

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

FILED

OCT 7 2025

NC OSH Review Commission

COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

DOCKET NOS. OSHANC 2020-6338, 2021-6389,
2022-6448

v.

OSHA INSPECTION Nos. 318202660,
318214426, 318237120

SDH CHARLOTTE, LLC dba SMITH
DOUGLAS HOMES
and its successors

ORDER OF THE COMMISSIONERS

RESPONDENT.

DECISION OF THE REVIEW COMMISSION

This appeal was heard at or about 10:00 A.M. on the 30th day of January 2025, via the Lifesize platform, by Paul E. Smith, Chairman, William Rowe, and Terrence Dewberry, members of the North Carolina Occupational Safety and Health Review Commission.

APPEARANCES

Complainant: Stacey Phipps, Special Deputy Attorney General; North Carolina Department of Justice, Raleigh, North Carolina

Respondent: J. Larry Stine; Wimberly Lawson Steckel Schneider and Stine, Atlanta, Georgia

The undersigned have reviewed the prior Order based upon the record of the proceedings before the Hearing Examiner and the briefs and arguments of the parties.

The Commission AFFIRMS the Order of Hearing Examiner Leon.

ISSUES PRESENTED

WHETHER THE HEARING EXAMINER CORRECTLY DETERMINED THAT SDH WAS A CONTROLLING EMPLOYER UNDER THE MULTI-EMPLOYER DOCTRINE?

SAFETY STANDARDS AND/OR STATUTES AT ISSUE

29 CFR 1926.501(b)(13)

Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels was not protected by guardrail systems, safety net systems, or a personal fall arrest system, nor was the employee provided with an alternative fall protection measure under another provision of paragraph 1926.501(b).

29 CFR 1926.20 (b)1 and 2 Accident Prevention

1926.20(b)(1)

It shall be the responsibility of the employer to initiate and maintain such programs as may be necessary to comply with this part.

1926.20(b)(2)

Such programs shall provide for frequent and regular inspections of the job sites, materials, and equipment to be made by competent persons designated by the employers.

29 CFR 1926.102(a)(1)

The employer shall ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

29 CFR 1926.1053(b)(1)

When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support.

29 CFR 1926.451(g)(1)(vii)

For all scaffolds not otherwise specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this section, each employee shall be protected by the use of personal fall arrest systems or guardrail systems meeting the requirements of paragraph (g)(4) of this section.

FINDINGS OF FACT

1. The complainant is charged with enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (OSHANC or Act), N.C. Gen. Stat. §§ 95-126 et seq.
2. Respondent is an employer within the meaning of N.C. Gen. Stat § 95-127(10) and is subject to the provisions of OSHANC (N.C. Gen. Stat § 95-128).
3. The undersigned have jurisdiction over this case pursuant to N.C. Gen Stat. § 95-125.
4. On January 23 and 24, 2024, a remote hearing was held before Hearing Examiner Leon.
5. On June 10, 2024, Hearing Examiner Leon filed an Order affirming the citations as issued.
6. Filed on July 8, 2024, the Employer timely petitioned the Review Commission for a review of the decision of the Hearing Examiner.
7. An Order granting review was filed on July 11, 2024.
8. The oral arguments were heard by the full Commission on January 30, 2025.
9. The Review Commission adopts the Hearing Examiner's findings of facts.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes as a matter of law as follows:

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 Commission has jurisdiction of this cause, and the parties are properly before this Commission.
3. The Respondent is an employer within the meaning of N.C. Gen. Stat § 95-127 and is subject to the Act. N.C. Gen. Stat § 95-128.
4. The Complainant Commissioner of Labor has met its burden of proof.
5. The Commission AFFIRMS the Order of Hearing Examiner Leon.

DISCUSSION

North Carolina has adopted a multi-employer citation policy to provide guidance to OSHA inspectors as to when it is appropriate to cite a particular employer when more than one employer may be citable for a hazardous condition. *Commissioner of Labor v. Weekley Homes, L.P.*, 169 N.C. App. 17, 609 S.E.2d 407 (2005). Under the multi-employer doctrine, “an employer who controls or creates a worksite safety hazard may be held liable under the Occupational Safety and Health Act even if the employees exposed to the hazard are employed solely by another employer.” *Id.* at 23, 609 S.E.2d at 413.

