

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, November 5, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Commissioner (video)
	Clint Bolick	Commissioner
	Scott P. LeMarr	Commissioner
	Andrew Wade	Acting Director
	Valli Goss	Assistant Chief Counsel
	William Warren	ADOSH Director
	Steve Ripple	Discrimination Investigator
	Kelly LeFevre	Human Resource Manager
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:35 p.m. noting a quorum present. Also in attendance were Scott Cooley and Afshan Peimani new attorneys from the Legal Division, Jake Byrne and Bill Cooper for America Roofing, and Jason Weber of Snell & Wilmer.

Approval of Minutes of October 21, 2015 Regular Meeting and Executive Session.

The Commission unanimously approved the Minutes of the October 21, 2015 Regular Session and Executive Session meeting on motion of Commissioner Bolick, second of Commission Hennelly. Commissioner LeMarr abstained since he was not appointed for that meeting.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C14/15-2898 A Yard Apart, L.L.C.
2. 2C14/15-1803 Beach Ventures, Inc.
3. 2C14/15-2258 Adam Walkosz & Lydia Walkosz, h/w, dba Country Club Assisted Living Care Home
4. 2CSP15/16-0021 Marin Dry Wall, L.L.C.
5. 2C15/16-0281 Pizza on 87, L.L.C.
6. 2C14/15-2044 Tire Pro Automotive, Inc.

Chairman Schultz asked if any agenda items needed to be removed from the Consent Agenda, hearing none. Commissioner Bolick asked about the difference in the \$500.00 and

\$1,000.00 penalties and Mr. Wade explained why there are different penalty amounts. The Commission unanimously approved the items on the Consent Agenda on motion of Commissioner LeMarr, second of Commissioner Hennelly.

Discussion and/or Action regarding Legislation. This agenda item may include Discussion and/or Action Regarding the Sunset Review of the Industrial Commission of Arizona, and related Boards, Committees or Councils.

Chairman Schultz stated he did not have any new information. Mr. Wade commented on the 52nd Legislature, 2nd Regular Session Calendar Deadlines.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Alta Vista Masonry, LLC 8650 E McDowell Rd Phoenix, AZ 85051	Planned Years in Business: 8 Empl. Covered by inspection: 5
Site Location: 545 E. McDowell Rd Phoenix, AZ 85004	
Inspection No: Q6169-1079473	
Inspection Date: 07/15/2015	

SERIOUS – Citation 1 - Item 1 – 545 E McDowell Rd. Phoenix, AZ: One employee was performing work while on a fabricated frame scaffold and the employee had not been trained in the hazards associated with the type of scaffold being used. (29 CFR 1926.454(a)).

Div. Proposal - \$1,200.00	Formula Amt. - \$1,200.00
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SERIOUS – Citation 1 - Item 2 – 545 E McDowell Rd. Phoenix, AZ: One employee working on the roof without the use of a guardrail system, safety net system, or personal fall arrest system to prevent an approximate 15 foot fall hazard. (29 CFR 1926.501(b)(1)).

Div. Proposal - \$1,500.00	Formula Amt. - \$1,500.00
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SERIOUS – Citation 1 - Item 3 –

- a) 545 E McDowell Rd. Phoenix, AZ: One employee utilized a portable 'A' frame step ladder in the closed position. (29 CFR 1926.1053(b)(4)).

- b) 545 E McDowell Rd. Phoenix, AZ: One employee utilized a portable 'A' frame step ladder for roof access and the employer did not provide ladder training in the recognition and avoidance of unsafe conditions associated with the use of portable ladders. (29 CFR 1926.1060(a)).

Div. Proposal - \$1,200.00	Formula Amt. - \$1,200.00
TOTAL PENALTY - \$3,900.00	TOTAL FORMULA AMT. - \$3,900.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Bolick commented on the adjustment factors. Mr. Warren responded to the comment. Mr. LeMarr asked about the ladder citation and the differences between scaffold and ladder standards. Mr. Warren responded to the question.

Chairman Schultz asked if there were any other questions of a motion. Commissioner Bolick moved to approve staff recommendations for the citation and penalties. Commissioner LeMarr seconded the motion. The Commission unanimously approved the motion.

America Roofing LLC
1005 S 30th Ave
Phoenix, AZ 85009

Planned
Years in Business: 16
Empl. Covered by inspection: 3

Site Location: 7542 W Carter Rd
Laveen, AZ 85339
Inspection No: V1001-1060810
Inspection Date: 05/15/2015

WILLFUL-SERIOUS – Citation 1 Item 1 – 545 E McDowell Rd. Phoenix, AZ: One employee was performing work while on a fabricated frame scaffold and the employee had not been trained in the hazards associated with the type of scaffold being used. (29 CFR 1926.454(a)).

