

COPY

Approved: Margery B. Feinzig
Margery B. Feinzig
Assistant U.S. Attorney

Before: HONORABLE VICTORIA REZNIK
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA :
 : 23 Mag. 5706
- v. - :
 : SEALED COMPLAINT
JOSE LEMA, :
a/k/a Jose Lema Mizhirumbay," :
 : Violation of
 : 29 U.S.C. § 666(e) and 18 U.S.C. §2
Defendant. :
 : COUNTY OF OFFENSE: Rockland
----- X

SOUTHERN DISTRICT OF NEW YORK, ss.:

STEPHEN DONNELLY, being duly sworn, deposes and says that he is a Special Agent with the United States Department of Labor Office of Inspector General ("DOL-OIG"), and charges as follows:

COUNT ONE

1. In or about February 2022, in the Southern District of New York and elsewhere, JOSE LEMA, a/k/a "Jose Lema Mizhirumbay," the defendant, an employer engaged in a business affecting interstate commerce who had employees, knowingly and willfully violated a standard, rule, or order promulgated pursuant to Section 655 of Title 29, United States Code, and a regulation prescribed pursuant to Chapter 15 of Title 29, United States Code, in that he knowingly and willfully violated residential construction fall protection standards of the Occupational Safety and Health Administration ("OSHA") by failing to protect his employees from fall hazards and having employees work on a residential roof at a worksite in New Square, NY, which caused an employee to fall roughly 30 feet and sustain injuries that resulted in his death.

(Title 29, United States Code, Section 666(e) and Title 18, United States Code, Section 2).

The bases for my knowledge and for the foregoing charge are, in part, as follows:

2. I am a Special Agent with the DOL-OIG and have been employed in that capacity for over nineteen years. During that time, I have participated in investigations of crime within the

purview of the United States Department of Labor, including embezzlement, visa fraud, and a case involving the violation of OSHA standards resulting in the death of a worker. I have participated in hundreds of arrests. I base this affidavit on my training and experience, my personal knowledge, and my conversations with other law enforcement officers, DOL-OIG employees, OSHA Compliance, Safety and Health Officers, and my examination of various reports, records and photographs.

3. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts that I have learned during this investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

BACKGROUND

4. Based on my review of OSHA records, conversations with OSHA and DOL-OIG personnel, and sworn testimony of JOSE LEMA, the defendant, and others, taken during OSHA administrative proceedings, at all times relevant to this Complaint:

a. ALJ Home Improvement, Inc. (hereafter "ALJ"), was a small residential roofing company based in Nanuet, New York that was established in 2018. ALJ provided residential roofing services in New York and New Jersey and was a business affecting interstate commerce that had employees. ALJ was the roofing sub-sub-contractor for a construction site in New Square (Ramapo), New York (the "New Square Worksite" or the "Worksite").

b. JOSE LEMA, the defendant, was the President and sole principal of ALJ. LEMA established ALJ, controlled its operations, was in charge at ALJ's worksites, and was the only ALJ employee in charge of safety. LEMA employed several individuals at ALJ, including individuals who worked at the New Square Worksite.

5. Based on my review of public information, I have learned that:

a. With the Occupational Safety and Health Act of 1970 ("OSH Act"), Congress created OSHA to ensure safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education, and assistance. Under the OSH Act, employers are responsible for providing a safe and healthful workplace for their workers. 29 CFR § 1926.501(a) *et seq.*, promulgated pursuant to 29 U.S.C. § 655 and a regulation prescribed pursuant to Chapter 15 of Title 29 of the United States Code, sets forth requirements for employers to provide fall protection systems in various scenarios.

b. 29 C.F.R. § 1926.501(b)(13), states the following:

Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a

greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of 1926.502.