The Commissioner of Labor has the burden of establishing the applicability of the multi-employer citation policy. To determine whether an employer is citable under the multi-employer citation policy, it must first be determined that the employer is creating, exposing, correcting, or controlling the worksite hazard. If the employer fits into one of those four categories, the Commissioner then determines if the employer’s actions were sufficient to meet their OSHA obligations.

In the June 10, 2024, order under appeal here, Hearing Examiner Leon found that SDH was the controlling employer. Control may be established by contract or by practice. The Hearing Examiner found that SDH established control by both contracts and practice. The management presence on the jobsite established that they were the controlling employer. (Order Conclusion of Law 18). SDH exercised control when they did not allow subcontractors to meet with the CSHO in the public roadway, and in two cases the SDH representative told the CSHO that he must have a warrant. The subcontractors viewed SDH as controlling the worksite, as evidenced by subcontractors calling the SDH Construction Manager when the CSHO asked for the person in charge. SDH scheduled the work of trade partners. SDH provided materials such as “wood roof and floor truss

systems, handers, anchors and adhesives.” OSHA cited SDH as a controlling employer acting as a general contractor because Respondent exercised general supervisory authority and control of the worksite.

SDH changed their business model years ago in what appears to be an effort to protect them from legal issues related to safety. They assert that they have moved away from the role of traditional General Contractor supervising subcontractors to now identifying as “Construction Managers” who engage “trade partners” to build their homes. SDH requires that all their subcontractors enter into a detailed Trade Partner Agreement that contains a provision describing the subcontractor’s responsibility for compliance with safety laws, stating “trade partner is responsible for following OSHA Safety standards.” Although SDH attempts to disclaim its authority over its “trade partners,” the testimony and other exhibits established that SDH had the ability to exercise control over safety, if they chose to do so. Labor correctly followed the established guidelines to determine that SDH was a controlling employer and that they failed to take necessary measures to protect people working on their jobsite. “If an employer is allowed to ‘contract’ away his responsibility in providing a safe workplace, the effectiveness of the safety standards employed by the legislative Act would be drastically diminished.” *Brooks v. BCF Piping, Inc.*, 109 N.C. App. 26, 34, 426 S.E.2d 282, 287 (1993). As a controlling employer, SDH had a duty of reasonable care. SDH did not meet that duty.

SDH presented no defense to the specific violations, only relying on their status as “Construction Managers” rather than General Contractors. Since substantial evidence of OSHA violations were presented and SDH was found to be a controlling employer, they may be held accountable under the multi-employer doctrine. *See Weekley Homes*, 169 N.C. App. at 28, 609 S.E.2d at 415 (citing, *inter alia*, *Universal Constr. Co. v. Occupational Safety & Health Review Comm’n*, 182 F.3d 726, 732 (10th Cir. 1999) (finding a controlling employer responsible where its

“field manager was present at the worksite . . . and in a position to observe the violations, but did not correct the violations or direct [the subcontractor] to correct the violations, despite the field manager’s authority to do so”). The Hearing Examiner’s detailed findings and conclusions, which include specific citations to the video of the hearing, indicate a thoughtful consideration of the evidence. *See Brooks v. Rebarco, Inc.*, 91 N.C. App 459, 469, 372 S.E.2d 342, 348, 1988 N.C. App LEXIS 822, *22.

For the reason stated herein, the Review Commission hereby **ORDERS** that the Hearing Examiner's June 10, 2024, Order in this case be, and hereby is, **AFFIRMED**. The employer is now ordered to pay the total assessed penalty of \$45,900.00 within 30 days of the filing date of this Order.

This the 7 day of October 2025.

Signature: Paul E. Smith

Email: psmith@pathlaw.com

PAUL E. SMITH, CHAIRMAN

Signature: [Signature]

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TERRENCE DEWBERRY, MEMBER

Signature: William D. Rowe

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WILLIAM D. ROWE, MEMBER

CERTIFICATE OF SERVICE

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

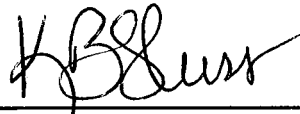
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via email.

THIS THE 8 DAY OF October 2025.



Karissa B. Sluss
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