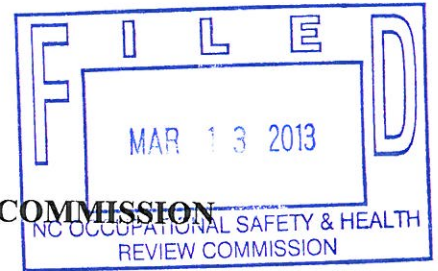


**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**



<p>COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA</p> <p>Complainant,</p> <p style="text-align: center;">v.</p> <p>CAROLINA MASONRY UNLIMITED INC and its successors</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DOCKET NO: 2012-5294</p> <p>INSPECTION NO: 316359538</p> <p>CSHO ID: R6552</p> <p><u>FINAL ORDER</u></p>
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THIS CAUSE coming on for Hearing on March 13, 2013 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Larissa Williamson, Assistant Attorney General, appeared as counsel for the Complainant, and James W. Black, Jr., Vice President of Respondent, appeared for the Respondent.

Pursuant to the Order of Pre-Hearing Conference (the “Hearing Order”) a pre-hearing conference was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. At the Hearing Complainant and Respondent notified the Undersigned that as a result of the pre-hearing conference the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”). Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record. The Stipulations and Motions are as follows:

STIPULATIONS

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the “Act”).
2. Respondent is a North Carolina corporation authorized to conduct business in North Carolina with its principal place of business in Fuquay-Varina, North Carolina.

DATABASE
CP

3. On February 2, 2012, Belvin Horres, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 2201 Millbrook Road in Raleigh, North Carolina (the "Inspection").

4. As a result of the Inspection, on February 9, 2012, Complainant issued the following Citation (the "Original Citation"):

CITATION NUMBER ONE

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Type</u>
Citation 1 Item 1a	29CFR 1926.451(g)(4)(ii)	Immediately abated	Serious
Citation 1 Item 1b	29CFR 1926.451(g)(4)(iv)	Immediately abated	Serious

with a total penalty of \$300.00.

5. Respondent submitted a timely Notice of Contest.

6. This Hearing was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").

7. Neither party has any objection, procedural or otherwise, to this Hearing. Respondent stipulates that the penalty was properly calculated in accordance with the Field Operating Manual procedure and giving consideration by Complainant to standard mitigating factors.

8. Respondent posted the Original Citation and the Hearing Order in a conspicuous place at or near the site of the alleged Violations where all affected employees may read each respective document. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter.

9. Complainant and Respondent agree that the violations alleged in Citation 1 have been abated. Respondent agrees that it shall use its best efforts to develop and implement a written procedure to ensure the achievement of fall protection while loading and unloading scaffolds (and replacing any required removed guard rails) in compliance with the Occupational Safety and Health Act of North Carolina.

10. The parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, that have been incurred in connection with this case.

11. Complainant and Respondent agree that provided the respective Motions of each party are granted there are no other matters that remain to be decided, and other than a ruling with respect to the Motions no outstanding issues remain to be resolved by a hearing of this matter.

MOTIONS

Complainant moved to

amend Citation One by deleting Item 1b and reclassifying Item 1a from serious to non-serious, with the penalty remaining at \$300.00.

Respondent did not object to Complainant's Motion.

Respondent requested that upon the granting of Complainant's Motion that the Undersigned consider the following motion by the Respondent: to withdraw Respondent's Notice of Contest to the Citation as amended.

Complainant did not object to Respondent's Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any procedural objection to this Hearing.
4. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

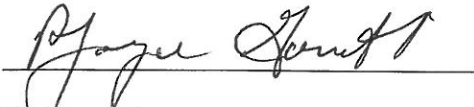
CONCLUSIONS OF LAW

The foregoing Finding of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 13day of March, 2013.



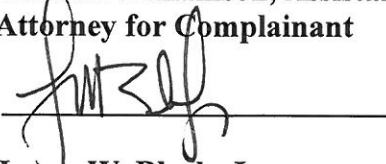
R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:

A handwritten signature in black ink, appearing to read 'L. Williamson', written over a horizontal line.

**Larissa Williamson, Assistant Attorney General
Attorney for Complainant**

A handwritten signature in black ink, appearing to read 'J. Black, Jr.', written over a horizontal line.

**James W. Black, Jr.
Vice President for Respondent**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing FINAL ORDER upon:

JAMES W BLACK JR
VICE PRESIDENT
CAROLINA MASONRY UNLIMITED INC.
9900 LAKE WHEELER RD
FUQUAY-VARINA NC 27526

by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

LARISSA WILLIAMSON
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

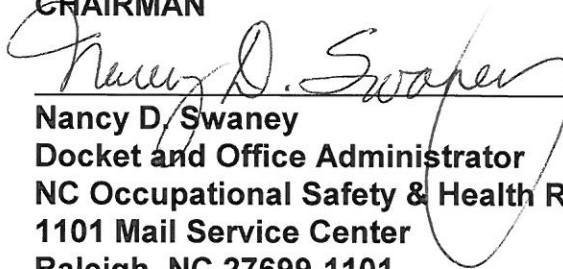
by depositing a copy of the same in the United States Mail, First Class; and

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH NC 27699-1101

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 18th DAY OF March 2013.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
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