

SECRETARY OF LABOR,  
Complainant,  
v.  
HECHINGER INVESTMENT  
COMPANY OF DELAWARE, INC.,  
d/b/a BUILDERS SQUARE,  
Respondent.

OSHRC DOCKET NO. 99-0382

APPEARANCES:

Helen J. Schuitmaker, Esquire  
Chicago, Illinois  
For the Complainant.

Michael J. Scotti, III, Esquire  
Chicago, Illinois  
For the Respondent.

Before: Chief Judge Irving Sommer

**DECISION AND ORDER**

This proceeding is before the Occupational Safety and Health Review Commission (“the Commission”) pursuant to section 10 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (“the Act”). The Occupational Safety and Health Administration (“OSHA”) inspected a Builders Square store in Elgin, Illinois, on December 4, 1998. As a result of the inspection, OSHA issued Respondent a serious citation alleging a violation of 29 C.F.R. 1910.29(a)(4)(ii). Respondent contested the citation, and this matter was designated for E-Z Trial pursuant to Commission Rule 203(a). The hearing in this case was held on June 23, 1999, in Chicago, Illinois.

**The OSHA Inspection**

Sharon Hillhouse, the OSHA compliance officer (“CO”) who conducted the inspection, testified that her office had received a complaint about the facility. Her office called the store and spoke with John Pollack, the manager, and then faxed him a letter setting out the complaint and requesting a response within a week; when no response was received, she was assigned to go to the store. Hillhouse further testified that she began her inspection after meeting with Mike Blocker, a

department supervisor, and that he accompanied her during the inspection. According to the CO, there were about 12 ladder stands at the store that employees used for stocking shelves and other tasks. The stands were of various sizes, having from five to ten 6 to 8-inch-high steps, but they all had handrails, a top platform, and four caster wheels with locks on the front two wheels. Hillhouse tested each stand by climbing up two to four steps, holding onto the handrails, and jiggling the stand to see if it would move, and six of the stands moved when she tested them. She said the front wheel locks should lock automatically when someone steps onto the first step and that the locks should hold the stand firmly in place and keep it from moving; she also said the condition of the defective stands presented a fall hazard that could have resulted in serious injury. The CO noted that she saw an employee standing on the platform of a ten-step stand putting up decorations when she was there, that the stand was wobbly and not level on the floor, and that a fall from the platform, which was at least 6 feet high, could have resulted in broken bones, lacerations, contusions or a concussion. The CO further noted that she discussed the stands with Blocker and Dave Reconnu, the acting store manager, who agreed to have them repaired; in a later telephone closing conference she had with Pollack, he also told her the stands would be repaired.<sup>1</sup> (Tr. 8-24; 32-49; 72-77).

### Discussion

The cited standard provides as follows:

All scaffold casters shall be provided with a positive wheel and/or swivel lock to prevent movement. Ladder stands shall have at least two (2) of the four (4) casters and shall be of the swivel type.

Respondent contends that the CO had limited knowledge in regard to ladders, that some movement in ladder stands is permissible, and that the Secretary in any case did not establish that it had knowledge of the cited condition. (Tr. 85-87). I disagree. CO Hillhouse testified that she had been an OSHA CO for 20 years, that she had had ladder safety training that included wheel locks on ladder stands, and that she had conducted over 800 inspections and had inspected many ladders. (Tr. 8-10; 28-30; 64). The CO further testified that C-2 and C-3 were written specifications she had obtained pertaining to various types of mobile ladders. She marked on C-2 and C-3 the type of mobile ladder she had seen at Respondent's store and noted that both documents indicated that the

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<sup>1</sup>The record indicates that the stands were, in fact, repaired. (Tr. 24; 67; 77-79).

ladders complied with 29 C.F.R. 1929; she also marked on C-3 the information relating to the locks on that kind of mobile ladder. (Tr. 15-20; 50-51). That information states as follows:

Step on ladder and leg tips automatically lock to the floor. **Lock prevents any movement while ladder is in use and cannot be accidentally released.** (Emphasis in original).

Based on the CO's testimony and the information in C-3, which Respondent did not rebut, I conclude that the ladder stands violated the terms of 29 C.F.R. 1910.29(a)(4)(ii).<sup>2</sup> I also conclude that the record establishes employee exposure to the ladder stands and Respondent's knowledge of the violative condition. The record shows that OSHA contacted John Pollack on October 19, 1998, and faxed him C-4, a letter in regard to the complaint, the following day. (Tr. 10-11; 32-34). C-4 states, in item number 2, that:

The casters/wheels on the ladder stands do not function properly. The ladder stands are very hard to move around. Applicable OSHA Standard: 29 CFR 1910.29.

Respondent suggests that it did not know that the wheel locks were not working because the complaint did not specify this fact. However, this assertion is rejected. As the CO indicated, the complaint in this case put Pollack on notice that the wheels were not functioning properly, and had Pollack checked the wheels on the ladder stands after receiving the complaint, he would have discovered the problem with the locks. Moreover, employers have a responsibility to ensure the safety of the equipment their employees use, and if Respondent had had a program requiring regular inspections of its equipment the defective locks on the wheels would have been detected. In view of the record, it is clear that Pollack knew or should have known well before the date of the inspection that the locks on the cited ladder stands were not working. It is also clear that the knowledge of Pollack, the store's manager, is imputable to Respondent. This citation is therefore affirmed as a serious violation. The Secretary's proposed penalty of \$1,500.00 is appropriate, in light of the CO's testimony with respect to the gravity of the violation and the employer's size, history and good faith. (Tr. 25-26). The proposed penalty of \$1,500.00 is accordingly assessed.

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<sup>2</sup>Respondent indicated that it had intended to present the testimony of either Pollack or Blocker, but neither appeared at the hearing. Respondent's request for the admission of Pollack's affidavit was rejected due to the Secretary's lack of opportunity for cross-examination of this individual. (Tr. 5-7; 61; 81-84).

**Conclusions of Law**

1. Respondent, Hechinger Investment Company of Delaware, Inc., d/b/a Builders Square, is engaged in a business affecting commerce and has employees within the meaning of section 3(5) of the Act. The Commission has jurisdiction of the parties and of the subject matter of the proceeding.

2. Respondent was in serious violation of 29 C.F.R. 1910.29(a)(4)(ii).

**Order**

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Item 1 of Citation 1 is AFFIRMED, and a penalty of \$1,500.00 is assessed.

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Irving Sommer  
Chief Judge

Date: