

SECRETARY OF LABOR,

Complainant,

v.

MJP CONSTRUCTION CO., INC.,

Respondent.

DOCKET NO. 02-2018

APPEARANCES:

Margaret A. Temple, Esq.
Office of the Solicitor of Labor
U.S. Department of Labor
New York, New York
For Complainant

Joseph P. Paranac, Jr.
St. John & Wayne, L.L.C.
Newark, New Jersey
For Respondent

BEFORE: MICHAEL H. SCHOENFELD
Administrative Law Judge

DECISION AND ORDER

Procedural History

This proceeding is before the Occupational Safety and Health Review Commission (“the Commission”) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (“the Act”).

Following an OSHA inspection of a work site in Hoboken, New Jersey, the Secretary, on or about October 21, 2002, issued to MJP Construction Company, Inc., (“Respondent”) two citations alleging willful and serious violations of construction safety standards appearing in Part 1926 of Title 29 of the Code of Federal Regulations and proposed civil penalties totaling \$ 65,000.

Issue has been joined by the filing of timely complaint and answer. The parties entered into settlement discussions. Counsel of record for Respondent has filed a statement that Respondent “has gone out of business,” and that Respondent “does not intend to further defend against the complaint.” The Secretary has filed a Motion to Dismiss Respondent’s Notice of Contest, on the grounds that Respondent has “[i]n essence...abandoned this case.” Respondent has abandoned its case.

Jurisdiction

Complainant alleges and Respondent did not deny that in its construction business it used tools, equipment and supplies which moved in interstate commerce. I thus find that Respondent engaged in a business affecting interstate commerce.

Based on the above finding, I conclude that Respondent, at all pertinent times, was an employer within the meaning of § 3(5) of the Act.¹ Accordingly, the Commission has jurisdiction over the subject matter and the parties.

Discussion

Respondent has voluntarily abandoned its case. Accordingly, the allegations of the complaint are deemed to be admitted in their entirety. Accordingly, all items of the citations and the penalties proposed are affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent was, at all times pertinent hereto, an employer within the meaning of section 3(5) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 (1970).
2. The Commission has jurisdiction over the parties and the subject matter of this case.
3. Respondent was in violation of section 5(a)(2) of the Act in that it failed to comply with the standard at 29 CFR §1926.1052(c)(1)(i) as alleged in Citation 1, Item 1. The violation was serious within the meaning of section 17(k) of the Act, 29 U.S.C. § 666(j), for which a civil penalty of \$2,000 is appropriate.
4. Respondent was in violation of section 5(a)(2) of the Act in that it failed to comply

¹ *Title 29 U.S.C. § 652(5).*

with the standard at 29 CFR §1926.501(b)(1) as alleged in Citation 2, Items 1a, 1b, 1c and 1d. The violations were willful serious within the meaning of section 17(a) of the Act, 29 U.S.C. § 666(a), for which a total civil penalty of \$63,000 is appropriate

ORDER

Citations 1 and 2, issued to Respondent, including the penalties proposed therefor, on or about October 21, 2002 are AFFIRMED in their entirety.

/s/
Michael H. Schoenfeld
Judge, OSHRC

Date: October 30, 2003
Washington, D.C.