

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

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
)
v.)
)
ALPHA OMEGA CONSTRUCTION)
GROUP, INC.)
and its successors)
)
RESPONDENT.)
_____)

ORDER

OSHANC NO. 2018-6061
INSPECTION NO. 318142171
CSHO ID: X3137

FILED

JUN 28 2021

NC Occupational & Safety
Review Commission

THIS MATTER was before the undersigned for hearing via the Lifesize video conference platform on June 9, 2021 beginning at 10:00 A.M.

The Complainant was represented by Stacey A. Phipps, Assistant Attorney General; the Respondent was represented by Greg C. Ahlum of Johnston Allison & Hord.

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 a corporation which is authorized to do business in North Carolina. The respondent is a contractor that provides several different types of labor and materials for new residential structures.
3. Pursuant to N. C. Gen. Stat. § 95-135, the Review Commission has jurisdiction over the parties and subject matter to this action.
4. The respondent is an “employer” within the meaning of N. C. Gen. Stat. §95-127(10); all of respondent’s employees referred to in the hearing are “employees” within the meaning of N. C. Gen. Stat. § 95-127(9).

5. On or about July 18, 2018, a new two-story residence was being built in the Cedarvale Farms subdivision in Midland, Cabarrus County, North Carolina, having an address of 649 Iron Horse Lane.

6. Century Communities was the general contractor for this project. The respondent had a contract with Century for part of the construction work, including the exterior siding. The respondent subcontracted the installation of the exterior siding to LJC Construction.

7. Cabarrus County is a Special Emphasis County for construction.

8. Jose (Joel) Cordero (Jr.) is a Senior Field Supervisor for respondent and was responsible for safety and work progress inspections on this job. His father, Jose Cordero (Sr.) is the owner of LJC Construction. LJC Construction had been a long-time subcontractor for respondent.

9. On July 18, 2018, Grant Quiller, a Safety and Health Compliance Officer with the OSH Division of the Department of Labor, conducted an inspection of the respondent's work site at 649 Iron Horse Lane. Mr. Quiller conducted the inspection pursuant to plain view safety hazards observed from a public road way. At the time of this inspection, Mr. Quiller had been with the OSH Division for approximately one year.

10. At the time of the inspection, at least one representative of Century Communities was in the new subdivision where this construction was taken place and Jose Cordero Sr. had a crew from LJC Construction installing siding on the new residence.

11. In Citation 1, Item 1, Mr. Quiller cited respondent with a serious violation of 29 CFR 1926.1053(b)(15) for ladders not being inspected by a competent person for visible defects on a periodic basis, where two employees of LJC Construction were on ladders with bent and broken rungs and bent rusted safety shoes.

12. Mr. Quiller took photographs of the ladders in this condition. However, the previous day, on July 17, 2018, Joel Cordero in behalf of respondent conducted a safety inspection of this job site, and observed a crew from LJC Construction performing siding work from ladders with no apparent defects. He included a picture of such ladders with his report.

13. In Citation 1, Item 2a, Mr. Quiller cited respondent with a serious violation of 29 CFR 1926.1153(c)(1) for an employee of LJC Construction not using proper engineering controls, work practices and respiratory protection while cutting fiber cement board using a DeWalt handheld power saw without dust collection or respiratory protection.

14. During Joel Cordero's inspection on July 17, 2018, the employees of LJC Construction on this job site were cutting and installing MiraTEC board, which is a wood-based product which contains no silica and doesn't require engineering controls, work practices and respiratory protection under the cited standard.

15. In Citation 1, Item 2b, Mr. Quiller cited respondent with a serious violation of 29 CFR 1926.1153(g)(1)(i) in that respondent's written exposure control plan did not contain a description of the tasks in the work place that involve exposure to respirable crystalline silica, such as cutting fiber cement board with a handheld power saw, which could cause potential silica exposure.

16. The respondent had a written exposure control plan for respirable crystalline silica which described a number of different exposure control methods involving power tools and saws.

17. The respondent was listed by the complainant as an intermediate employer on this job site, but the complainant's multi-employer worksite policy does not define an intermediate employer, and it was clear under the facts of this case that respondent was not a creating employer, an exposing employer or a controlling employer under the policy.

18. In North Carolina, under the case Commissioner of Labor v. Weekly Homes, L.P., 169 N.C. App. 17 (2005), a contractor has a duty to inspect a job site to detect safety violations committed by its subcontractors as well as its own employees, but only to violations that could reasonably be detected by inspecting the job site.

19. This duty to the employees of subcontractors is limited to those violations it could reasonably have been expected to prevent or abate by reason of its supervisory capacity. Commissioner of Labor v. Romeo Guest Associates, Inc., OSHANC 96-3513 (RB 1998).

20. Since respondent had just inspected this job site the previous day seeing essentially the same activities on the part of the employees of LJC Construction, with no safety violations, it had fulfilled its obligations under the law with respect to such employees.

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

CONCLUSIONS OF LAW

1. The foregoing 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 did not violate any of the cited provisions of the Act with respect to this inspection, because it had no knowledge of these violations by LJC Construction, and had just inspected the same work site the day before with essentially the same activities being performed by LJC Construction employees.

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

1. Citation 1, Item 1, an alleged serious violation of 29 CFR 1926.1053(b)(15), is dismissed.
2. Citation 1, Item 2a, an alleged serious violation of 29 CFR 1926.1153(c)(1), is dismissed.
3. Citation 1, Item 2b, an alleged serious violation of 29 CFR 1926.1153(g)(1)(i), is dismissed.
4. Each party shall bear its own costs and attorney's fees.

This 24th day of June, 2021.

Richard M. Koch

RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

**GREG C AHLUM
JOHNSTON ALLISON & HORD
1065 EAST MOREHEAD ST
CHARLOTTE NC 28204**

By depositing a copy of the same in the United States Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:


**STACEY PHIPPS
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO 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 1 DAY OF July 2021.



**Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
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