

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

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2012 - 5381
)	
)	
Complainant,)	INSPECTION
)	NO: 316600477
)	
v.)	CSHO ID: C7621
WALK PROPERTY GROUP LLC)	
and its successors)	<u>FINAL ORDER</u>
)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on June 18, 2014 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:30 a.m. Linda Kimbell, Assistant Attorney General appeared as counsel for the Complainant, and Laura Nasser, Manager of Respondent, and Wais Nasser appeared for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. Based on the Original Citation and Respondent’s Notice of Contest, it appears that no injuries were sustained and that: Respondent was providing renovation construction services in Wilmington, North Carolina, at a residential house which was being renovated to consist of multiple apartments; prior to acquisition by Respondent the house had been condemned by the City of Wilmington; Respondent had renovated the upstairs apartment

and was commencing work on the downstairs apartment; the Inspector (hereinafter defined) alleged that (a) each employee on a walking/working surface was not protected from tripping into or stepping into or through holes (specifically holes in the floor which were 6 inches X 18 inches and 12 inches X 24 inches and were from 2 to 24 inches deep; (b) the employer's safety and health program did not provide for frequent and regular inspections of the job sites, materials, and equipment to be made by a competent person (specifically employees were exposed to trips, unguarded equipment and electrical equipment hazards resulting from a lack of frequent and regular inspection by a competent person); (c) debris was not kept cleared from the following areas: front, sides and rear of property (specifically employees were exposed to piles of debris such as slats of wood and lumber with nails embedded, piles of wall plaster, plumbing fixtures and tin); (d) grounded conductor was attached to a terminal or lead so as to reverse designated polarity (specifically, employees were using a 10 inch Dewalt mitre saw which was receiving electrical power from a GFCI receptacle that had reverse polarity); (e) flexible cords were not connected to devices and fittings so that strain relief is provided to prevent pull from being directly transmitted to joints or terminal screws (specifically, employees were using a 10 inch Craftsman table saw that was not provided with strain relief on the equipment cord at the male connector); and, (f) unprotected sides and edges of stairway landings were not provided with guardrail systems (specifically, employees were exposed to a fall hazard from a stairway landing that was 39 inches from the ground and was not equipped with guardrails); Respondent denied all such allegations.

As a result of this Hearing, Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. 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"). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a manager managed North Carolina limited liability company, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Wilmington, North Carolina. Respondent is in the business of residential renovation. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(10); all of Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(9).
3. On September 17, 2012, Lafayette Atkinson, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of

Respondent's worksite located at 513 S 7th Street in Wilmington, North Carolina (the "Inspection").

4. As a result of the Inspection, on October 4, 2012, Complainant issued two citations ("Citation 1" and "Citation 2") as more specifically described on **Exhibit "A"** (collectively the "Original Citation").
5. Respondent submitted a timely Notice of Contest dated on or about October 8, 2012.
6. A Hearing in this matter 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.
8. Respondent posted the Original Citation and the Hearing Order as required by the Rules. 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 including without limitation objection to the reasonableness of any abatement period.
9. Respondent agrees that the violations alleged in the Original Citation have been abated.
10. The parties agree that upon granting of Complainant's Motion the penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent.
12. Respondent agrees to pay the penalty assessed in this matter of \$500.00 in 10 equal monthly installments of \$50.00 each, with the first installment due and payable on the first business day of August, 2014. All subsequent installments shall be due and payable on the first business day of each month thereafter. In no event shall the payment term extend beyond a consecutive 10 month period, unless agreed upon by the Complainant. In the event Respondent does not pay each monthly installment as agreed upon, all remaining installments become immediately due and payable, and the Complainant retains the right to institute collection proceeding as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant has to institute collection proceedings to collect the debt.
13. 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 any stage of these proceedings up to and including the filing of this Order (except as provided in Stipulation 12 above).
14. 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 that other than a ruling with respect to the Motions no outstanding issues remain to be resolved by an evidentiary hearing of this matter. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to the Complainant's Motion. The parties further agree that (i) the modification of any portion of the Original Citation by

Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, and (ii) none of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.

MOTIONS

Complainant moved to do the following (“Complainant’s Motion”):

***amend Citation 1 by reducing the amount of the penalty from \$1,000.00 to \$500.00;**

***amend Citation 2 Item 4 by reducing the amount of the penalty to from \$300.00 to \$0.00.**

except as set forth in this motion, the Original Citation shall remain unmodified or amended.

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 (“Respondent’s Motion”), and Respondent confirmed that the violations alleged in the Original Citation as amended have been abated:

***to withdraw Respondent’s Notice of Contest to the Original Citation as amended pursuant to Complainant’s Motion set forth above.**

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. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act").
5. 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 Findings 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 18th day of June, 2014.



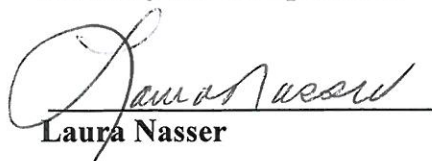
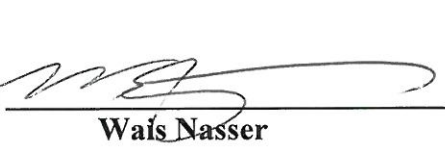
R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:



Linda Kimbell

**Linda Kimbell, Assistant Attorney General
Attorney for Complainant**

 and 

Laura Nasser Waís Nasser

| Representative for Respondent

Exhibit "A"
Original Citation

CITATION NUMBER 1 (Type of Violation: Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
Grouped			
1a	29 CFR 1926.501(b)(4)(ii)	10/09/2012	\$1,000.00
1b	29 CFR 1926.20(b)(2)	10/09/2012	

CITATION NUMBER 2 (Type of Violation: Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.25(a)	10/09/2012	\$ 0.00
2	29 CFR 1926.404(a)(2)	10/09/2012	\$ 0.00
3	29 CFR 1926.405(g)(2)(iv)	10/09/2012	\$ 0.00
4	29 CFR 1926.1052(c)(12)	10/09/2012	\$ 300.00
		TOTAL	\$ 1,300.00

CERTIFICATE OF SERVICE

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

WAIS NASSER
WALK PROPERTY GROUP LLC
7 SOUTH 4TH STREET
WILMINGTON NC 28401

LINDA KIMBELL
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

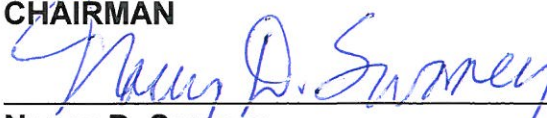
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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 19th DAY OF June 2014.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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