



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
One Lafayette Centre
1120 20th Street, N.W. — 9th Floor
Washington, DC 20036-3419

FAX:
COM (202) 606-5050
FTS (202) 606-5050

SECRETARY OF LABOR
Complainant,

v.

SPARROW CONSTRUCTION CORP.
Respondent.

OSHRC DOCKET
NO. 92-3009

**NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on August 3, 1993. The decision of the Judge will become a final order of the Commission on September 2, 1993 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before August 23, 1993 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: August 3, 1993

DOCKET NO. 92-3009

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210

Patricia Rodenhausen, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
201 Varick, Room 707
New York, NY 10014

Paul Vincent Bonfiglio, Safety
Advisor
Vincent Safety Service Company
357 Hempstead Turnpike - Suite 206
Post Office Box 212
West Hempstead, NY 11552

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th St. N.W., Suite 990
Washington, DC 20036 3419

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1926.850(g). The repeat citation was settled by the parties prior to trial. A hearing was held on the remaining citation in New York, N.Y. No jurisdictional issues are in dispute, the parties having pleaded sufficient facts to establish that the Respondent is subject to the Act and the Commission has jurisdiction of the parties and of the subject matter.

DISCUSSION

Alleged Violation of 29 C.F.R. 1926.850(b)-Serious Citation 1

The standard at 1926.850(b) provides:

When employees are required to work within a structure to be demolished which has been damaged by fire, flood, explosion, or other cause, the walls or floor shall be shored or braced.

Sparrow was the general contractor carrying out the job of completely rehabilitating residential structures herein which were in a total state of disrepair having been fired out, burnt out and were inhabitable. Their job was to demolish the remaining insides of the buildings, rebuild them, keeping the outside framework. These activities were called "gut rehab" by Mr. Silverstein, a company officer. Compliance officer Cugno testified that three brick buildings at the site were being renovated and "what they call gut rehab" was being carried out. He observed two workers "pulling debris by hand and shovel onto a wheelbarrow" and "they were standing directly underneath a floor where a partial collapse had occurred." When I walked towards there, I observed that there was an opening that went from the first floor all the ways to the roof. It had been a partial collapse and you can see daylight and there was debris hanging on all the floors above." These employees were working directly underneath the debris, on the first floor, removing the debris. (T, 16).

The compliance officer stated the floor above had all charred walls and beams and in a state of partial collapse; the building had been vacant with fire and water damage visible. The employees working there were removing debris and they "were doing the preparations of the demolishing of that area". There was no bracing on all the flooring above where the men were working to prevent the possibility of a collapse of the flooring on top of the employees, which if it occurred would have seriously injured them. The two workers observed working

were employed by Mam Designers, the demolition subcontractor hired by the Respondent. Respondent Sparrow had a construction superintendent on the site to take care of any problems.

The compliance officer gave his testimony in a straightforward, frank and convincing manner and appeared to be truthful and honest and was sufficient to make out a prima facie case of a violation of the standard at issue. His testimony was not discredited in any way, nor contradicted by direct evidence, nor by any legitimate inferences from the evidence. The record fully demonstrates that there was a hazard present to the employees removing the debris herein from potential collapse of the flooring and other destroyed areas, and that such hazard could be controlled by shoring or bracing, which was not done. The violative conditions were readily visible and obvious. The Respondent's construction superintendent was on the premises, had knowledge of the work being done by his subcontractor and furthermore was conversant with the conditions present at a "gut rehab". The hazards in men working at "gut rehab" were obvious to the Respondent, and it knew or should reasonably known of the violative conditions. The Respondent, as general contractor herein, and in overall control had the responsibility of protecting the subcontractor's employees who were at serious hazard herein. Respondent's allegation that it is not responsible under the Act for the hazards to which employees, not its own, are subjected to is rejected.

The Commission has held that, on multi-employer construction sites, the general contractor is responsible for violations of its subcontractors that the general contractor could reasonably be expected to prevent or to detect and abate by reason of its supervisory capacity over the entire worksite, even though none of its own employees is exposed to the hazard. (Citations Omitted). *Gil Haugen Construction Co.*, 7 BNA 2004, 2006 (Nos. 76-1515 and 76-1513, 1979). This ruling was re-affirmed in *Blount International, Ltd.* 15 BNA OSCH 1897 (No. 89-1394, 1992). The totality of the evidence establishes a violation of 1926.850(b). The absence of bracing or shoring could lead to a collapse upon the workers removing the debris causing serious injuries. Under all the existing facts and circumstances herein, a penalty of \$2000.00 for said violation is consistent with the criteria set forth in section 17(j) of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All findings of fact relevant and necessary to a determination of the contested issues have been found specially and appear herein. See Rule 52(a) of the Federal Rules of Civil Procedure. Proposed findings of fact or conclusions of law inconsistent with this decision are denied.

ORDER

Based upon the Findings of Fact, Conclusions of Law, and the entire record, it is hereby ORDERED:

1. Citation no. 1 is AFFIRMED as a serious violation of 29 C.F.R. 1926.850(b), with a penalty of \$2000.00 ASSESSED.



IRVING SOMMER
Judge

DATED: **AUG - 2 1993**
Washington, D.C.

SOL:SDR:srm
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UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

ROBERT REICH, Secretary of Labor, :
United States Department of Labor, :
Complainant, : OSHRC Docket
v. : NO. 92-3009
SPARROW CONSTRUCTION CORP., :
Respondent. :

ORDER APPROVING PARTIAL SETTLEMENT

Respondent in OSHRC Docket No. 92-3009, by a letter dated September 15, 1992, contested 2 citations issued to it by Complainant on August 27, 1992. In that letter, Respondent also contested the penalties proposed by Complainant for the citations.

An executed Partial Stipulated Settlement has been received from the parties, and this stipulation addresses all matters at issue between the parties regarding Citation No. 2, Items 1, 2 and 3, and the accompanying proposed penalties in this proceeding. The stipulation having been read and considered it is

ORDERED: (1) That the terms of the Partial Stipulated Settlement are approved and incorporated as part of this Order; and

(2) That this Order, pursuant to Section 12(j) of the Act, 29 U.S.C. § 661(j), will become the final order of the Commission at the expiration of 30 days from the date of docketing by the Executive Secretary, unless within that time a member of the Commission directs that it be reviewed.

Dated this 31st day of March, 1993.

SO ORDERED:

A handwritten signature in black ink, appearing to be "D. A. ...", written over a horizontal line.

Judge, Occupational Safety
& Health Review Commission