

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,  
Complainant,  
v.  
TRADESMEN GROUP, INC.,  
Respondent.

DOCKET No. 03-2133

Appearances: Paul Spanos, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
For Complainant.

John W. McGraw  
Tradesmen Group, Inc.  
Dublin, Ohio  
For Respondent

Before: Michael H. Schoenfeld, Administrative Law Judge

***DECISION AND ORDER***

***Background and Procedural History***

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651-678; hereafter called the “Act”) and has been heard and decided pursuant to Subpart M of the Rules of Procedure of the Occupational Safety and Health Review Commission (the Commission), 29 C.F.R. § 2200.200 *et seq.*

On October 2, 2003 a Compliance Officer (“CO”) from the U.S. Occupational Safety and Health Administration (“OSHA”) visited Respondent’s work site in Peninsula, Ohio and conducted an inspection and investigation of Respondent. As a result of the inspection, OSHA issued a citation

to Respondent on October 16 2003 alleging two 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 Cleveland, Ohio on April 6, 2003. No affected employees sought party status.

### ***Jurisdiction***

Respondent at all times relevant to this action maintained a place of business in Dublin, Ohio and other places where it was engaged in renovation and remodeling including historical restoration. Engaging in such work constitutes construction activities. The Commission has held that construction is in a class of activity which as a whole affects interstate commerce. *Eric K. Ho, Ho Ho Ho Express, Inc., Houston Fruitland, Inc.*, 20 BNA OSHC 1361, 2002 CCH OSHD ¶32,692, (Nos. 98-1645 & 98-1646, 2003), *citing, Clarence M. Jones d/b/a C. Jones Company*, 11 BNA OSHC 1529, 1983 CCH OSHD ¶26,516 (No. 77-3676, 1983).

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***

The citation items allege that Respondent’s two employees at the site worked from an aerial lift without utilizing proper fall protection and that the employees worked from or walked on a working surface also without appropriate fall protection.<sup>1</sup> OSHA proposed to assess a total penalty of \$3,000 for the two alleged violations.

Pursuant to the provisions of Rule 209, 29 C.F.R. § 2200.209, stipulations, testimony and documentary evidence was taken at the hearing. Based upon that record, as well as the citation and pleadings in the case, a decision and order was delivered from the bench. That portion of transcript of the bench decision (Tr. 24 - 27) is attached as Appendix A and made a part of this Decision and Order.

---

<sup>1</sup> The items alleged violations of the standards at 29 C.F.R. §§1926.453(b)(2)(v) and 1926.501(b)(1), respectively. Each was designated as “serious.”

Having found the violations existed and that they were “serious” within the meaning of the Act, items 1 and 2 of the citation issued to Respondent are AFFIRMED.

Upon consideration of the size, history and good faith of Respondent, with special emphasis on the degree of concern for safety exhibited by Respondent’s safety program and training efforts, a penalty of \$500.00 for each of the two violations is found to be appropriate and is assessed.

***ORDER***

1. Item 1 of Citation 1, issued to Respondent on October 16, 2003, is AFFIRMED.

A civil penalty of \$500.00 is assessed therefor.

2. Item 2, of Citation 1, issued to Respondent on October 16, 2003, is AFFIRMED.

A civil penalty of \$500.00 is assessed therefor.

SO ORDERED.

\_\_\_\_\_  
/s/  
Michael H. Schoenfeld  
Judge, OSHRC

Dated: April 29, 2004  
Washington, D.C.