Div. Proposal - \$56,000.00	Formula Amt. - \$56,000.00
TOTAL PENALTY - \$56,000.00	TOTAL FORMULA AMT. - \$56,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Bolick asked about a repeated citation and Mr. Warren explained why ADOSH proposed a willful serious. Commissioner Bolick stated that this was a repeat of prior violations. Mr. Warren referred to the prior violations and commented on actions taken by the employer to improve compliance. Commissioner LeMarr asked about the citation as a serious compared to a willful. Mr. Warren explained why ADOSH wrote the citation as proposed. Mr. Wade commented on the statutory authority for penalties.

Chairman Schultz asked if there were further questions for Mr. Warren, and hearing none, he invited Bill Cooper to the address the Commission. Mr. Cooper explained his role with America Roofing and the efforts the employer has taken to improve compliance. Chairman Schultz asked Mr. Cooper for more details about his involvement with the employer and the inspections he performed and those that superintendents performed. Commissioner LeMarr asked about the specific inspection performed for this violation. Mr. Cooper responded to the question. Chairman Schultz asked about fall protection equipment and Mr. Cooper responded to the question.

Jake Byrne addressed the Commission noting that he was part owner of America Roofing. He provided additional details regarding and commented that it is difficult to educate the employees on the standards and requirements.

Chairman Schultz commented on the purposes of penalties. He added that he appreciates that America Roofing employees are ADOSH trained and most of them are CPR certified. He asked about the turnover rate. Mr. Byrne responded that the market is improving, there is demand for workers in the roofing industry, and workers may move from one employer to another for one dollar.

Commissioner LeMarr commented on the employer's safety program, that the employer appears to be diligent about the program and noted that there have been ADOSH inspections where the employer was in compliance. He added that it was bothersome that there were fall protection citations in February and May for the same thing. Commissioner LeMarr explained that this is an indication that the safety program may not be as encompassing as it needs to be. Mr. Byrne replied that he understood Commissioner LeMarr's comment and he commented on the extent of their exposure given that America Roofing has 33% of the market.

Chairman Schultz asked for more details concerning the employer's plan to ensure compliance. Mr. Byrne described the changes made since the May ADOSH inspection and suggested OSHA should fine employees instead of the employer.

Commissioner LeMarr asked about options for the citation and Mr. Wade responded to the question.

Chairman Schultz asked if there were any other discussion or a motion. Commissioner Bolick commented on the employer's history and noted that ADOSH inspects only a tiny fraction of worksites which suggests there may be more violations that are not identified. He added that the employer seems to have a focus on safety even if the goals are not being successfully translated. He explained that he would be interested in assessing a penalty that takes into account the history as well as the employer's efforts to improve. Commissioner LeMarr concurred with Commissioner Bolick and stated the past track record was not good and commented on sampling percentage. He commented on the efforts regarding compliance and commented that he would support a formula that would be half of the maximum amount of penalty, which would be a penalty of \$35,000.00.

Chairman Schultz asked if Commissioner Hennelly had anything to add. Commissioner Hennelly stated he agreed and added that in his few years on the Commission, these issues just keep coming up and seem to be getting worse, not just with this employer, but in the roofing industry. He acknowledged the employer's history, and the difficulties the employer may experience with the opportunities employees may find with other employers. Commissioner Hennelly agreed with the concept of a reduced penalty to recognize the employer's efforts.

Chairman Schultz asked if there was a motion to approve the citation as presented with a penalty of \$35,000.00. Commissioner LeMarr moved that motion and Commissioner Bolick seconded the motion. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$35,000.00. Commissioner LeMarr stated to Mr. Byrne that with the reduction of fine, he would encourage him to spend the money he saved this afternoon, on safety, and encouraged him to continue to focus on safety because it will continue to pay him back four times over.

SB Framing LLC
15250 N Hayden Rd
Scottsdale, AZ 85260

Site Location: 5601 Exeter Blvd
Phoenix, AZ 85018
Inspection No: H1793-1079149
Inspection Date: 07/21/2015

Planned
Years in Business: 7
Empl. Covered by inspection: 10

SERIOUS – Citation 1 - Item 1 – Southwest corner of jobsite: One employee was cutting gable ends and an employee below was not protected from head injury by a protective helmet. (29 CFR 1926.100(a)).

