

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

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
MERITAGE HOMES OF THE)
CAROLINAS, INC.)
and its successors)
)
RESPONDENT.)
_____)

ORDER

**OSHANC NO. 2018-5995
INSPECTION NO. 318122124**

AUG 14 2020

**NC Occupational & Safety
Health Commission**

THIS MATTER was before the undersigned for hearing via the Lifesize video conference platform on August 5, 2020 beginning at 10:00 A.M.

The Complainant was represented by Victoria L. Voight, Special Deputy Attorney General; the Respondent was represented by C. Grainger Pierce, Jr. of Van Hoy, Reutlinger, Adams & Pierce, PLLC.

Based on the evidence, consisting of testimony and admitted documents, the undersigned makes the following

FINDINGS OF FACTS

1. The complainant as the Commissioner of Labor is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina ("the Act").
2. The respondent is an Arizona corporation which is authorized to do business in North Carolina. The respondent is a general contractor engaged in the business of constructing residential structures.
3. On or about October 24, 2017 the respondent was the general contractor constructing single family residences in the Parkside subdivision in Charlotte, North Carolina. A two story residence with an address of 15314 Scholastic Drive was under construction.

4. Per employees of the respondent, the respondent served as the general contractor on construction in this neighborhood, but did not provide any of the actual construction. In October 2017 Alpha Omega Construction Group (“A-O”) was furnishing exterior siding on this house and on October 24, 2017 its subcontractor JJC Construction was installing the siding on the exterior of the second floor.

5. JJC Construction was not an approved subcontractor by the respondent and respondent was not aware that it was providing siding installation on this house.

6. Sometime around the middle of the day on October 24, 2017, Compliance Safety and Health Officer Carl Burgette drove into the Parkside subdivision and noticed that construction was on going. In particular, he noticed a man standing on the roof of the first floor of the 15314 Scholastic Drive house installing exterior siding. This man was more than six (6) feet above the ground and was not protected by a guard rail system, a safety net system or a personal fall arrest system nor was he provided with any sort of alternative fall protection measure.

7. Officer Burgette took a number of photographs of this man working on the second floor of the house under the above described conditions, in particular what was identified as Complainant’s Exhibit Number 4.

8. Scholastic Drive is a narrow one way street encircling a public elementary school, which street was used by school faculty and parents of students as well as the people involved with building the houses in the Parkside subdivision, including respondent’s employees and respondent’s subcontractors and suppliers. This configuration and the amount of traffic created potential safety problems particularly when school was in session and the children were on the playground.

9. As Officer Burgette was snapping his pictures, Dale Zaugg, respondent’s Site Superintendent, was walking down Scholastic Drive toward the house at 15314 after having confronted a truck driver whose truck was in the center of Scholastic Drive. Mr. Zaugg also noticed Officer Burgette’s car facing the wrong way on Scholastic Drive.

10. During the period of time Mr. Zaugg was engaged in activities involving Scholastic Drive, he walked by the house at 15314 where the man was installing siding on the front of the house. In the picture identified as Complainant’s Exhibit Number 4, Mr. Zaugg is shown facing toward that house in a position where he either saw or could have seen the man at work without any fall protection. Part of Mr. Zaugg’s duties as Site Superintendent involved safety on the job site in Parkside.

11. There was contradictory testimony as to whether Mr. Zaugg spoke to the man on the roof. He claims he did not speak to the man or see him working. Even though Complainant’s Exhibit Number 4 was not taken from an angle directly behind Mr. Zaugg, it is difficult from looking at that exhibit to believe that Mr. Zaugg could not see the man and that he was working without fall protection.

12. There was also contradictory testimony as to who told the man to get off the roof and quit working. However, there was no dispute about who the man was. His name was Ramirez and he was the supervisor for JCC Construction, the subcontractor of A-O.

13. There was undisputed evidence that the respondent emphasizes safety on its jobsites and that it has a good safety record with the complainant. Nationwide, the respondent builds 600-700 new houses a year. It was constructing at least 82 houses in the Parkside subdivision.

14. Officer Burgette measured the height of the roof Mr. Ramirez was standing on as shown in Complainant's Exhibit Number 4 and it was 11.2 feet above the ground. Because of this height, a fall from that roof could have caused broken bones, internal injuries or even death.

15. Officer Burgette cited respondent with a violation of 29 CFR 1926.501(b)(13) with a proposed penalty of \$2,800.00. He gave the respondent a 50% credit for size, 10% credit for good faith and a 10% credit for history. Because respondent has 1,100 employees nationwide it is not entitled to a credit for size. The respondent was only entitled to a 10% credit and the penalty should have been \$6,300.00, pursuant to the North Carolina Operations Manual.

16. Because of the factual circumstances here, the undersigned is going to exercise the limited discretion he has concerning penalties and not recalculate the penalty from \$2,800.00.

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

CONCLUSIONS OF LAW

1. The forgoing Findings of Fact are incorporated 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) and such violation was a serious violation of the standard.

4. The originally calculated penalty of \$2,800.00, even though not calculated properly under the North Carolina Operations Manual, is appropriate given the factual circumstances of this case and the fact that the complainant pled it in its complaint in this matter.

Based on the forgoing Findings of Fact and Conclusion of Law, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The respondent has violated the provisions of 29 CFR 1926.501(b)(13), which violation is a serious violation of the standard, with a penalty of \$2,800.00.

2. The respondent shall pay this penalty within ten (10) days of the filing date of this Order.

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

This 11th day of August, 2020.

Richard M. Koch

RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

C. GRANGER PIERCE, JR.
Van Hoy, Reutlinger, Adams &
Pierce, PLLC
737 East Blvd
Charlotte, NC 28203

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


VICTORIA VOIGHT
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, postage prepaid at Raleigh, North Carolina, and upon:

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 18 DAY OF August 2020.



Karissa B. Sluss
Docket and Office Administrator
NC OSH Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
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