

SECRETARY OF LABOR,

Complainant,

v.

SCHIMENTI CONSTRUCTION CO.,

Respondent.

DOCKET NO. 03-1486

**APPEARANCES:**

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

Matthew C. Schimenti (*Pro Se*)  
Mount Kisco, NY  
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 Hartsdale, New York, the Secretary, on or about July 1, 2003, issued to Schimenti Construction Company, (“Respondent”) two citations alleging serious and other-than-serious violations of construction safety standards appearing in Part 1926 of Title 29 of the Code of Federal Regulations and proposed civil penalties totaling \$ 2,475.00.

Issue has been joined by the filing of timely notice of contest. Despite appropriate notice, Respondent did not appear for a telephone pre-hearing conference. Nor has Respondent provided any communication with either the Secretary or the Commission despite requests to do so. Accordingly, I find that Respondent has abandoned its contest. Thus, 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 standards at 29 CFR §1926.404(b)(1)(i) and 1926.404(f)(6) as alleged in Citation 1, Items 1 and 2. The violations were both serious within the meaning of section 17(k) of the Act, 29 U.S.C. § 666(j), for which a civil penalties of \$1575.00 and \$900.00, respectively, are appropriate.
4. Respondent was in violation of section 5(a)(2) of the Act in that it failed to comply with the standards at 29 CFR §1926.54(b); 1926.54(d) and 1926.452(w)(2), as alleged in Citation 2, Items 1, 2 and 3. The violations were other-than- serious within the meaning of the Act. No civil penalty was proposed or is assessed.

**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.