

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC #1179

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CUSTOM HOME IMPROVEMENT CO., INC.

RESPONDENT

**DECISION AND ORDER
OF REVIEW COMMISSION**

Before **SHIELDS**, Chairman; **RUH** and **BRADEN**, Commissioners.

BY THE COMMISSION:

A Recommended Order of Hearing Officer Joel Frockt, issued February 18, 1986, is presently before this Commission for review pursuant to an Order Granting Petition for Discretionary Review issued March 27, 1986.

Discretionary review of said Recommended Order is limited to the alleged violation of standard §1910.217(b)(3)(i) as set forth in item 3 of Citation No. 1.

In his conclusions of law the hearing officer determined that since the mechanical power presses did in fact have single-stroke mechanisms, albeit not in proper working order, that Respondent had not violated the aforesaid standard.

We disagree.

In the case of S & T Industries, KOSHRC #859 (1983), the hearing officer was confronted with identical circumstances. The machine in question there had a malfunctioning anti-repetitive device, and the hearing officer refused to be persuaded that there was a "technical" compliance with standard §1910.217(b)(3)(i). He said that if employers could be excused from the operation of the Act by simply having equipment that appeared to protect employees, but which did not in fact function to protect them, the purposes of the Act to provide a safe and healthful workplace for employees would be completely frustrated. Upon review the Review Commission specifically noted that the basis for the citation was

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the improper adjustment of the device, rather than the absence of the device, and affirmed the hearing officer's decision.

In light of the foregoing precedent and the facts and circumstances in this case, we find that the proposed penalty assessment of \$120 (one hundred and twenty dollars) is appropriate.

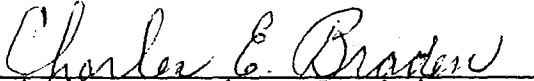
ORDER

THEREFORE, IT IS HEREBY ORDERED that the hearing officer's decision vacating the violation of 29 CFR 1910.217(b)(3)(i) (as adopted by 803 KAR 2:020) is **REVERSED**.

IT IS FURTHER ORDERED that Respondent pay a penalty of \$120 (one hundred and twenty dollars) for the serious violation of 29 CFR 1910.217(b)(3)(i). The penalty shall be paid without delay, but no later than 45 days from the date this decision is issued.


William H. Shields, Chairman


Carl J. Ruh, Commissioner


Charles E. Braden, Commissioner

DATE: June 3, 1986

DECISION NO. 1597

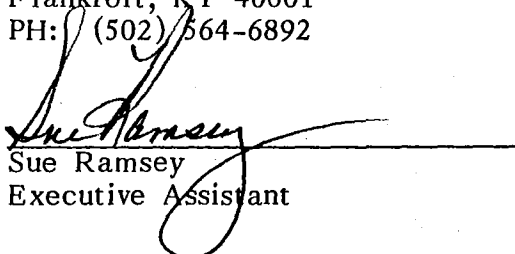
Copy of the foregoing Order has been served on the following parties in the manner indicated:

Hon. Kenneth J. Costelle (Messenger Mail)
Assistant Counsel
Labor Cabinet
Office of General Counsel
U. S. 127 South
Frankfort, KY 40601

Mr. William E. Hancock, Pres. (Cert. Mail #P283 321 878)
Custom Home Improvement Co., Inc.
11422 Blue Lick Road
Louisville, KY 40229

This 3rd day of June, 1986.

Kenneth Lee Collova
Executive Director
KOSH REVIEW COMMISSION
Airport Bldg., Louisville Rd.
Frankfort, KY 40601
PH: (502) 564-6892


Sue Ramsey
Executive Assistant

3-17-86
3-31-86

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC #1179.

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CUSTOM HOME IMPROVEMENT COMPANY, INC.

RESPONDENT

NOTICE OF RECEIPT OF RECOMMENDED ORDER
AND
ORDER OF THIS COMMISSION

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a Decision, Findings of Fact, Conclusions of Law and Recommended Order is attached hereto as a part of this Notice and Order of this Commission.

