

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Petitioner,

No. 08-2223

v.

EZEQUIEL MARTINEZ ROOFING
and its successors,

and

Ezequiel Martinez, Owner
Ezequiel Martinez Roofing,

Respondents.

**PETITION FOR JUDGMENT
OF CIVIL CONTEMPT**

Hilda L. Solis, U.S. Secretary of Labor, petitions the Court to adjudge Ezequiel Martinez Roofing (EMR), and its owner, Ezequiel Martinez, to be in civil contempt of a decree entered by the Court on July 30, 2008, enforcing a final order of the Occupational Safety and Health Review Commission. In support, the Secretary states as follows:

1. Following an inspection of EMR's worksite in Nebraska, the Secretary cited EMR on April 30, 2007, for: 1) allowing employees to conduct residential construction activities, at an elevation greater than 6 feet above lower levels, without the use of required fall protection, in violation of 29 C.F.R. § 1926.501(b)(13); and 2) allowing employees to use improperly extended or secured portable ladders to access upper landing surfaces, in violation of 29 C.F.R. § 1926.1053(b)(1). The Secretary also proposed penalties totaling \$14,000. The citation and penalties became final orders of the Commission on October 15, 2007. *See* 29 U.S.C. § 661(j); *see also* Petition for Summary Enforcement, attached.

2. This Court subsequently issued a decree, on July 30, 2008, pursuant to section 11(b) of the OSH Act, 29 U.S.C. § 660(b), enforcing the Commission's final order. The decree, a copy of which is attached hereto, requires EMR and its successors to comply with that order by:

a. immediately abating its violation of 29 C.F.R. § 1926.501(b)(13) by ensuring that employees conducting residential construction activities at elevations greater than 6 feet above lower levels use required fall protection;

b. immediately abating its violation of 29 C.F.R. § 1926.1053(b)(1) by ensuring that the portable ladders used by employees to access upper landing surfaces either have side rails properly extended or are properly secured (where securing of ladders is permitted by the standard);

c. submitting abatement verification, certification, and documentation to OSHA within 30 calendar days of the date of the order; and

d. paying, within 30 calendar days of the order, the \$14,000 in civil money penalties assessed by the Commission.

3. Ezequiel Martinez is EMR's owner. Mr. Martinez received actual notice of the decree, as he was personally served with a copy of the decree on August 7, 2008. *See* Affidavit of Steve Jordan, attached.¹

¹ The Secretary submits the affidavit of Steve Jordan as proof of EMR's contempt. On August 24, 2009, the Court denied the Secretary's first petition for judgment of civil contempt "without prejudice to the refiling of the petition accompanied by appropriate proof of the truth of the Secretary's allegations."

4. EMR and Ezequiel Martinez subsequently defied this Court's decree by:
- a. allowing employees to conduct residential construction activities, at an elevation greater than 6 feet above lower levels, without the use of required fall protection, at a worksite in Nebraska in April 2009;
 - b. failing to pay the \$14,000 penalty, plus interest and fees; and
 - c. failing to submit the required abatement verification, certification, and documentation. *Ibid.*

5. EMR's and Ezequiel Martinez's obstinate refusal to comply with applicable OSHA standards, as mandated by this Court's decree, has placed EMR employees at substantial risk of serious physical harm.²

² EMR employees were also observed working without fall protection during an inspection of an Iowa worksite in September 2008. Iowa is a "state-plan" state, which means that it enforces its own OSHA regulations as a matter of state law. *See* 29 U.S.C. § 667; 29 C.F.R. Pt. 1952, Subpt. J. EMR's willingness to subject its employees to risk of harm in Iowa provides further evidence that the company has no regard for this Court's enforcement decree.

6. EMR and Ezequiel Martinez are therefore in civil contempt of this Court's decree, and coercive measures are necessary to bring them into compliance.

The Secretary requests the following relief:

- a. that the Court adjudge EMR and Ezequiel Martinez to be in civil contempt of its July 30, 2008 decree;
- b. that the Court impose sanctions that it deems necessary and appropriate to compel compliance with the decree, including, if necessary, incarceration of Ezequiel Martinez; and
- c. that the Court grant such other relief as it deems just and proper.

Respectfully submitted.

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September 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document and all attachments by overnight mail via a third-party commercial carrier, to the following non-CM/ECF participant:

Ezequiel Martinez
Ezequiel Martinez Roofing
5846 S. 50th Avenue
Omaha, NE 68117

/s/ Lee Grabel
Lee Grabel