KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.
FRANKFORT, KENTUCKY 40601
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October 19, 1979

MERLE H. STANTON
CHAIRMAN

CHARLES B. UPTON
MEMBER

JOHN C. ROBERTS
MEMBER

JULIAN M. CARROLL
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

KOSHERC #583

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

VS.

CHARTER BUILDERS, INC.

COMPLAINANT

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; UPTON and ROBERTS, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer Wayne Waddell, issued under date of July 10, 1979, is presently before this Commission for review, pursuant to a Petition for Discretionary Review filed by the Respondent.

We find that the evidence adequately supports the Hearing Officer's finding that the Respondent was in violation of 29 CFR 1926.500(b)(1)(as adopted by 803 KAR 2:030) and 29 CFR 1926.500(d)(1)(as adopted by 803 KAR 2:030).

We further find that the penalty reductions recommended by the Hearing Officer were appropriate under the circumstances.

Consistent with our holding in Gateway Erectors, KOSHRC #582, we reject Hearing Officer Waddell's conclusion that a repeat multiplier should not be used in calculating a penalty for a serious violation where the first instance violation was non-serious and carried no penalty.
This Commission nevertheless is of the opinion that the record indicates other mitigating circumstances sufficient to justify the recommended reduction in penalty.

Accordingly, it is the unanimous ORDER of this Commission that the Recommended Order of the Hearing Officer be and it is hereby AFFIRMED, except for the legal conclusion of the Hearing Officer hereinabove mentioned, which is hereby OVERRULED. All findings and conclusions of the Hearing Officer not inconsistent with this opinion are hereby AFFIRMED.

Merle H. Stanton, Chairman

Charles B. Upton, Commissioner

John C. Roberts, Commissioner

DECISION NO. 778

DATED: October 19, 1979
Frankfort, Kentucky
Copy of this Decision and Order has been served by mailing or personal delivery on the following:

Commissioner of Labor
Commonwealth of Kentucky
U. S. 127 South
Frankfort, Kentucky 40601
Attention: Hon. Michael D. Ragland
Executive Director for
Occupational Safety & Health

Hon. Frederick G. Huggins
Deputy General Counsel
Department of Labor
U. S. 127 South
Frankfort, Kentucky 40601

Mr. A. D. McMullan, Pres.
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Charter Builders, Inc.
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Hon. Robert C. Elder, Jr.
Smith Smith Dunlap & Canterbury
4050 First National Bank Building
Dallas, Texas 75202

This 19th day of October, 1979.

Iris R. Barrett
Executive Director