29 C.F.R. § 1926.501(b)(13) applied to the New Square Worksite.

6. Based on my discussions with OSHA Compliance, Safety and Health Officers, (“CSHO”), I understand that roofing workers who are using a personal fall arrest system typically wear a safety harness that is connected to the roof by the following means. The safety harness, which is worn like a vest, contains a “D ring” built into the back of it. A lanyard, which is a cord or strap that has a clip attached to it, is connected to a rope and the rope is clipped to the D ring. Typically, the rope attached to the lanyard goes through a rope grab and is connected to an “anchor plate” or “bracket” that is screwed into the roof. A worker who uses this type of personal fall arrest system is said to be “tied into” the roof or “tied off” to the roof.

THE FATAL FALL AT THE NEW SQUARE SITE

7. Based on my review of a Ramapo Police Department (“RPD”) report, I learned that on or about February 8, 2022, at approximately 8:36 a.m., RPD received a call indicating that an individual working on the roof of a building at the New Square Worksite fell off the building and was severely injured. RPD officers and detectives went to the New Square Worksite, began investigating and ultimately identified the victim (“Victim-1”), who was twenty-five years old. While they were at the Worksite, they were notified that Victim-1, who had been taken to the hospital by emergency medical personnel, had died from his injuries. The RPD notified OSHA of the fall.

8. Shortly after, two CSHO’s (“CSHO-1” and “CSHO-2”) arrived at the New Square Worksite and began an investigation, which included inspecting the Worksite, interviewing witnesses and taking photographs. OSHA subsequently held administrative proceedings that included taking sworn testimony of JOSE LEMA, the defendant, and others.

9. Based on my review of an OSHA inspection report, deposition transcripts, interview notes, telephone screenshots and my conversations with CSHO-1 and CSHO-2, I have learned the following regarding Victim-1’s fatal fall:

a. A roof contracting company (the “Roof Subcontractor”) sub-contracted with ALJ to install a new roof on the three-story, multi-family apartment building being constructed at the New Square Worksite.

b. On or about February 8, 2022, it was cold and plywood sheathing was wet and/or icy due to recent precipitation. That morning, a principal of the Roof Subcontractor sent a text message to JOSE LEMA, the defendant, instructing that “before anyone goes on the roof make sure it’s 100% clean from snow and ice, No1 should go on roof if there is even a little snow or ice.” LEMA replied “Good morning okay.”

c. JOSE LEMA, the defendant, did not go to the New Square Worksite or check the conditions of the roof. Instead, he sent Victim-1 and three other ALJ employees

("Employee-1," "Employee-2" and "Employee-3," collectively, the "Three Employees"), all of whom he hired, to the New Square Worksite to install the new roof. LEMA did not know what kind of safety training Victim-1 ever received; he never asked him. Neither LEMA nor the Three Employees knew Victim-1's name.

d. At about 8:00 AM, Victim-1 and the Three Employees ascended a ladder to the roof. Within twenty to thirty minutes of arriving at the New Square Worksite, Victim-1 fell off the roof and landed on the ground approximately 30 feet below.

e. During the RPD's and OSHA's investigations at the Worksite that day, RPD officers, CSHO-1 and CSHO-2 observed a safety harness on the ground where Victim-1 had fallen. They learned that emergency medical services personnel had cut it off Victim-1 when they were administering aid to him. There was no lanyard, rope, or any other attachment connected to the D-ring on the back of the safety harness.

f. CSHO-1 and CSHO-2 spoke with one of the Three Employees who were on the roof with Victim-1 ("Employee-1"). According to Employee-1, after Victim-1 fell off the roof, Employee-1 came down from the roof and saw Victim-1 on the ground wearing a harness and there was no hook or snapped rope attached to Victim-1's harness.

g. Given the state of Victim-1's harness, CSHO-1 and CSHO-2 preliminarily concluded it was not attached to a lifeline/rope that would have secured Victim-1 to the roof.

