

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 sole proprietorship, 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 Columbia, North Carolina. Respondent is in the business of roofing. 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 March 20, 2013, Chuck Murdock, an Occupational Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 25099 Hwy 12 in Rodanthe, North Carolina (the "Inspection").

4. As a result of the Inspection, on April 2, 2013, Complainant issued one citation ("Citation 1") as more specifically described on Exhibit "A" (the "Original Citation"):

5. Respondent submitted a timely Notice of Contest on May 6, 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 abatement period.

9. The parties agree that upon granting of Complainant's Motion the penalty for the Items 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 financial and other factors applicable to Respondent as disclosed at the Hearing.

10. Upon entry of this Final Order Respondent agrees to pay the penalty assessed in this matter of \$1,800.00 in 18 equal monthly installments of \$100.00 each, with the first installment due and payable on the first business day of October, 2013. 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 18 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.

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 Final Order except as provided in Stipulation 10 above.

12. 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.

MOTIONS

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

amend Citation 1 by grouping Items 1, 2 and 3 and adjusting the proposed penalty from \$6,300.00 to \$1,800.00.

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 ("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 Final 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 Final 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 20 day of August, 2013.



R. Joyce Garrett

Administrative Law Judge

2013-5458
Robert Thompson dba Thompson Roofing

CONSENTED TO:

A handwritten signature in black ink, appearing to read "Jill E. Cramer", written over a horizontal line.

| -Jill E. Cramer, Assistant Attorney General
Attorney for Complainant

A handwritten signature in black ink, appearing to read "Robert Thompson", written over a horizontal line.

| Robert Thompson
| Representative for Respondent

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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 1926.501(b)(1)	Immediately Abated	\$2,100.00
2	29 CFR 1926.602 (c)(1)(ii)	Immediately Abated	\$2,100.00
3	29 CFR 1926.602 (c)(1)(viii)(A)	Immediately Abated	\$2,100.00
TOTAL			\$ 6,300.00

CERTIFICATE OF SERVICE

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

ROBERT THOMPSON
PRESIDENT
THOMPSON ROOFING
1334 HWY 94 N
COLUMBIA NC 27925

JILL CRAMER
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
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