You will further take notice that pursuant to Section 48 of our Rules of Procedure any party aggrieved by this decision may submit a petition for discretionary review by this Commission. The petition must be received by the Commission in its offices in Frankfort on or before the 25th day following the date of this notice. Statements in opposition to petition for discretionary review may be filed during review period, but must be received by the Commission on or before the 35th day from date of issuance of the recommended order.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission, and it is hereby ordered that unless this Decision, Findings of Fact, Conclusions of Law, and Recommended Order is called for review and further consideration by a member of this Commission within 40 days of the date of this order, on its own order, or the granting of a petition for discretionary review, it is adopted and affirmed as the Decision, Findings of Fact, Conclusions of Law and Final Order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been directed by one or more Review Commission members.

Copy of this Notice and Order has been served on the following parties in the manner indicated:

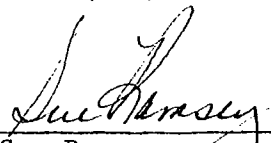
Hon. Rose Ashcraft
Assistant Counsel
Labor Cabinet
Office of General Counsel
U. S. 127 South
Frankfort, KY 40601

(Messenger Mail)

Mr. William E. Hancock, Pres. (Cert.Mail #P041 818 994)
Custom Home Improvement Co., Inc.
11422 Blue Lick Road
Louisville, KY 40229

This 18th day of February, 1986.

Kenneth Lee Collova
Executive Director
KOSH REVIEW COMMISSION
Airport Bldg., Louisville Rd.
Frankfort, KY 40601
PH: (502) 564-6892



Sue Ramsey
Executive Assistant

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC DOCKET
NUMBER 1179

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

V. FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND RECOMMENDED ORDER

CUSTOM HOME IMPROVEMENTS COMPANY, INC.

RESPONDENT

* * * * *

This matter arises out of two citations issued against Custom Home Improvements Company, Inc., hereinafter referred to as "Custom Home" by the Secretary of Labor, hereinafter referred to as "Secretary", for violations of the Kentucky Occupational Safety and Health Act, hereinafter referred to as "Act".

On July 10 and 11, 1984, a Compliance Safety and Health Officer, hereinafter referred to as the "CSHO" made an inspection of the property of Custom Home in Louisville, Kentucky. As a result of that inspection, the Commissioner issued two citations on August 10, 1984, charging Custom Home with two serious violations of the Act and proposing a total penalty thereof of \$360.00.

On August 21, 1984, and within fifteen working days from receipt of the citation, Custom Home served notice on the Secretary contesting the citation. The Notice of Contest was transmitted to this Review Commission on August 23, 1984 and

notice of receipt of the contest was sent by the Review Commission to the parties on August 29, 1984.

Thereafter, on September 10, 1984, the Secretary filed its Complaint and this matter was assigned to a Hearing Officer and scheduled for a hearing. The hearing was held in Louisville on January 3, 1985, pursuant to KRS 338.071(4). That section of the statute authorizes this Review Commission to rule on appeals from citations, notifications and variances to the Act and to adopt and promote rules and regulations with respect to the procedural aspects of those hearings. KRS 338.081 further authorizes this Review Commission to appoint Hearing Officers to conduct its hearings and represent it in this manner. The decisions of the Hearing Officers are subject to discretionary review by the Review Commission on appeal timely filed by either party, or upon the Review Commission's own motion.

A standard alleged violated and under contest (as adopted by 803 KAR 2:003), the description of the alleged violation and the penalty proposed for same are as follows:

1a. 29 CFR 1910.215(a)(2):

"abrasive wheel(s) used on grinding machinery were not provided with safety guard(s) which covered the spindle end, nut, flange projections:

- (a) bench grinder, located on work bench on North side of door department."

1b. 29 CFR 1910.215(b)(9):

"guards for abrasive wheel machine(s) where the operator stands in front of the machine were not constructed so that the peripheral protecting member could be adjusted to the constant decreasing diameter of the wheel core.

- (a) bench grinder located on work bench on

North side of door department."

