

ORIGINAL

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Case No. 2014-28

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Attorneys for Complainant Director
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STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of) CASE NO. OSH 2014-28
) (Inspection No. 317667988)
DIRECTOR, DEPARTMENT OF LABOR)
AND INDUSTRIAL RELATIONS,) WITHDRAWL OF LETTER OF CONTEST
) DATED AUGUST 11, 2014; EXHIBITS A
Complainant,) and B; and APPROVAL AND ORDER
)
vs.)
)
ALOHA ROOFING, INC.,)
)
Respondent.)

**WITHDRAWAL OF LETTER OF CONTEST
DATED AUGUST 11, 2014**

On July 22, 2014, the Director of the Department of Labor and Industrial Relations ("Director") issued a Citation and Notification of Penalty (Exhibit "A") to Respondent ALOHA ROOFING, INC. ("Respondent"). By letter dated August 11, 2014, Respondent timely contested the Citation (Exhibit "B"). Respondent hereby withdraws its letter of contest dated August 11, 2014. The Director has no objection to the

withdrawal of the contest by Respondent. Upon approval of this Withdrawal, all proceedings before this Labor Board shall be dismissed.

DATED: Honolulu, Hawaii, 15 Dec 2014
ALOHA ROOFING, INC.

By: _____

Its _____

HERBERT B.K. LAU
Deputy Attorney General
Attorney for Complainant Director of Labor
and Industrial Relations

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 634

DATED: December 19, 2014

JAMES B. NICHOLSON, Chair

SESNITA A.D. MOEPONO, Member

ROCK B. LEY, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



FILE COPY

Certified Number: 7012 2210 0002 6730 3855

Citation and Notification of Penalty

To:

Aloha Roofing Inc
and its successors
1635 Leilani St
Honolulu, HI 96819

Inspection Number: 317667988
Inspection Date(s): 05/12/2014- 05/12/2014
Issuance Date: 07/22/2014

Inspection Site:

691 Kahiau Lp
Honolulu, HI 96821

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DIANTHA M. GOO, ADMINISTRATOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

Aloha Roofing Inc
1635 Leilani St
Honolulu, HI 96819

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 07/22/2014. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 423, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 317667988**Inspection Dates:** 05/12/2014-05/12/2014**Issuance Date:** 07/22/2014**Citation and Notification of Penalty****Company Name:** Aloha Roofing Inc**Inspection Site:** 691 Kahiau Lp, Honolulu, HI 96821

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1926.100(a) [Refer to chapter 12-110-50(a), HAR]: Employees working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be protected by protective helmets.

Ground level of project site at 691 Kahiau Loop - Three roofers were not wearing any protective helmets while walking/working in areas in which other employees were working above lower levels. The employees were exposed to a struck by hazard with the potential for serious bodily injuries.

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$ 550.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 317667988

Inspection Dates: 05/12/2014-05/12/2014

Issuance Date: 07/22/2014



Citation and Notification of Penalty

Company Name: Aloha Roofing Inc

Inspection Site: 691 Kahiau Lp, Honolulu, HI 96821

Citation 1 Item 2 Type of Violation: Serious

29 CFR 1926.1053(b)(1) [Refer to chapter 12-110-50(a), HAR]: When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access.


Rear retaining wall of project site at 691 Kahiau Loop - An extension ladder used by three roofers to gain access to an upper landing surface of a rear retaining wall that was 10 feet above ground did not extend 3 feet above the upper landing surface. A ladder that does not extend 3 feet beyond the upper landing surface at the access point exposes the employees to a fall hazard. A fall to a lower level exposes the employees to potential serious bodily injuries.

Date By Which Violation Must be Abated:

07/28/2014

Penalty:

\$ 550.00



DIANTHA M. GOO
Administrator

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



1635 Leilani Street Honolulu, HI 96819
T 808.538 7663 F 808.845.2882
Lic. #C-26465

August 11, 2014

VIA CERTIFIED MAIL

State of Hawaii
Department of Labor and Industrial Relations
830 Punchbowl Street, Room 423
Honolulu, HI 96813

To whom this may concern:

This letter is our official notification to you of our intent to contest the following citations and penalties.

Inspection Number: 317667988 AND 317667798

We have secured the legal services of the law firm Yamamura & Shimazu, a Law Corporation. Attorney Paul Yamamura will be representing Aloha Roofing, Inc. in this matter. Please refer any correspondence directly to Yamamura & Shimazu, with a courtesy copy to our office.

Yamamura & Shimazu
Attorneys at Law, A Law Corporation
Central Pacific Plaza
220 South King Street, Suite 1770
Honolulu, Hawaii 96813
Telephone: 808-523-6969
Fax: 808-599-5580
E-Mail: pyamamur@hawaiiantel.net

RECEIVED
STATE OF HAWAII-DLIR
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HAWAII OCCUPATIONAL
SAFETY AND HEALTH
DIVISION

Sincerely,


Jean Vicente
Aloha Roofing, Inc.

cc: Paul Yamamura, Yamamura & Shimazu
John Fierro, Aloha Roofing, Inc.

EXHIBIT B