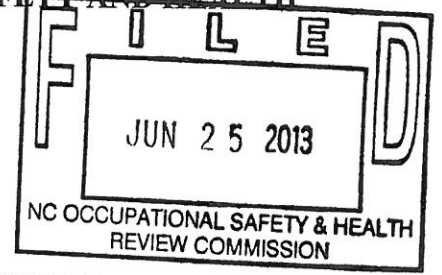


BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR )  
THE STATE OF NORTH CAROLINA )  
 )  
COMPLAINANT, )  
 )  
v. )  
 )  
GASTONIA SHEET METAL WORKS, INC. )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

ORDER

OSHANC NO. 2012-5349  
INSPECTION NO. 316493337  
CSHO ID NO. U6329

THIS MATTER was heard by the undersigned on its merits on June 5, 2013 in Charlotte, North Carolina.

The complainant is represented by Jason Rosser, Assistant Attorney General; the respondent appeared through Sam Vagnozzi, its Safety and Training Director.

As a preliminary matter, the parties advised that they had entered into a stipulation document dated May 9, 2013 entitled "Stipulations Between the Parties". This document was received as evidence and is attached to this Order.

Based on the foregoing, and after hearing and receiving the evidence and the arguments of counsel, the undersigned makes the following

**FINDINGS OF FACT**

1. The complainant 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 corporation located in Gastonia, North Carolina. It employs 138 persons and is engaged in the business of HVAC and commercial roofing installation and service.

3. On April 12, 2012, Danielle Knowland, a safety compliance officer since 2006 with the North Carolina Department of Labor, was in China Grove, North Carolina. While driving down Main Street she observed certain fall hazards from the public right of way on a building on that street.

DATABASE  
CB

4. This building was a combination Town Hall/Fire Department facility for the Town of China Grove, which facility was undergoing an expansion/renovation. It is located at 333 North Main Street, China Grove, North Carolina.

5. The part of the building which caught Ms. Knowland's attention was the Fire Department expansion. This area was new construction, consisting of a center bay and two side bays. The building was constructed of brick and had a flat rubber membrane roof.

6. The center bay measured 27 feet from the top of the parapet wall to the concrete drive below. The side bays each measured 21 feet from the top of the parapet wall to the concrete drive.

7. The parapet wall measured 18 inches from the top of the parapet wall to the roof surface in the center section and 32 inches from the top of the parapet wall to the roof surface on the two side sections. These measurements were at the front of the building. The measurement from the top of the center parapet to the roof of each side section was 6 feet.

8. Ms. Knowland observed two of respondent's workers on the roof above the center bay installing coping, which is the banding around the perimeter of the rubber roof which waterproofs the edges and corners at the parapet walls and provides an architectural detail on the outside of the parapet wall.

9. In order to install this coping, the workers must lean over the parapet wall to install the coping on the outside of the parapet wall. Ms. Knowland observed this activity and memorialized it in a photograph that was admitted into evidence.

10. The respondent was the roofing subcontractor on this project. The general contractor was MV Momentum. Ms. Knowland conducted an opening conference with representatives of the general contractor and the respondent and was permitted to conduct her inspection. In the course of her inspection, Ms. Knowland took photos and measurements, interviewed respondent's employees and prepared a report.

11. At the time of the inspection, the respondent had three employees working on the project: Marc Downy, Marc Deal and Chuck Howard. At the time of her initial observation of the project, Ms. Knowland observed Chuck Howard and Marc Downy on the roof at the center bay installing the coping.

12. Ms. Knowland conducted a closing conference and then recommended a citation for a serious violation of 29 CFR 1926.501(b)(10), which was issued by the complainant on July 11, 2012.

13. Issued as Citation 1, Item 1, this item alleged that employees on a low slope roof with unprotected sides and edges six feet or more above lower levels were not protected by one of the approved methods in the standard.

14. This safety standard under Subpart M generally permits a variety of options for compliance with the fall protection requirements. The respondent could provide guard rails, a safety net, personal fall arrest, a warning line and/or a safety monitoring system.

15. These standards do not apply to assessment or inspection of a site, but there is no factual dispute that the respondent's employees were engaged in actual construction of the roof coping.

16. The center parapet wall height of 18 inches does not meet the guard rail standard of a minimum of 29 ± inches for the lower rail and the minimum of 42 ± inches for the top rail, both such standards being above the walking surface (the roof membrane).

17. At the time of the initial inspection, there was no permissible guard rail, no safety net, no personal fall protection (although such equipment was in respondent's vehicles) and no warning line. There was also no apparent anchorage site for the personal fall arrest equipment.