2a. 29 CFR 1910.219(b)(1):

"pulley(s) with part(s) 7 feet or less from the floor or work platform were not guarded in accordance with the requirements specified at 1910.219(n) and (o):

- (a) bench grinder, located on work bench on north side of door department.
- (b) pulleys on air compressor on North side of door department.
- (c) pulleys on close machine press in window department."

2b. 29 CFR 1910.219(e)(1)(i):

"horizontal belts which had both runs 7 feet or less from the floor level were not guarded with a guard that extended to at least 15 inches above the belt:

- (a) bench grinder on work bench on North side of door department.
- (b) air compressor on North side of door department."

2c. 29 CFR 1910.219(3)(3)(i):

"vertical or inclined belt(s) were not enclosed by guard(s) conforming to the requirements specified at 1910.219(m) and (o):

- (a) vertical belts on close machine press located in window department."

3. 29 CFR 1910.217(b)(3)(i):

"mechanical power press(es) using full revolution clutches did not incorporate a single-stroke mechanism:

- (a) three mechanical power presses located in the window department. (Alva Allen)
- (b) one mechanical power press located in the door department. (Alva Allen)"

NOW, THEREFORE, upon the pleadings and evidence herein and upon the entire record, the following Findings of Fact, Conclusions of Law, and Recommended Decision are hereby made.

FINDINGS OF FACT

At the time of the inspection, July 10 and 11, 1984, Hardy B. Watson, Jr., was a Compliance Officer with the Occupational Safety and Health Program, employed by the Secretary of Labor. Mr. Watson had been a Compliance Officer for 12 years and has been trained at the OSHA school in Chicago in addition to numerous training courses. His duties were to make safety inspections, check for any type of safety violations, and cite violations. Mr. Watson testified that he made approximately 150 inspections per year. His authority comes from the Secretary of Labor and he reports to John Duncan, his immediate supervisor.

The inspection of Custom Home Improvement Company, Inc. was a safety inspection for manufacturing. It was a general scheduled inspection with entry gained onto the premises by way of consent.

Mr. Watson held an opening conference with Don Smith, company representative, on July 10, 1984. At that time, no inspection was made because Mr. Hancock was not present. The CSHO returned on July 11, 1984, to make his walk around inspection accompanied by Mr. Hancock.

During the inspection of the premises, the CSHO became aware of violations of safety standards and recommended the issuance of citations. He observed that abrasive wheels used on

grinding machinery were not provided with safety guards covering the spindle end, nut and flange projections. This occurred on a bench grinder located on the work bench on the North side of the door department. He also observed that guards for abrasive wheel machines where operators standing in front of the machines were not constructed so that peripheral protective metal could be adjusted to the constantly decreasing diameter of the wheel. This was observed on a bench grinder located on the work bench of the north side of the door department. The CSHO testified that he did not see the bench grinder being used at the work site but he had the opportunity to determine the frequency of the use of the equipment by having talked with the operator.

The CSHO stated that the purpose of the guard referred to is to protect the employee from particles flying in the event the wheel were to explode. He stated that it is necessary to have the guard to be adjustable to fit the decreasing size of the wheel since the wheel becomes used and eventually gets smaller, which then increases the size of the opening.

The CSHO stated that the hazard to which the employee was exposed was the possibility of an explosion of the grinding wheel which would send particles flying and could put out an eye or severely injure the face or hands. He said that there were guards for this type of protection available.

The CSHO further noted that pulleys with parts 7 feet or less from the floor or work platform were not guarded in accordance with the requirements specified at 1910.219(m)(o). Specifically, this was observed on a bench grinder located on the

work bench on the North side of the door department, on pulleys located on an art compressor on the north side of the door department and on pulleys on a Klass machine press in the window department.

The CSHO further testified that he observed horizontal belts having runs 7 feet or less from the floor level as not being guarded with a guard that extended to at least 15 inches above the belt. This was observed on a bench grinder on a work bench on the North side of the door department and on an air compressor on the North side of the door department. The CSHO also testified that he observed vertical and inclined belts not enclosed by guards which conform to the requirements specified in 1910.219(m)(o). This was noted on a vertical belt on the klass machine press located in the window department.

