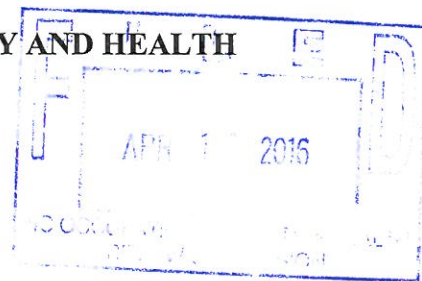


**BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION**

RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
J C MASONRY CONSTRUCTION CORP.,)
)
RESPONDENT.)
_____)

ORDER

OSHANC NO. 2015-5737
INSPECTION NO. 318000494
CSHO ID NO. Q8086

THIS MATTER was heard by the undersigned on April 6, 2016 in Charlotte, North Carolina. The matter was called for hearing at approximately 10:00 am.

The complainant was present through Paul M. Sullivan, District Supervisor and Kay Knezevich, Safety Compliance Officer. The complainant was represented by Jason Rosser, Assistant Attorney General. The respondent was present and represented by its owner and president, Juan Javier Carmona.

The file reflects that the respondent was given due written notice of the date, time and place of this hearing.

At the outset of the hearing, Mr. Rosser requested of the respondent a copy of a contract between respondent and Sunbelt Rentals that the complainant had subpoenaed. Mr. Carmona replied that there was no written contract but rather a certification. He stated the respondent did not have a copy, but that he had requested it from Sunbelt Rentals but had not received it as of the date and time of the hearing.

After hearing and receiving the evidence of the parties, 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 responsibility 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 and is located in Concord, North Carolina. The respondent is engaged in the business of installing exterior stucco veneers.

3. On July 9, 2015, Safety Compliance Officer Kay Knezevich conducted an inspection of a residential construction jobsite at 4086 Blossom Hill Drive, Mathews, North Carolina in the Highgate residential subdivision.

4. Ms. Knezevich visually observed scaffolding erected around a partially constructed residence which did not appear to be compliant with the Act. At that point, the house was under roof and exterior wall finishes were being applied.

5. Ms. Knezevich received permission from Akhter Builders, the general contractor, to enter the worksite and conduct the inspection.

6. She took measurements and photographs, interviewed witnesses and Mr. Carmona and recommended the issuance of the citations in this matter.

7. Ms. Knezevich observed tubular welded frame scaffolding erected adjacent to the side of the above-referenced residence, on three sides of the residence. This scaffolding measured six (6) feet in height for each level (or "buck") and five (5) bucks high in one place on the front of the residence and four (4) bucks high in at least three (3) other areas. These sections were from 24 feet to 30 feet in height where work was being performed.

8. In no place was the scaffold secured to the residence, nor were there any guardrails or evidence of anchors or other use of personal fall arrest equipment on the jobsite in connection with work on the scaffold.

9. At the time of the inspection, no employees of respondent were working on the scaffold or otherwise at the jobsite. Employees of JC Roofing (unrelated to the respondent) and the stone mason were using respondent's scaffold. None of these employees was using any personal fall arrest equipment.

10. At the time of the inspection, on many of the areas where the scaffold was erected, a weather barrier and metal lathe had been installed. This is work that was performed by respondent's employees and are preparatory steps to application of the stucco.

11. Such preparatory work would be required to be performed using the scaffold in place, as the workers could not get access to these work areas otherwise.

12. When interviewed by Ms. Knezevich, Mr. Carmona stated the following:

a) He had been sick for about a week and was not on the jobsite during the performance of much or all of the above-referenced preparatory work;

b) His competent person on this job had quit during the time he was sick. There was no other competent person for respondent on the jobsite;

c) When he came to the jobsite a day or two before the inspection, he realized the safety deficiencies with the scaffold and was making preparations to correct them at the time of the inspection; and

d) The metal lathe and weather barrier preparatory work was performed by his employees using the scaffold and at least two employees had been so working.

13. At no time during two closing conferences a week apart did Mr. Carmona mention to Ms. Knezevich that there were anchors installed on the gable ends of the roof to support use of personal fall arrest equipment in use during the work. Although Mr. Carmona now claims they were in place, he offered no evidence at the hearing to corroborate this assertion and the numerous pictures from many angles of the residence on the date of the inspection showed no anchors, which are about two inches long.

14. Mr. Carmona believes that the safety compliance officer had to actually see his employees working on the scaffold in order to cite for these violations, but his own statements and the circumstantial evidence of the scaffold in place in a condition violative of the Act indicate that his employees worked on the scaffold in its condition at the time of the inspection and that they were exposed to the hazard thereby created.

15. Aside from his testimony, neither Mr. Carmona nor respondent offered any documents or other evidence to support his contentions that there were no violations of the Act by respondent.

16. An unsecured scaffold of this height can tip, topple or collapse. Employees using it could be injured in such situation by being thrown about the scaffold or falling off.

17. The uncontroverted testimony was that for each citation item violation, the probability of an accident existed, for which the likely probable injury was blunt force trauma, fractures or death.

18. The proposed penalty for each citation item was calculated pursuant to the Field Operations Manual. In each calculation, it was determined there was a high severity and a greater probability, with a gravity based penalty of \$7,000.00. The respondent was given credit for size and history totaling 70%. The respondent was given no credit for good faith because of the high severity determination.

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 1926.451(c)(1) by failing to have the scaffold tied to the residence or otherwise restrained from tipping. This violation was a serious violation of the Act.

4. The respondent violated the provisions of 29 CFR 1926.451(f)(7) by not erecting, moving or dismantling a scaffold by experienced and trained employees under the supervision of a competent person. This violation was a serious violation of the Act.

5. The respondent violated the provisions of 29 CFR 1926.451(g) (1) (vii) by failing to protect its employees from falls greater than ten (10) feet by the use of personal fall arrest systems or guardrail systems. This violation was 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 1a is affirmed as a serious violation of 29 CFR 1926.451(c)(1), with a penalty of \$2,100.00;

2. Citation 1, Item 1b is affirmed as a serious violation of 29 CFR 1926.451(f)(7), with a penalty of \$2,100.00;

3. Citation 1, Item 3 is affirmed as a serious violation of 29 CFR 1926.451(g)(1)(vii), with a penalty of \$2,100.00;

4. The total penalties of \$6,300.00 shall be paid within twenty (20) days of the filing date of this Order; and

5. All violations not immediately abated shall be immediately abated.

This 8th day of April, 2016.



RICHARD M. KOCH
HEARING EXAMINER