18. The respondent's employees did belatedly state to Ms. Knowland that they believed that they had a safety monitoring system in place.

19. There was also no effective safety monitoring system in place. This is evidenced by photographs taken by Ms. Knowland (admitted into evidence by stipulation) which indicated that Messrs. Howard and Downy were on the roof with their backs to each other performing coping work and Mr. Deal was on the ground, across Main Street, by the respondent's trucks, talking on a cell telephone and not looking at the work being performed on the roof.

20. The conditions observed by Ms. Knowland showed that there was no statutorily-adequate fall protection. This created the possibility of an accident the substantially probable result of which was death or serious injury, due to the height of the potential fall and the hardness of the landing surface below.

21. The respondent's employees on site were aware of the general requirements of the fall protection standards.

22. All three of respondent's employees working on the project were at various times exposed to the hazard.

23. The penalty was calculated pursuant to complainant's Operations Manual, with a gravity based penalty of \$5,000.00, a high severity factor and a lesser probability factor. The respondent was given credit of 20% for size, 25% for good faith, 10% for cooperation and 10% for history. This resulted in a proposed adjusted penalty of \$1,750.00.

24. In the course of her inspection, Ms. Knowland observed that the extension ladder installed and used by the respondent was in compliance with the Act. From all the evidence, it appeared to the undersigned that the respondent generally had safety plans and procedures in place and in use. This was an occasion in which the facts did not show complete compliance with the cited standard.

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 1926.501(b)(10) by exposing employees to a fall hazard while installing coping at the roof edges and corners of a building at a height greater than 15 feet above the ground without required fall protection. This was a serious violation of the standard.
4. The proposed penalty was correctly calculated in accordance with the facts of this matter and the Operations Manual.

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 1926.501(b)(10) with a penalty of \$1,750.00.
2. Such penalty shall be paid within twenty (20) days of the filing date of this Order.
3. All violations not previously abated shall be immediately abated.

This 17<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
RICHARD M. KOCH  
HEARING EXAMINER

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

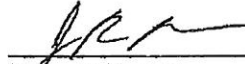
<b>COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA</b>	)	
	)	<b>OSHANC NO. 2012-5349</b>
<b>Petitioner,</b>	)	<b>INSPECTION NO. 316493337</b>
	)	<b>CSHO NO. U6329</b>
<b>v</b>	)	
	)	
<b>GASTONIA SHEET METAL WORKS, INC.</b>	)	<b>STIPULATIONS BETWEEN</b>
<b>and its successors</b>	)	<b>THE PARTIES</b>
	)	
<b>Respondent.</b>	)	

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

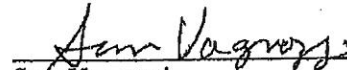
1. Respondent, Gastonia Sheet Metal Works, Inc., stipulates to the admission of the Complainant's photos.
2. Respondent, Gastonia Sheet Metal Works, Inc., is a NC corporation, duly organized and existing under the laws of the State of North Carolina.
3. Respondent, Gastonia Sheet Metal Works, Inc., is subject to the jurisdiction of the Safety and Health Review Commission of North Carolina.
4. On 04/17/2012, Marc Downy, Marc Deal, and Chuck Howard were the employees on site at 333 N. Main Street, China Grove, NC 28023 for the Respondent.
5. On 04/17/2012, the Respondent was engaged in roofing work on a low slope roof at 333 N. Main Street, China Grove, NC 28023.

This the 9<sup>th</sup> day of May, <sup>2013</sup>~~2012~~.

Roy Cooper  
Attorney General

  
\_\_\_\_\_  
Jason R. Rosser  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602  
Telephone No. (919) 716-6680

**ATTORNEYS FOR COMPLAINANT**

  
\_\_\_\_\_  
Sam Vagnozzi  
Safety Director  
Gastonia Sheet Metal Works, Inc.  
P.O. Box 12216  
Gastonia, NC 12216  
Telephone No. (704) 864-0344

**REPRESENTATIVE FOR RESPONDENT**

CERTIFICATE OF SERVICE

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

**SAM VAGNOZZI  
SAFETY DIRECTOR  
GASTONIA SHEET METAL WORKS INC  
407 EAST LONG AVENUE  
GASTONIA NC 28054**

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

**JASON ROSSER  
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 25<sup>th</sup> DAY OF June 2013.

**OSCAR A. KELLER, JR.  
CHAIRMAN**



**Nancy D. Swaney  
Docket and Office Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
FAX: (919) 733-3020**