The CSHO identified the names of two employees who used these pieces of equipment and stated that each piece of equipment was used by one person at a time. He further confirmed that Mr. Hancock, the company representative was with him at the time of his inspection.

There was a question raised whether or not the guards on the Klass machine press had been removed purely for the purpose of maintenance, but the CSHO said he had inquired and found out that the machine press was being used even during the time the machine was being worked on. He further stated that he felt that a serious violation was warranted because failure to have guards for the pulleys and belts could cause severe lacerations or possible amputations.

The CSHO observed mechanical power presses using full revolution clutches which did not incorporate a single stroke mechanism as required in 1910.217(d)(3)(i). He observed this on three mechanical power presses located in the window department and one mechanical power press located in the door department. he explained that a single stroke mechanism on a power press would prevent it from continuing to make strokes after pushing the foot pedal or level to activate it. He stated that the same two employees noted before were also exposed to this hazard and that the employer had been made aware of the violation. He stated that the employer said he was unaware that the single stroke mechanism was required. The CSHO believed that it was a violation which could easily be abated. The violation was considered to be serious because of the possibility of amputation or serious lacerations to the employee.

The Commissioner assessed penalties for the violations using the recommendations of the CSHO, which take into account the number of employees exposed to the hazards, the duration of their exposure, the proximity to the danger zone and other factors such as speed and stress. These were prepared using guidelines provided for the CSHO and which are used by all Compliance Officers in order that assessments be consistent throughout the Commonwealth.

With regard to the number of employees exposed, the Respondent was given a one, duration of exposure was assigned a factor of one, proximity to the danger zone was assigned a one, and there was no point assigned for stress or working conditions.

Thus, the Respondent received the minimum value assignable in each of the categories required. In computing the severity quotient, the CSHO assigned a 4 because the possible injury would require hospitalization. Applying the calculations as required in the field operations manual, the probability/severity quotient resulted in a value of two. The recommended guidelines provide that a value of two is to be assessed a \$400.00 fine. The CSHO then testified that this was reduced by 70% giving 40% for size, 10% for history, and 20% for a good faith. The resulting recommended penalty was \$120.00. The same calculations were applied for items 2 and 3 of the citation.

The CSHO testified that he held the closing conference with Mr. Hancock, of the Respondent going over all the violations with him.

The next witness to testify was Mr. Hancock, Company Representative, who testified that the bench grinder was used very little, possibly ten minutes a week, but that the problem has been abated. He further stated that the abatement has been performed on the big housing over the grinder. He further questioned whether or not the violation reported by the CSHO was in fact a serious violation. He stated that the air compressor which was cited is approximately 6 feet off the floor with its back against the wall and the tank being out in front of the pulley and the belts. He did not see that it would be possible for an employee to put their hand into an area of danger. He stated however that the machine has been corrected.

Mr. Hancock stated that the employees had failed to put the guard back on the Klass machine press prior to the CSHO making his inspection. He stated, however, that it has been replaced. He further noted that guards have been put on the belts and pulleys which were less than 7 feet from the floor.

CONCLUSIONS OF LAW

29 CFR 1910.215(a)(2) provides:

The safety guard shall cover the spindle end, nut, and flange projections. The safety guard shall be mounted so as to maintain proper alignment with the wheel, and the strength of the fastenings shall exceed the strength of the guard, except:

i. safety guards on all operations where the work provides a suitable measure of protection to the operator, may be so constructed that the spindle end, nut and outer flange are exposed; and where the nature of the work is such as to entirely cover the side of the wheel, the side covers of the wheel may be omitted;

ii. the spindle end, nut and outer flange may be exposed on machines designed as portable saws.

This standard requires safety guards in all but two situations to protect employees from the hazards to which they are otherwise exposed in performing their jobs. In this case, the employees were exposed to the hazard of an exposed spindle end, nut or outer flange. This could possibly result in severe lacerations and/or amputation. Guards as required under the standard would have protected them from the hazard and the failure to require their use was a serious violation of the act.