h. CSHO-1 and CSHO-2 asked the Three Employees what fall protection equipment they had at the Worksite. In particular, they asked if the workers had lanyards. The workers indicated they did not have them. When CSHO-1 and CSHO-2 asked the Employees to show them what safety equipment they had, they showed the CSHO's some beat-up rope, a vest that looked like it had been used in a fall, and one anchor plate they got out of the ALJ van.

i. The next morning, OSHA flew a drone over the New Square Worksite, which had been left untouched overnight, and obtained images that show that there were no anchor plates on the roof to which workers could attach their safety ropes and no hole patterns consistent with anchor plates ever being on the roof. Instead, ropes visible on the roof had been fastened to the roof ridge by hammering nails adjacent to the rope and bending the nails over to crimp the rope.

j. According to the CSHO's, this is not a safe or acceptable way to secure fall protection ropes to a roof. During his administrative deposition, JOSE LEMA, the defendant, conceded that this was not safe or "correct."

k. RPD investigators obtained surveillance video from a camera affixed to a utility pole down the road from the Worksite. I have viewed the surveillance footage and it captured Victim-1's fall from a distance and there do not appear to be any ropes securing Victim-1 to the roof and thereby protecting him from falling.

l. A principal of the general contractor for the New Square Worksite who

was deposed during the administrative proceeding confirmed that the ALJ workers on the roof were not tied into the roof. He testified that on the morning of the accident, he drove by the Worksite on his way to another job and saw workers on the roof not tied off, “for about two, three minutes or so,” and he “drove off before seeing them get tied off, and he assumed they would become tied off.”

m. OSHA issued twelve citations against ALJ, nine of which cited “willful” conduct, and included citations for violations of OSHA’s residential construction fall protection standards, 29 C.F.R. §§ 1926.501(b)(13) and 1926.503(a). ALJ did not contest the citations, including the “willful” fall protection citations. Accordingly, they are a final order by operation of law.

LEMA’S REPEATED FAILURES TO PROTECT HIS EMPLOYEES

10. Based on my review of OSHA records and conversations with OSHA and DOL-OIG personnel, I understand that Victim-1’s deadly fall was not the first time an employee of JOSE LEMA, the defendant, and ALJ fell to his death at one of their worksites or that their employees were exposed to fall hazards. OSHA investigated ALJ six times before Victim-1’s death and once after, all within five years after LEMA founded ALJ.

11. The first incident took place on or about February 27, 2019, just months after JOSE LEMA, the defendant, established ALJ. According to a New York State Police Incident Report, ALJ employees were installing a roof on a newly constructed three-story home in Kiamesha Lake, New York, on a cold and snowy day. An ALJ employee (“Victim-2”) slipped off the roof, fell 35 feet to the ground, and subsequently died from his injuries.

12. According to OSHA records, OSHA determined that Victim-2 was not wearing a safety harness and ALJ had not provided him with training to recognize and protect himself from fall hazards. CSHO’s met with JOSE LEMA, the defendant, and, among other things, reviewed hazards and OSHA standards and employer rights and obligations. OSHA issued citations to ALJ for, among other things, failing to ensure employees wear fall protection systems, in violation of 29 C.F.R. § 1926.501(b)(13). ALJ settled and agreed to pay a penalty and to “conduct fall hazards and other construction site hazard training for all the employees” by January 1, 2022.

13. According to OSHA records, the second incident took place just eight months later, on or about October 22, 2019. Another CSHO (“CSHO-3”) saw ALJ employees re-roofing a single-family home in Edison, New Jersey without evident fall protection, exposing them to a two-story fall hazard.

14. CSHO-3 advised JOSE LEMA, the defendant, that fall protection use was lacking on the site. When CSHO-3 asked about any prior OSHA inspections, LEMA acknowledged being recently inspected and fined but asked CSHO-3 to “do what you can” (on fines). During the inspection, CSHO-3 discussed with LEMA, among other things, hazards and OSHA standards. OSHA issued a citation to ALJ for willfully failing to ensure employees wear fall protection systems, in violation of 29 C.F.R. § 1926.501(b)(13). ALJ settled and agreed to pay a penalty and retrain all employees in fall protection hazards, secure the services of a consultant to

review fall protection practices, and conduct random jobsite inspections.

