

STATE OF ALASKA

DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD

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MAY 10 1991

Law Offices of Robert W. Landau

STATE OF ALASKA,)
DEPARTMENT OF LABOR,)
Complainant,)
vs.)
CHANNEL BUILDERS, INC.,)
Contestant.)

Docket No. 90-827
Inspection No. Hu-9505-319-90

DECISION AND ORDER

This matter arises from an occupational safety and health citation issued by the State of Alaska, Department of Labor ("Department") to Channel Builders, Inc. ("Contestant") following an inspection of Contestant's workplace in Ketchikan, Alaska. The citation alleges that Contestant violated Alaska Construction Code 05.110(d)(9)(B)(i) by failing to guard or cover an electrical panel box containing live wires. The violation was classified as a "repeat" violation and a penalty of \$1,000 was assessed.

Contestant filed a timely notice of contest dated April 25, 1990. A hearing was held before the full Board on February 14, 1991, in Ketchikan. The Department was represented by Assistant Attorney General Lisa M. Fitzpatrick. There was no appearance for

Contestant. The Department presented witness testimony and documentary evidence. Upon consideration of the materials filed with the Board and the evidence presented at the hearing, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. On March 2, 1990, compliance officer Cliff Husted conducted an occupational safety and health inspection at a construction worksite located at 312 Dock Street, Ketchikan, Alaska. The inspection was prompted by a referral from the state plumbing inspector who had visited the construction site and had seen an uncovered electrical panel box.

2. At the worksite there were several contractors involved in remodeling a building for a clothing store and curio shop. Tongass Trading was the general contractor at the site and gave its permission for Husted's inspection. Contestant was one of several subcontractors at the site and was responsible for putting up paneling and other carpentry work.

3. Husted was accompanied during his inspection by Rick Forrester, one of Contestant's two employees working at the site.

4. During his inspection, Husted observed an uncovered electrical panel box (Exhibit B). Contestant's employees admitted removing the panel cover in order to more easily install the paneling around the box. Husted tested the electrical circuits in the panel box and determined that they were energized.

5. The panel box violation was classified as a "repeat" violation because Contestant had been cited for a violation of the same code provision within the preceding three years (Exhibits C and D.) The previous violation had become final since Contestant did not challenge it and paid the monetary penalty (Exhibits E and F).

6. Hustead also classified the violation as "serious" because of the proximity of the employees to the hazard and the likelihood of a shock injury in the event of accidental contact with the live wires.

7. Hustead calculated the monetary penalty using the Department's penalty calculation guidelines. The unadjusted penalty for a serious repeat violation is \$2,000. The penalty was reduced by 40 percent due to Contestant's small company size, and 10 percent due to its good faith in immediately abating the hazard. Thus, the final penalty assessed by the Department was \$1,000.

8. On May 23, 1990, Contestant's sole shareholders, Jerry and Virginia Mickel, voluntarily dissolved Channel Builders, Inc. and assumed the debts and liabilities of the corporation. A certificate of dissolution of the corporation was issued by the Department of Commerce and Economic Development on June 13, 1990 (Exhibit A).

9. The Notice of Hearing in this matter was duly issued by the Board on January 7, 1991, and was sent by certified mail to Contestant's business address in Ketchikan and to Jerry Mickel at his address in Savannah, Missouri. The hearing notice sent to

Ketchikan was returned as unclaimed, while the notice sent to Mickel was received by his agent.

10. On or about January 25, 1991, Jerry Mickel contacted the Department to advise that he could not attend the scheduled hearing and to request a continuance. He was told that he would have to formally request a continuance from the Board as provided by regulation. See 8 AAC 61.170(h).

11. In a letter to the Board dated February 5, 1991, Mickel requested a continuance of the hearing until August 1991. Mickel's letter was forwarded to the Board's hearing officer on February 11, 1991, three days before the scheduled hearing. The Department filed a written opposition to Mickel's request for a continuance on February 12, 1991.

12. The Board's hearing officer denied the request for a continuance on February 12, 1991. On the same date, at approximately 3:45 p.m., the hearing officer called Contestant's business telephone number in Ketchikan and left a message on its answering machine that the continuance had been denied and the hearing would go forward as scheduled on February 14, 1991. The hearing officer also attempted to contact Jerry Mickel at his Missouri telephone number but was unsuccessful.

CONCLUSIONS OF LAW

A. Contestant's Failure To Appear

Contestant failed to appear at the duly scheduled hearing in this matter and indicated prior to the hearing its intention not

to attend. In addition, Contestant's request for a continuance until August 1991 was denied for lack of good cause shown. Contestant has not made any showing of excusable neglect for its failure to attend the hearing. Under these circumstances, we find Contestant to be in default.

B. Merits of Citation

We further conclude that the Department has made out a prima facie case of violation. It is undisputed that an electrical panel box was not covered or guarded against accidental contact with live wires. It is also undisputed that Contestant's employees were installing paneling around the panel box and thus were exposed to the hazard. Contestant knew or should have known that the panel box was energized and should have taken steps to disconnect the power to the box so that its employees could work around it in safety.

The violation was properly classified as a "serious repeat" in light of the significant potential for shock hazard and the fact that the Contestant had been cited for the same violation within the preceding three years. Furthermore, we have reviewed the Department's penalty assessment and find no reason to disturb the proposed penalty of \$1,000.

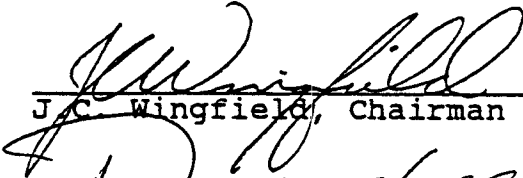
ORDER

Based on the foregoing findings of fact and conclusions of law,

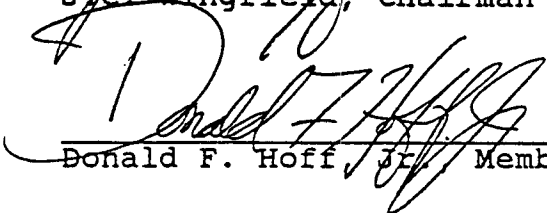
IT IS HEREBY ORDERED that the Department's citation and proposed penalty are affirmed as issued.

DATED this ____ day of _____, 1991.

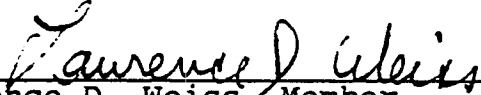
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