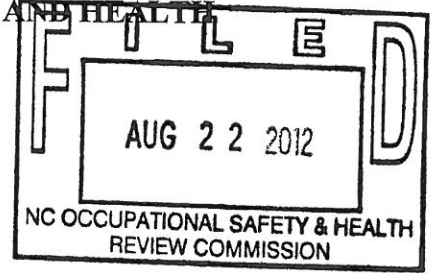


BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR )  
THE STATE OF NORTH CAROLINA )  
 )  
COMPLAINANT, )  
 )  
v. )  
 )  
AV GENERAL CONTRACTORS, INC. )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

ORDER

OSHANC NO. 2011-5217  
INSPECTION NO. 315511345  
CSHO ID NO. Q8086

THIS MATTER was heard by the undersigned on August 8, 2012 in Charlotte, North Carolina.

The complainant is represented by Linda Kimbell, Assistant 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 compliance officer. 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 AV General Contractors, Inc. is a North Carolina corporation with its principal place of business in Union County, North Carolina.

3. On June 21, 2011, Compliance Safety and Health Officer Kay Knezevich observed a residential construction job site while driving along Marvin Road in Mecklenburg County, North Carolina.

4. From the public road CSHO Knezevich observed workers on the roof of a one-story residence working without fall protection.

5. CSHO Knezevich drove to the jobsite and presented her credentials to Fidel Diaz, job foreman for respondent. Mr. Diaz contacted Jose Luis Viveros-Lopez, the president of the respondent, who arrived at the jobsite shortly after, while CSHO Knezevich conducted her inspection. Both men consented to the inspection.

6. CSHO Knezevich learned that the respondent was re-roofing a house with a street address of 10015 Southampton Commons Drive in Charlotte, North Carolina. The general contractor for the project was D&W, Inc., which had subcontracted the roof job to the respondent.

7. The re-roofing job consisted of removing the existing shingles and installing new shingles. The respondent had six employees on the site, of which five were on the roof at the time CSHO Knezevich observed them.

8. The roof contained several slopes from the peaks to the eaves. At the eave the roof was 10.5 feet above the ground. The peaks were approximately 15 feet above the ground. The pitch was 8:12.

9. None of the five employees working on the roof had any type of fall protection. When Ms. Knezevich inquired of Mr. Diaz about fall protection, he indicated that it was in respondent's vehicle on site. A search of the vehicle by respondent's employees yielded only one harness, one rope and one anchor.

10. Mr. Viveros-Lopez advised CSHO Knezevich that the employees had been using safety harnesses the preceding day. Interviews of the employees indicated that they had not used the harnesses the day before, which was the first day of the job.

11. CSHO Knezevich took photographs of the respondent's employees working on the roof without fall protection. The photographs were received in evidence.

12. The five employees of respondent who were exposed to a fall hazard while working on the roof were Manuel Garcia, Jose Rivera, Cruz Hernandez, Jose Rodriguez and Fidel Diaz.

13. The area immediately surrounding the residence below the roof consisted of vegetation, concrete porches and a concrete driveway.

14. The conditions of employees working on a roof between 10.5 feet and 15 feet above the ground without fall protection created the possibility of an accident the

substantially probable result of which would be death or serious injury to one or more employees.

15. The proposed penalty was computed in accordance with the complainant's Operation's Manual.

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

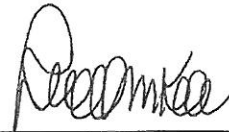
### CONCLUSIONS OF LAW

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 1926.501(b)(13) by allowing employees to engage in residential construction activities 6 feet or more above lower levels without protection by a guardrail system, safety net system or a personal fall arrest system.
4. This is a serious violation of the Act.

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 1926.501(b)(13) with a penalty of \$1,400.00.
2. This penalty shall be paid within twenty (20) days of the filing date of this Order.
3. All violations not previously abated shall be immediately abated.

This 15<sup>th</sup> day of August, 2012.



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RICHARD M. KOCH  
HEARING EXAMINER

**CERTIFICATE OF SERVICE**

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

JOSE LUIS VIVERES LOPEZ  
PRESIDENT  
AV GENERAL CONTRACTORS INC  
PO BOX 525  
MONROE NC 28111

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

JOSE LUIS VIVERES LOPEZ  
PRESIDENT  
AV GENERAL CONTRACTORS INC  
PO BOX 525  
MONROE NC 28111

LINDA KIMBELL  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
P O BOX 629  
RALEIGH NC 27602-0629

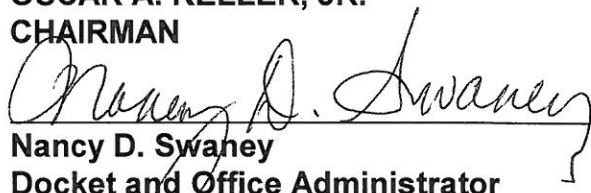
by depositing a copy of the same in the United States Mail, First Class;

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 22<sup>nd</sup> DAY OF August 2012.

OSCAR A. KELLER, JR.  
CHAIRMAN

  
Nancy D. Swaney  
Docket and Office Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
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