

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

COMMISSIONER OF LABOR OF THE )  
STATE OF NORTH CAROLINA )  
  
COMPLAINANT, )  
  
v. )  
  
JOSE LARIOS dba JOSE LARIOS, )  
and its successors, )  
  
RESPONDENT. )  
\_\_\_\_\_ )

**ORDER**  
  
OSHANC NO. 2021-6361  
  
**FILED**  
  
**DEC -7 2023**  
  
NC OSH Review Commission

THIS MATTER was before the undersigned for hearing via the Lifesize video conference platform on November 29, 2023 at 10:00 am.

Counsel for the complainant is Stacey A. Phipps, Special Deputy Attorney General; the respondent is *pro se*.

Present for the hearing were counsel for the complainant, Kirk Hobson, the Safety and Health Compliance Officer on this inspection and Felicia Hoover, General Counsel for the Review Board. No one for the respondent appeared.

At the appointed time for the hearing, the undersigned waited approximately 15 minutes to see if someone for the respondent signed on. Since the respondent's attorney had withdrawn from the case, no one at the Review Commission nor with the complainant had heard from the respondent. As the hearing progressed, no one in behalf of the respondent made an appearance. The respondent had been notified by counsel for the complainant of the date, time and Lifesize link for the hearing.

Because the respondent did not appear for the hearing, counsel for the complainant could have made a motion for default under the rules. The undersigned indicated that he wanted to have the complainant put on evidence to establish the citations and penalties, since the CSHO was available to testify and there were only three factually related citation items.

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

## FINDINGS OF FACT

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 sole proprietorship in the name Jose Larios. He is in the business of providing residential construction work.
3. On January 21, 2021, two workers for the respondent were installing a new roof on a single-story residential structure under construction in the River Park Subdivision in Gaston County, North Carolina. The address of the new house is 325 Oxbow Circle, Mount Holly, North Carolina.
4. This house was being built for SDH Charlotte LLC, which does business as Smith Douglas Homes. Smith Douglas Homes was the general contractor for construction of this house. Smith Douglas Homes subcontracted with CJP Construction, which subcontracted with JQ Construction, which subcontracted with respondent.
5. Mr. Hobson and another CSHO observed these two employees on the roof of the house installing ridge cap shingles without using any type of fall protection system. This jobsite is included in the special emphasis program of complainant for construction in Gaston County.
6. Mr. Hobson took photographs of the conditions cited in the citation items and conducted an inspection of the jobsite. The two employees of the respondent observed on the roof without fall protection were Juan Sanchez and Concepcion Montoya.
7. The height of the roof at the ridgeline where the ridge cap shingles were being installed was 24 feet, 8 inches above hard ground.
8. During the course of the inspection, the respondent Jose Larios came to the jobsite. Mr. Hobson asked him if he had a written certification record of training for his employees, including their names, date of training and signature of the person who conducted the training or the signature of the employer. Mr. Larios stated that CJP Construction had provided fall protection training for his employees, but he did not have any records for this training.
9. When Mr. Hobson came to this jobsite he noticed that the portable extension ladder used by the employees to access the roof of this house did not extend at least 3 feet above the upper landing surface being accessed. The ladder extended approximately 1 foot above the landing surface, which was approximately 10 feet, 2 inches above hard ground.
10. The respondent immediately abated the hazards by having his employees install anchors, completing the certification of fall protection training on a form provided by Mr. Hobson and extending the extension ladder at least 3 feet above the landing edge of the roof.

11. These violations of the OSHA standards were serious violations as indicated by Mr. Hobson in his report of the inspection.

12. The proposed penalties were computed in accordance with the North Carolina Field Operations Manual.

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 violated the provisions of 29 CFR 1926.501(b)(13), as alleged in Citation No. 1, Item 1a, and such violation was a serious violation of the standard.

4. The respondent violated the provisions of 29 CFR 1926.503(b)(1), as alleged in Citation No. 1, Item 1b, and such violation was a serious violation of the standard.

5. The respondent violated the provisions of 29 CFR 1926.1053 (b)(1), as alleged in Citation No. 1, Item 2, and such violation was a serious violation of the standard.

Based on the foregoing 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 affirmed as a serious violation of the standard, with a penalty of \$2,100.00.

2. The respondent has violated the provisions of 29 CFR 1926.503(b)(1), which violation is affirmed as a serious violation of the standard, with a penalty combined with that of Citation 1, Item 1a.

3. The respondent has violated the provisions of 29 CFR 1926.1053 (b)(1), which violation is affirmed as a serious violation of the standard, with a penalty of \$2,100.00.

4. The respondent shall pay the total penalties of \$4,200.00 within ten (10) days of the filing date of this Order.

This 7<sup>th</sup> day of December, 2023.

*Richard M. Koch*

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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 LARIOS  
DBA JOSE LARIOS  
2290 CALE EARNHARDT BLVD  
KANNAPOLIS, NC 28083

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


STACEY A. 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  
carla.rose@labor.nc.gov

via email.

THIS THE 11 DAY OF December 2023.

  
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Karissa B. Sluss  
Docket and Office Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
NCOSHRC@labor.nc.gov