

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
BRAVO CARPENTERS, INC.)
)
RESPONDENT.)
_____)

ORDER

OSHANC NO. 2012-5377
INSPECTION NO. 316493204
CSHO ID NO. 04989

THIS MATTER was heard by the undersigned on July 10, 2013 in Charlotte, North Carolina.

The complainant was represented by Melissa Taylor, Assistant Attorney General; the respondent appeared through its owner Luis Bravo.

Mr. Bravo had previously indicated to the Safety and Health Review Commission office and/or the complainant that he required a Spanish interpreter for this hearing. Monica Bew, a certified Spanish interpreter, was duly sworn by the court reporter to provide those services and provided interpreting services to Mr. Bravo throughout the hearing. In addition, at times Mr. Bravo communicated in English during the course of the hearing, indicating an understanding of the proceedings in English.

At the outset of the hearing, the parties advised the undersigned that they had entered into a written set of stipulations regarding the respondent's position on the citations. The stipulations, which are attached to this Order, reflect that the respondent agrees that it is not contesting the validity of the citation items, but only the amount of the penalties. Thus, the hearing only concerned the amount of the penalties, how they were calculated and the respondent's reasons for seeking a change or reduction on the penalties.

After hearing and receiving the evidence and the contentions/arguments of the parties, the undersigned makes the following

FINDINGS OF FACT

1. The complainant is responsible by law for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").
2. The respondent is a North Carolina corporation located in Charlotte, North Carolina. It generally employs six persons.
3. On April 5, 2012, complainant's safety compliance officer Thomas Hardesty conducted a partial inspection of a residential roof replacement job being performed by respondent at 1901 Sunday Silence Road in Waxhaw, North Carolina.
4. Mr. Hardesty could observe the work on the project from the public right of way. He took multiple photographs of the respondent's workers performing the roofing work. These photographs, which were admitted into evidence, showed multiple violations of the Act, which violations formed the bases for the citation items.
5. The complainant also offered evidence that the penalty for each citation was calculated in accordance with its Field Operations Manual. Mr. Bravo acknowledged that he did not contend that the penalties were not correctly calculated pursuant to the Field Operations Manual.
6. For each of the citation items, the respondent was given a 60% credit for size and a 10% credit for cooperation. The respondent had no written safety and health programs at that time. In addition, the complainant's records indicated that the respondent had prior serious violations from an inspection in 2010 on Pitts School Road in Concord, North Carolina.
7. Mr. Bravo indicated some familiarity with the 2010 citation items but the evidence does not reflect any final disposition or resolution of these citation items. But for the existence of these citation items, the respondent would have gotten a 10% reduction for history.
8. The respondent's principal business was framing construction, but on this Sunday Silence Road job it had subcontracted with Morrissey Custom Homes to do this roofing work. The respondent was paid \$3,600.00 for the work, from which amount Morrissey Custom Homes deducted \$1,400.00 because Morrissey was separately cited by complainant for violations of the Act based on the work being performed by the respondent.
9. Subsequent to the inspection, the respondent caused some of its employees to take OSHA-approved safety classes and instituted some written workplace safety programs, including one for fall protection.

10. Through their post-inspection actions, the respondent and Mr. Bravo have shown a willingness to attempt to comply with the provisions of the Act.

11. Mr. Bravo testified that the respondent was struggling financially and that it had lost money on the Sunday Silence job, but provided no documentation in corroboration of the testimony.

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 various provisions of the Act as indicated in the citation items and such violations were serious violations of the Act.

4. The respondent has provided evidence that it has suffered adverse financial consequences as a result of this inspection, and since the inspection has shown a spirit of cooperation and compliance with the Act, when the respondent could easily ignore the proscription of the Act with minimal or no consequences.

5. For these reasons, the respondent is entitled to a reduction in the penalties imposed in this matter. See, e.g. Brooks v Alex Shugart, 3 NCOSHD 642 (RB 1989) and Brooks v Henry McKee & Sons Company, 3 NCOSHD 525 (1989).

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 1926.100(a) with a penalty of \$450.00.

2. Citation 1, Item 2 is affirmed as a serious violation of 29 CFR 1926.102(l) with a penalty of \$225.00.

3. Citation 1, Item 3 is affirmed as a serious violation of 29 CFR 1926.502 (d)(17) with a penalty of \$1,050.00.

4. Citation 1, Item 4 is affirmed as a serious violation of 29 CFR 1926.503 (a)(1) with a penalty of \$1,050.00.

5. Citation 1, Item 5a is affirmed as a serious violation of 29 CFR 1926.1053 (b)(5)(i) with a penalty of \$1,050.00.

6. Citation 1, Item 5b is affirmed as a serious violation of 29 CFR 1926.1053 (b)(1) with a penalty grouped with that of Item 5a, above.

