

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

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2013 - 5493
)	
)	INSPECTION
Complainant,)	NO: 317086635
)	
)	CSHO ID: Q3336
v.)	
B&H CONSTRUCTION INC and its successors)	<u>FINAL ORDER</u>
)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on February 24, 2014 continued from February 12, 2014 due to inclement weather, 10:30 a.m. Jill Cramer, Assistant Attorney General appeared as counsel for the Complainant by teleconference, and William R. Brantley, President of Respondent, appeared by teleconference 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 Wilson, North Carolina. Respondent is in the business of construction. 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. During the period of May 2-14, 2013, an Occupational Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 1/10 Mile East on Old Fayetteville Road and Oak Ln in Leland, North Carolina (the “Inspection”).

4. As a result of the Inspection, on June 21, 2013, Complainant issued a serious citation (“Citation 1”) as more specifically described on Exhibit “A” (the “Original Citation”). Citation 1 consisted to 2 Items and, in general, pertained to alleged trenching/excavation violations.

5. Respondent submitted a timely Notice of Contest.

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 as follows:

*** Respondent will have all employees go through recertification in competent person trench training and will provide copies of the documentation of the training to NCDOL/OSH;**

*** Respondent agrees to have a competent person on site and in a supervisory capacity for all trench work; and**

*** Respondent agrees to abide by all applicable trenching standards.**

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.

11. Respondent agrees to pay the penalty assessed in this matter within 30 days after the date of this Final Order.

12. 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.

13. 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 Item 1a and Item 1b by reclassifying from serious to non-serious with a change in the proposed penalty to \$500.00;**

***amend Citation 1 Item 2a and Item 2b by reclassifying from serious to non-serious with a change in the proposed penalty to \$600.00;**

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 24th day of February, 2014.



R. Joyce Garrett

Administrative Law Judge

B&H Construction Inc
2013-5493

CONSENTED TO:



Jill Cramer
Attorney for Complainant

William R. Brantley
Representative for Respondent

919-733-3020

Boring
B&H Construction Inc
2013-5493

today's date: 2/24/14
CONSENTED TO:
penalty to be paid within 30 days.

Jill Cramer
Attorney for Complainant

William R. Brantley

William R. Brantley
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 1926.651(c)(2)	Immediately Abated	\$ 1,000.00
1b	29 CFR 1926.651(h)(2)	7/18/2013	
Grouped			
2a	29 CFR 1926.652(a)(1)	Immediately Abated	\$ 1,400.00
2b	29 CFR 1926.651(k)(1)	7/18/2013	
		TOTAL	\$2,400.00

CERTIFICATE OF SERVICE

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

WILLIAM R BRANTLEY
PRESIDENT
B&H CONSTRUCTION INC
6318 LAMM RD
WILSON NC 27896

JILL CRAMER
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

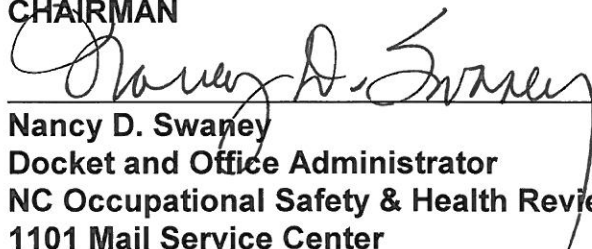
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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 3rd DAY OF March 2014.

OSCAR A. KELLER, JR.
CHAIRMAN



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