Further, the Hearing Officer concludes that the penalty proposed was appropriate under the circumstances.

29 CFR 1910.215(b)(9) provides:

"safety guards are the types described in (3) and (4) of this paragraph where the operator stands in front of the opening, shall be constructed so that the peripheral protecting number can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in subparagraphs (3) and (4) of this paragraph shall never be exceeded and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed 1/4 inch.

In this situation, the un rebutted testimony of the CSHO provided that the proper adjustments were not available and there was an exposure to the employee of flying particles in the event of an exploding wheel. The proper equipment with available adjustment mechanism would have protected the employee from the hazard. The failure to require the use of the proper safety guards was a serious violation of the act. The Hearing Officer concludes that the penalty proposed was appropriate under the circumstances.

29 CFR 1910.219(d)(1) provides:

Pulleys, any parts of which are seven (7) feet or less from the floor or working platform shall be guarded in accordance with the standard specified in paragraphs (m) and (o) of this section. Pulleys serving as balance wheels (e.g., punch presses) on which the point of contact between belt and pulley is more than 6 feet 6 inches (6 ft. 6 in.) from the floor may be guarded with a disk covering the spokes.

Testimony was undisputed that a bench grinder, air compressor, and machine press all were lacking proper guarding of

pulleys and the Respondent merely stated that the problem had now been abated. Employees were exposed to the hazard of severe lacerations and/or amputation and therefore the Hearing Officer concludes that the failure to require the use of protection was of serious violation of the act and the penalty proposed was appropriate under the circumstances.

29 CFR 1910.219(e)(3)(1)(i) provides:

Where both runs of horizontal belts are seven (7) feet or less from the floor level, the guard shall extend to at least fifteen (15) inches above the belt or to a standard height (See Table 0-12), except that where both runs of a horizontal belt are forty-two inches or less from the floor, the belt shall be fully enclosed in accordance with paragraphs (m) and (o) of this section.

As in the previous item, testimony of the CSHO was un rebutted that a bench grinder and air compressor were not properly protected in accordance with the above standard. The employees were exposed to severe lacerations or amputation which leads the Hearing Officer to conclude that failure to require the use was a serious violation of the act and that the penalty proposed was appropriate under the circumstances.

29 CFR 1910.219(e)(3)(i) provides as follows:

Vertical and inclined belts shall be enclosed by a guard conforming to the standards in paragraphs (m) and (o) of this section.

No testimony was offered by the Respondent to refute that offered by the CSHO and the hearing officer finds that the hazard to which the employees were exposed was such to justify the issuance of a serious violation of the Act. The Hearing

Officer further rules that the penalty proposed was appropriate under the circumstances.

29 CFR 1910.217(b)(3)(i) states that:

Machines using full revolution clutches shall incorporate a single-stroke mechanism.

This standard requires the use of single-stroke mechanisms on mechanical power presses in order to protect employees from the hazards to which they are otherwise exposed in performing their job. The testimony heard by the Respondent, by and through his Representative, Mr. Hancock, was that all these mechanical power presses did, in fact, have single-stroke mechanisms. While admittedly these mechanisms may or may not be in proper working order, the Hearing Officer concludes that the Complainant has failed to provide a showing that the Respondent failed to provide the guards as required. In the opinion of the Hearing Officer, the Respondent has failed to properly protect his employees, however, it has not violated the aforesaid standard in doing so.

RECOMMENDED DECISION

Upon the basis of the foregoing Findings of Fact, Conclusions of Law and upon the entire record, the following recommended decision was made.

1. That items 1a, 1b, 2a, 2b, and 2c charging serious violations of the Act and proposing a total penalty therefor of \$240.00 and the same are hereby affirmed.

2. That item 3 charging a serious violation of the Act, be and the same is hereby vacated.

3. That the violations affirmed herein shall be abated in accordance with the citation and the penalty paid without delay, but no later than 45 days from the date hereof.


Hearing Officer

DATED: February 18, 1986
DECISION NO. 1555