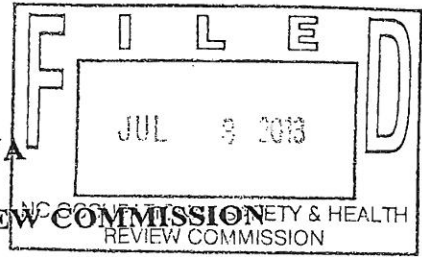
7. The revised amount of such penalties shall be paid within twenty (20) days of the date of this Order.

8. All violations not already abated shall be immediately abated.

This 12th day of August, 2013.



RICHARD M. KOCH
HEARING EXAMINER



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

COMMISSIONER OF LABOR OF THE)
 STATE OF NORTH CAROLINA)
)
 COMPLAINANT,)
)
 v.)
)
 BRAVO CARPENTERS INC.)
 and its successors)
)
 RESPONDENT.)
)
)

DOCKET NO.: OSHANC 2012-5377
 INSPECTION NUMBER: 316493204
 CSHO ID: 04989

STIPULATIONS

The parties to this action hereby agree and stipulate to the following matters at issue herein:

1. This Court has jurisdiction over the parties and the subject matter of this hearing.
2. Complainant is an agency of the State of North Carolina charged with inspection for compliance with and enforcement of the Occupational Safety and Health Act of North Carolina, the Act.
3. Respondent, Bravo Carpenters, Inc., is a NC corporations duly organized under the laws of the State of North Carolina.
3. Compliance Safety and Health Officer Tom Hardesty began this inspection on April 5, 2012.
4. The site of the inspection was 9101 Sunday Silence Road, Waxhaw, North Carolina.
5. The job assignment was re-roofing the residence at 9101 Sunday Silence Road.
6. Respondent's employees were exposed to a fall hazard of 17 to 23 feet.

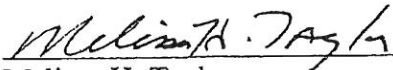
DATABASE

7. After the inspection by Officer Hardesty, Complainant on May 15, 2012, issued Respondent a citation alleging the following violations with corresponding penalties:
 - Citation 1, Item 1 - 1926.100(a) - with a penalty of \$900.00
 - Citation 1, Item 2 - 1926.102(a)(1) - with a penalty of \$450.00
 - Citation 1, Item 3 - 1926.502(d)(17) - with a penalty of \$2,100.00
 - Citation 1, Item 4 - 1926.503(a)(1) - with a penalty of \$2,100.00
 - Citation 1, Item 5(a) - 1926.1053(b)(5)(i) - with a penalty of \$2,100.00
 - Citation 1, Item 5(b) - 1926.1053(b)(1) - grouped with Item 5(a)
8. Respondent, Bravo Carpenters, Inc., agrees that he is not contesting or challenging the citations to the violations.
9. Respondent, Bravo Carpenters, Inc., agrees that he is **only** contesting or challenging the penalty amount assessed in the citation issued on May 17, 2012.
10. By way of this Stipulation, Respondent, Bravo Carpenters, Inc., is requesting a hearing **only** on the amount of the penalty to be paid.

This the 5th day of JULY, 2013.

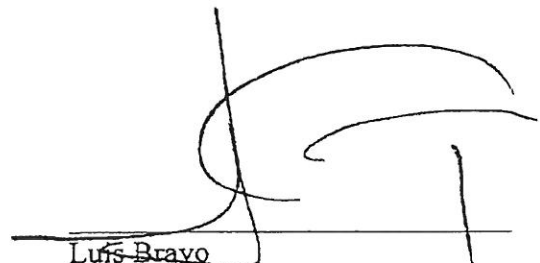
Respectfully Submitted,

ROY COOPER
Attorney General



 Melissa H. Taylor
 Assistant Attorney General
 N.C. Department of Justice
 Labor Section
 Post Office Box 629
 Raleigh, North Carolina 27602
 Telephone No. (919) 716-6680

ATTORNEY FOR COMPLAINANT



 Luis Bravo
 Bravo Carpenters, Inc.
 8909 Carmel Lane Apt. 204
 Charlotte, NC 28217
 (704) 634-0792

FOR RESPONDENT

CERTIFICATE OF SERVICE

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

LUIS BRAVO
BRAVO CARPENTERS INC
6604 E WT HARRIS BLVD
SUITE C2
CHARLOTTE NC 28215

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

MELISSA TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH NC 27602-0629

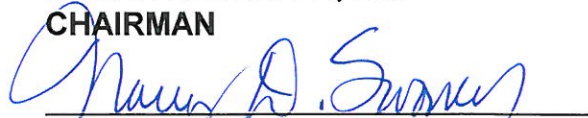
by depositing a copy of the same in the United States Mail, First Class;

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 16th DAY OF August 2013.

OSCAR A. KELLER, JR.
CHAIRMAN



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