Div. Proposal - \$450.00

Formula Amt. - \$450.00

SERIOUS – Citation 1 - Item 2 – Southwest corner of jobsite: An employee was using a Skilsaw circular saw, model and serial numbers unknown, to cut gables ends and the guard on the circular saw had been disabled. (29 CFR 1926.304(d)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – Southwest corner of jobsite: An employee cutting gable ends was using a Skilsaw circular saw (model and serial numbers unknown) and the electrical cord was frayed with exposed wiring. (29 CFR 1926.416(e)(1)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 4 – Southwest corner of jobsite: One employee was engaged in roof framing at a height of 12 feet from the exterior wall top plate to the ground and was not protected from falling by a guardrail system, safety net system or personal fall arrest system. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$450.00

Formula Amt. - \$450.00

SERIOUS – Citation 1 - Item 5 – Southwest corner of jobsite: One employee used an extension ladder to access the exterior wall top plate and the ladder was not extended a full 36 inches above the 2x4 top plate landing. (29 CFR 1926.1053(b)(1)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

NON-SERIOUS – Citation 2 - Item 1 – Office: The employer did not keep a record for 2012, 2013, 2014 and 2015 of all work-related injuries and illnesses on the OSHA 300 log, and did not keep a record of the summary of work related injuries and illnesses.

Div. Proposal - \$300.00

Formula Amt. - \$300.00

TOTAL PENALTY - \$3,450.00

TOTAL FORMULA AMT. - \$3,450.00

Mr. Warren summarized the citation and proposed penalty as listed and described the photographs. Chairman Schultz ask if there was a motion to approve staff recommendation. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,450.00 on motion of Commissioner LeMarr, second of Commissioner Hennelly. Chairman Schultz commented on the excellent photographs and investigation.

Sombrero Construction, L.L.C.
P.O. Box 1209
Cashion, AZ 85329

Referral
Years in Business: 12
Empl. Covered by inspection: 5

Site Location: 1755 W Tombstone Tr
Phoenix, AZ 85085

Inspection No: V1001-1072046

Inspection Date: 06/19/2015

SERIOUS – Citation 1 - Item 1 – North side deck: Two employees were working at a height of approximately 11 feet and were not protected from falling to the ground below. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – Garage: One employee was utilizing an 8ft Werner stepladder Model number unknown, as a means of access and egress to the trusses, which was approximately 10ft from the ground level. (29 CFR 1926.1053(b)(4)).

Div. Proposal - \$1,200.00

Formula Amt. - \$1,200.00

TOTAL PENALTY - \$2,700.00

TOTAL FORMULA AMT. - \$2,700.00

Mr. Warren noted that the Commission had previously asked that this case be reviewed for the potential of a willful classification and he presented the results of that review. He summarized

the citation and proposed penalty as listed. Commissioner Bolick asked about the size adjustment for this company compared to the adjustment on another matter. Mr. Warren commented on the potential reason for the difference. Mr. Wade commented on the Field Operations Manual (FOM). Commissioner Bolick asked if the fall protection issue in the current violation was sufficiently similar to the prior violation on September 12, 2013 to justify classify the citation as a repeated violation. Mr. Warren noted the prior citation was under contest as well as the May 15, 2015 Commissioner Bolick stated he would be in favor of removing the size adjustment factor with regard to Item 1 of the violation. Commissioner Bolick briefly reviewed the adjustment factors in the FOM.

Chairman Schultz asked if there was a motion to approve the citations and penalties as presented. Commissioner Bolick moved to approve the citation as presented but remove the size adjustment for Item 1 for a penalty amount of \$2,500.00 for total penalty of \$3,700.00. Commissioner Hennelly seconded the motion. The Commission unanimously approved issuing the citation and assessed the penalty of \$3,700.00.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

15-2865-07- San Palmas LLC

William Warren presented a summary of the complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter and he explained why.

Commissioner LeMarr commented on the investigation and asked if the Commission is investigating whether the employer has workers' compensation insurance in light of the evidence that the employer paid employees in cash. Mr. Wade explained what staff would do to ensure these types of circumstances are investigated.

Chairman Schultz asked if there was a motion to accept staff's recommendation not to pursue this discrimination complaint. Commissioner Bolick moved the Commission not pursue the complaint further and Commissioner LeMarr seconded the motion. The Commission unanimously voted in favor of the motion.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

Chairman Schultz stated this item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Discussion and action regarding selection and appointment of Executive Director for the Industrial Commission of Arizona.

Chairman Schultz stated they received a recommendation from the Governor's office to appoint James Ashley as the new Executive Director of the Commission. He asked if there was a motion to approve the appointment. Commissioner LeMarr moved that Mr. Ashley be appointed as Executive Director and Commissioner Bolick seconded the motion. The Commission unanimously approved the motion.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

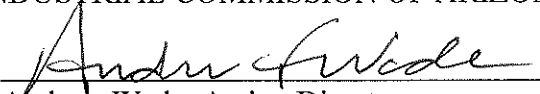
Valli Goss introduced Afshan Peimani and Scott Cooley, new attorneys in the Legal Division, and summarized their backgrounds.

Public Comment.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Commissioner LeMarr moved to adjourn and Commissioner Bolick seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:57 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Andrew Wade, Acting Director

ATTEST:



Kara Dimas, Commission Secretary