15. Based on my review of OSHA records and conversations with a fourth CSHO (“CSHO-4”), the third incident took place one year later, on or about October 3, 2020. CSHO-4 observed ALJ employees performing roofing work on multiple roofs at a condominium complex in Suffern, New York. CSHO-4 did not see appropriate safety measures, including any apparent fall protection, among other things, and estimated that the workers were being exposed to fall hazards of approximately 18 feet to the concrete below.

16. CSHO-4 met with JOSE LEMA, the defendant, who was hostile and refused to provide CSHO-4 with the names of employees at the site. CSHO-4 discussed violations at the site and reviewed OSHA requirements regarding fall protection. OSHA issued citations for, among other things, willful failure to ensure employees wear fall protection systems, in violation of 29 C.F.R. § 1926.501(b)(13), among other citations. Again, ALJ settled and agreed to pay a penalty.

17. According to OSHA records and CSHO-4, three more incidents took place seven months later, on or about, May 11, 2021, May 12, 2021, and May 13, 2021. CSHO-4 saw ALJ employees performing roofing work at three different homes within a residential community in Suffern. Some were wearing safety harnesses; others were not. None of the employees were secured via an anchor point and they were all being exposed to fall hazards of approximately 18 to 20 feet to the asphalt below.

18. On each of those days, CSHO took photographs, some of which LEMA viewed during his deposition. In viewing photographs taken on both May 11 and 12, 2021, LEMA identified himself not using fall protection despite working on a residential roof. According to CSHO-4, Employee-2 is also depicted in May 11 and May 12 photographs, not using fall protection. LEMA also viewed photographs taken on May 13, 2021. He identified Employee-2 and Victim-1 and admitted they were not using fall protection. According to CSHO-4, CSHO-4 went to the site twice that day and Employee-2 and Victim-1 were not using fall protection, even at the second visit, after being told to do so at the first visit.

19. OSHA opened three investigations for violations at each of the three sites. For each day, OSHA issued citations for willful failure to ensure employees were wearing fall protection systems, in violation of 29 C.F.R. § 1926.501(b)(13), among other citations. In or about May 2023, ALJ settled and agreed to pay penalties.

20. Even after Victim-1’s death, JOSE LEMA, the defendant, continued to violate OSHA standards and failed to protect his employees. According to OSHA records and CSHO-4, on or about August 4, 2022, CSHO-4 saw three ALJ employees working on an 18-foot roof in Ho Ho Kus, New Jersey, without any apparent fall protection. They were wearing harnesses that were not secured to the roof. JOSE LEMA, the defendant, was onsite and actively directing the work of the employees exposed to danger. OSHA issued more citations, including willful failure to ensure employees wear fall protection systems, in violation of 29 C.F.R. § 1926.501(b)(13).

21. According to OSHA records, in all, between in or about 2019 and in or about

2023, OSHA performed 8 investigations of ALJ work sites that resulted in the issuance of 24 willful citations, 16 serious citations, and over \$2.3 million in penalties. Each time OSHA investigated, CSHO's met with JOSE LEMA, the defendant, and made him aware of his rights and obligations to his employees. At his administrative deposition, LEMA admitted that prior to Victim-1's fall, he knew that employees on a roof higher than six feet high needed to be protected by some form of fall protection. But despite that knowledge, citations, and fines from six previous investigations, LEMA failed to follow OSHA standards and protect Victim-1 and his other employees.

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of JOSE LEMA, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.



STEPHEN DONNELLY
Special Agent
United States Department of Labor
Office of Inspector General

Sworn to before me this
24th day of July, 2023



HONORABLE VICTORIA REZNIK
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK