

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

DARCON CONSTRUCTION, INC.,

Respondent.

OSHRC DOCKET No. 00-0495

Appearances: Susan Demitrio, Esq.
Office of the Solicitor of Labor
U. S. Department of Labor
New York, NY
For Complainant

Lisa A. Firko, Esq.
Lum, Danzis, Drasco, Positan & Kleinberg, LLC
Roseland, NJ
For Respondent

Before: MICHAEL H. SCHOENFELD, Judge

DECISION AND ORDER

Background and Procedural History

This case arises under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 (1970) (“the Act”). From August 11, 1999 through August 27, 1999, a Compliance Officer (“CO”) from the U.S. Occupational Safety and Health Administration (“OSHA”) visited Respondent’s work site in New Rochelle, New York and conducted an inspection and investigation of Respondent. As a result of the inspection, OSHA issued a citation to Respondent on February 10, 2000, alleging willful, repeated and serious violations of construction safety standards appearing in Title 29 of the Code of Federal Regulations (“CFR”). Respondent timely contested all citations. A hearing was

held in New York, New York on May 28-29, 2001. No affected employees sought party status.

Jurisdiction

Complainant alleges and Respondent does not deny that it is an employer engaged in stucco construction work. Respondent does not deny that it uses tools, equipment and supplies which have moved in interstate commerce and conducts a business affecting interstate commerce.

Based on the above finding, I conclude that Respondent is an employer within the meaning of section 3(5) of the Act. Accordingly, the Occupational Safety and Health Review Commission (“the Commission”) has jurisdiction over the parties and the subject matter

Discussion

After the hearing, the parties announced that a settlement had been reached. See, Rule 100(a), 29 CFR § 2200/100(a).

The terms of the settlement have been reduced to writing and it has been submitted. The terms of the settlement meet the requirements of Commission Rule 100(b), 29 C.F.R. § 2200.100(b). Accordingly, the settlement is approved under 5 U.S.C. § 554(c)(1) and Commission Rule 100. The terms of the stipulated settlement are incorporated, in their entirety, by reference in this order.

SO ORDERED.

/s/

Michael H. Schoenfeld
Judge, OSHRC

Dated: 7-23-01
Washington, D.C.

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UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,
Complainant,

OSHRC Docket No. 00-0495

v.

DARCON CONSTRUCTION INC.,
Respondent.

STIPULATED SETTLEMENT

HOWARD M. RADZELY
Acting Solicitor of Labor

PATRICIA M. RODENHAUSEN
Regional Solicitor

SUZANNE DEMITRIO
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U.S. Department of Labor
Attorneys for
ELAINE L. CHAO,
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OSHRC Docket No. 00-0495

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STIPULATED SETTLEMENT

Based upon the following recital, the complainant and the Respondent herein agree to the following as a conclusion of this matter:

- 1) The Secretary hereby amends her Complaint, Citation 2, Item 1 and Citation 2, Item 2 to reclassify these violations as serious violations of the Occupational Safety and Health Act.
- 2) The Secretary hereby amends the proposed penalty and the Complaint to reflect a total proposed penalty of \$30,000, apportioned as follows:

| <u>CITATION NO.</u> | <u>ITEM</u> | <u>ORIGINAL PROPOSED PENALTY</u> | <u>AMENDED PROPOSED PENALTY</u> |
|---------------------|-------------|--|---|
| 1 | 1 | \$2,100 | \$2,100 |
| 1 | 2 | \$3,000 | \$3,000 |
| 1 | 3 | \$3,000 | \$3,000 |
| 2 | 1 | \$56,000 | \$6,300 |
| 2 | 2 | \$32,000 | \$3,600 |
| 3 | 1 | \$6,000 | \$6,000 |
| 3 | 2a-2c | \$6,000 | \$6,000 |
| 4 | 1a-1c | \$0 | \$0 |
| Total: | | \$108,100 | \$30,000 |

- 3) Based upon the above, the respondent herein withdraws its notice of contest and

answer as to the citations, complaint, and proposed penalty as modified.

- 4) Respondent affirmatively states that:
 - a) All conditions alleged in the citations as amended have been abated.
 - b) It will continue to comply with the Occupational Safety and Health Act.

5) Respondent certifies that on July 9, 2001, this stipulation will be posted where affected employees may see it.

6) Respondent will pay the amended proposed penalty totaling \$30,000 by forwarding checks made payable to Occupational Safety and Health-Labor to the OSHA Tarrytown Area Office located at 660 White Plains Road, 4th Floor, Tarrytown, New York, 10591-5107, on the following dates:

| | |
|--------------------|---------|
| July 20, 2001 | \$2,500 |
| August 20, 2001 | \$2,500 |
| September 20, 2001 | \$2,500 |
| October 20, 2001 | \$2,500 |
| November 20, 2001 | \$2,500 |
| December 20, 2001 | \$2,500 |
| January 20, 2002 | \$2,500 |
| February 20, 2002 | \$2,500 |
| March 20, 2002 | \$2,500 |
| April 20, 2002 | \$2,500 |
| May 20, 2002 | \$2,500 |
| June 20, 2002 | \$2,500 |

If any such payment is not made within ten (10) days of the date on which it is due, the entire unpaid balance of the \$30,000 penalty shall be payable immediately.

7) Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

8) This proposed settlement is not to be taken as an admission for the purpose of any proceeding other than one arising under the Occupational Safety and Health Act.

DATED: 7/6/01

New York, New York

DARCON CONSTRUCTION CO.
Respondent

HOWARD M. RADZELY
Acting Solicitor of Labor

PATRICIA M. RODENHAUSEN
Regional Solicitor

BY: /s/
LISA A. FIRKO, ESQ.
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