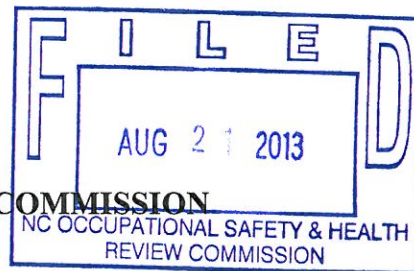


BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR)	DOCKET NO: 2013 - 5412
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
)	NO: 316646439
Complainant,)	
)	CSHO ID: P4254
v.)	
AAA ROOF TECHNOLOGIES)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on August 21, 2013 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Melissa Taylor, Assistant Attorney General appeared as counsel for the Complainant, and Thomas A Farr, attorney with Ogletree Deakins, Nash, Smoak & Stewart, P.C., appeared as counsel 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”). 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 North Carolina corporation, 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 Hendersonville, North Carolina. Respondent is a roof assessment company engaged in the business of performing roof damage assessments. 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 or about October 17, 2012, Robby Zimmerman, an Occupational Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's work activities conducted at 148 Hollow Creek Train, Mount Airy, North Carolina with respect to conditions which were alleged to have existed on or about June 13, 2012 (the "Inspection").

4. As a result of the Inspection, on November 26, 2012 Complainant issued a Citation and Notification of Penalty ("Citation 1") as more specifically described on **Exhibit "A"** (the "Original Citation").

5. Respondent submitted a timely Notice of Contest dated December 21, 2012. On or about January 14, 2013 Complainant received Respondent's/Employer's Statement of Position which requested formal pleadings in this case. Complainant filed its Complaint on March 4, 2013 and Respondent filed its Answer on March 22, 2013.

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 proposed abatement period.

9. The parties agree that under 29 CFR 1926.500(a) the provisions of 29 CFR 1910.132 related to fall protection do not apply when employees or agents of the Respondent are making an inspection, investigation, or assessment of workplace conditions prior to the actual start of construction work or after all construction work has been completed.

10. Respondent agrees upon granting of Complainant's Motion Respondent shall do the following:

* establish and communicate to employees a written safety program to be followed when conducting roof inspections, investigations or assessments which emphasizes ladder training and related safety protocols; the written safety program shall state that its objective is to minimize

employee exposure to fall hazards; Respondent shall provide Complainant with a copy of the finished document.

11. 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.

12. Complainant and Respondent agree that provided Complainant's Motion is granted there are no other matters that remain to be decided, and that 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 this matter. 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.

MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

Withdraw the Original Citation in its entirety.

Respondent did not object to Complainant's Motion.

Respondent agrees by consenting to this Final Order its Notice of Contest is withdrawn as a matter of law.

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 that Complainant's Motion is hereby **GRANTED**.

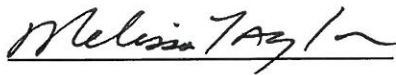
This the 21 day of August, 2013.



R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



**Melissa Taylor, Assistant Attorney General
Attorney for Complainant**



**Thomas A. Farr, Attorney at Law
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>
1	29 CFR 1910.132(a)	Immediately Abated	\$ 300.00
2	29 CFR 1910.132(d)(1)	12/20/2012	\$ 150.00
TOTAL			\$450.00

CERTIFICATE OF SERVICE

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

THOMAS A FARR
OGLETREE DEAKINS
4208 SIX FORKS ROAD
SUITE 1100
RALEIGH NC 27609

MELISSA TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

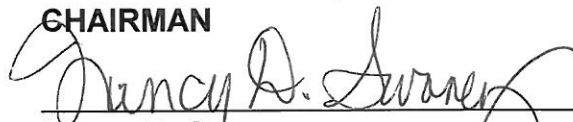
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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 21st DAY OF August 2013.

OSCAR A. KELLER, JR.
CHAIRMAN



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