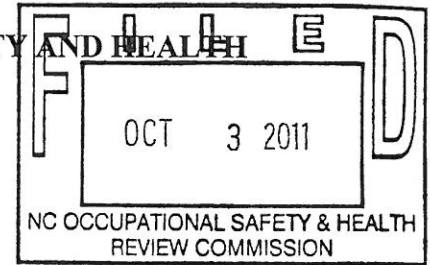


BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
H&A ENTERPRISE CO., INC.)
)
)
RESPONDENT.)
_____)

ORDER

OSHANC NO. 2010-5048
INSPECTION NO. 314460288
CSHO ID NO. N5659

THIS MATTER was scheduled for hearing before the undersigned and heard on September 14, 2011 in Charlotte, North Carolina.

The complainant is represented by Newton G. Pritchett, Jr. Assistant Attorney General; the respondent has been involved in this matter primarily through Will Vandiver, its vice president.

When the matter was called for hearing, the complainant submitted an affidavit from Dawn Jarman, the complainant's safety compliance officer who conducted the inspection of respondent's jobsite that resulted in the citation items. Attached to the affidavit and incorporated into it is the complainant's case file of the inspection. The respondent did not appear and was not represented. The affidavit of Dawn Jarman was received into evidence without objection. There was no evidence presented by the respondent.

After receiving the evidence the undersigned makes the following

FINDINGS OF FACT

1. The complainant as Commissioner of Labor of the State of North Carolina is charged by law with enforcement of compliance with the Occupational Safety and Health Act of North Carolina (the "Act").
2. The respondent is a corporation with a place of business in Union County, North Carolina.
3. On April 22, 2010, complainant's Safety Compliance Officer Dawn Jarman conducted a referral inspection at a construction site know as the Arwen Vista Apartments in Charlotte, North Carolina.

4. Gateway Communities. LLC was the general contractor on this project and the respondent was the framing subcontractor for the project.

5. Upon arrival, SCO Jarman observed employees of respondent on a pump jack scaffold. The scaffolding had no end rails and the employees were not tied into the fall protection system.

6. Both sets of scaffolding measured 45 feet in height and were not secured to the wall of the building. Triangular braces were the only material used to secure the scaffolding, which was secured at the roof.

7. The respondent has seven employees, of which one was on the scaffolding.

8. The respondent has a safety program and has no serious violations of the Act within the last 3 years.

9. The respondent was cooperative with the complainant in the course of the inspection.

10. The height of the scaffold at which respondent's employee was working was 20 feet about the ground, which was soft dirt.

11. At the time of the inspection, the respondents' employees were installing Nichiboard.

12. The respondent's supervisor was on the site of the project and could observe the condition of the scaffolding and the employees working on the scaffolding, but there was no indication that the supervisor recognized the above conditions as a hazard.

13. The proposed penalties were calculated pursuant to the complainant's 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 complainant has proved by the greater weight of the evidence that guardrails were not installed along all open sides of the scaffold in violation of 29 CFR 1926.451 (g)(4)(i).

4. The complainant has proved by the greater weight of the evidence that the poles for the pump jack scaffold were not secured to the structure by rigid triangular bracing or equivalent at the top and bottom and other necessary points, in violation of 29 CFR 1926.452 (j)(2).

5. The complainant has proved by the greater weight of the evidence that the respondent failed to ensure that each employee erecting or operating a scaffold was trained by a competent person to recognize hazards involving scaffolds, in violation of 29 CFR 1926.454 (b).

6. The complainant has proved by the greater weight of the evidence that the respondent's employees who were secured to a vertical lifeline were secured in such a way that the fall was not limited to 6 feet or less, in violation of 29 CFR 1926.502 (d)(16)(iii).

7. Each of these violations would be likely to cause death or serious injury to one or more of respondent's employees.

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

1. Citation 1, Item 1 is affirmed as a serious violation of 29 CFR 1926.451 (g)(4)(i) with a penalty of \$700.00.

2. Citation 1, Item 2 is affirmed as a serious violation of 29 CFR 1926.452 (j)(2) with a penalty of \$700.00.

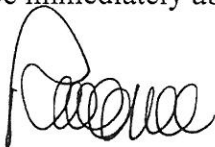
3. Citation 1, Item 3 is affirmed as a serious violation of 29 CFR 1926.454 (b) with a penalty of \$700.00.

4. Citation 1, Item 4 is affirmed as a serious violation of 29 CFR 1926.502(d)(16)(iii) with a penalty of \$700.00.

5. All penalties shall be paid within ten (10) days of the filing date of this Order; and

6. All violations not previously abated shall be immediately abated.

This 28th day of September, 2011.



RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

WILL VANDIVER
VICE PRESIDENT
H&A ENTERPRISE CO INC
4801 E INDEPENDENCE BLVD
SUITE 909
CHARLOTTE NC 28212

NEWTON PRITCHETT
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 NC 27699-1101

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

THIS THE 4th DAY OF October 2011.

OSCAR A. KELLER, JR.
CHAIRMAN


Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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