12. These conditions were confirmed by interviews with respondent's employees.

13. These hazards created the possibility of an accident the substantially probable result of which would be death or serious injury to respondent's employees.

14. The proposed penalty was computed in accordance with the Field Operation's 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 violated the provisions of 29 CFR 1910.305(b)(2) by allowing employees to be exposed to the energized uncovered electrical panel box.
4. The respondent violated the provisions of 29 CFR 1910.132(d)(1) by failing to conduct a workplace assessment of potential hazards on the respondent's projection booth.
5. Both of these violations are serious violations of the Act.

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 1910.305(b)(2) with a penalty of \$750.00.
2. Citation 1, Item b is affirmed as a serious violation of 29 CFR 1910.132(d)(1), with a penalty combined with that in Citation 1, Item 1a.
3. This penalty shall be paid within twenty (20) days of the filing date of this Order.
4. All violations not previously abated shall be immediately abated.

This 3<sup>rd</sup> day of March, 2009.

  
\_\_\_\_\_  
RICHARD M. KOCH  
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

JOHN LACAZE  
EASTLAND MALL CINEMAS  
341 S. MAIN STREET SUITE 302  
SALT LAKE CITY UT 84111

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

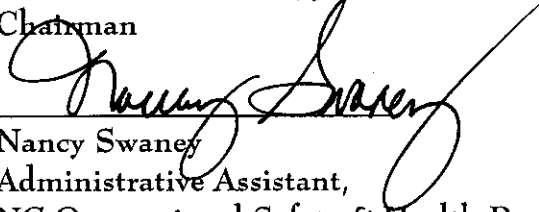
by depositing a copy of the same in the United States Mail, First Class;

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 6<sup>th</sup> 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