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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

AIRPORT BLDG., LOUISVILLE RD., (U.S. 60-WEST)

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

March 3, 1982

JOHN Y. BROWN, Jr.
GOVERNOR

JOHN C. ROBERTS
CHAIRMAN

CARL J. RUH
MEMBER

CHARLES E. BRADEN
MEMBER

KOSHRC #903

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

BARNEY MILLER'S, INC.

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before ROBERTS, Chairman; RUH and BRADEN, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer Shirley A. Cunningham, Jr., issued under date of November 25, 1981, is presently before this Commission for review pursuant to an Order of Direction for Review by the Commission.

The case below involved an alleged serious violation of 29 CFR 1910.309(a) (as adopted by 803 KAR 2:020) and a proposed penalty of \$280. The cited standard adopts by reference the requirements of the National Electrical Code Article 110-17(a).

After hearing, consideration of the evidence presented by the parties and reference to the appropriate sources, the Hearing Officer issued his Recommended Order sustaining a violation and vacating the penalty proposal.

#903

We agree with the Hearing Officer's finding that a violation has been established, and we hereby affirm a serious violation as charged. We cannot agree with the Hearing Officer's recommendation to vacate the penalty proposal.

In an order of review and remand in Alhom Company, KOSHRC #776 (1980) we held that KRS 338.991(2) requires that a serious violation be accompanied by some penalty assessment. In light of the foregoing precedent and the facts and circumstances entered upon the record in this case, we find that a penalty assessment of one dollar (\$1.00) is appropriate.

ORDER

IT IS HEREBY ORDERED that a serious violation of 29 CFR 1910.309(a) (as adopted by 803 KAR 2:020) is SUSTAINED.

IT IS FURTHER ORDERED that a penalty of one dollar is assessed.

Abatement of the cited conditions shall take place immediately upon issuance of this order.



John C. Roberts
Chairman

s/Carl J. Ruh

Carl J. Ruh
Commissioner

s/Charles E. Braden

Charles E. Braden
Commissioner

DATED: March 3, 1982
Frankfort, KY

DECISION NO. 1105

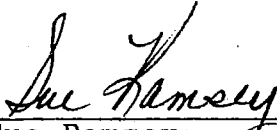
Copy of this Decision and Order has been served by mailing or personal delivery on the following parties:

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

Hon. Cathy Utley (First Class Mail)
Assistant Counsel
Department of Labor
620 South Third Street
Louisville, Kentucky 40202

Mr. Harry Miller (Cert. Mail #P 209 357 619)
Barney Miller's, Inc.
232 East Main Street
Lexington, Kentucky 40507

This 3rd day of March, 1982.



Sue Ramsey
Executive Secretary