

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

<b>COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA</b>	)	<b>DOCKET NO: 2013 - 5530</b>
	)	
	)	<b>INSPECTION</b>
<b>Complainant,</b>	)	<b>NO: 317040988</b>
	)	
<b>v.</b>	)	<b>CSHO ID: I4194</b>
<b>EILERSON DEVELOPMENT CORPORATION and its successors</b>	)	<b><u>FINAL ORDER</u></b>
	)	
<b>Respondent.</b>	)	

**THIS CAUSE** coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on April 8, 2014 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:30 a.m. Jill Cramer, Assistant Attorney General appeared as counsel for the Complainant, -and Margaret Carden, Safety Director, and Bill Gillespie, Jr., of Respondent, 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 general contractor services at a construction site in Morrisville, North Carolina; Respondent subcontracted the masonry work to NAVAS Construction; by written contract NAVAS was to

comply with all OSHA rules and regulations and was to provide the required scaffolds and required 'competent person'; the Inspector (hereinafter defined) alleged that (a) certain scaffold and scaffold components were not inspected for visual defects by a competent person before each work shift and after any occurrence which could affect a scaffold's structural integrity; (b) guardrail systems were not installed along all open sides and ends of platform; (c) scaffolding footings were not level, sound, rigid, and capable of supporting the loaded scaffold without settling or displacement; (d) portable ladders, hook or ladders, attachable ladders, stair towers, stairway-type ladders, ramps, walkways, integral prefabricated scaffold access, or direct access from another scaffold, structure, personal hoist, of similar surface were not used when scaffold platforms were more than 2 feet above or below a point of access; (e) the written hazardous communication program did not include a list of the hazardous chemicals known to be present using an identity that was referenced on the appropriate material safety data sheet; 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 Virginia business corporation duly authorized and in good standing in North Carolina, which does business in the State of North Carolina. Respondent is in the business of construction supervision. 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 10, 2013, Kim Grayson, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor (the "Inspector"), conducted a special emphasis inspection of Respondent's worksite located at 2000 Market Center Drive in Morrisville, North Carolina (the "Inspection").
4. As a result of the Inspection, on September 20, 2013, Complainant issued a Serious Citation consisting of Item 1 and Item 2a,b,and c ("Citation 1") and a Nonserious Citation consisting of Item 1 ("Citation 2"); each citation is more specifically described on Exhibit "A". Citation 1 and Citation 2 are collectively referred to as the "Original Citation".
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 that the violations alleged in the Original Citation as amended 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.
12. Respondent agrees to pay the penalty assessed in this matter within 10 business days of the date of this Final Order.
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.
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 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 deleting Item 1 and its penalty of \$1,000.00 and by deleting Item 2a, leaving Item 2b and Item 2c grouped with a penalty of \$1,000;**

**\* Citation 2 Item 1 shall remain unchanged;**

**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 8<sup>th</sup> day of April, 2014.



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R. Joyce Garrett

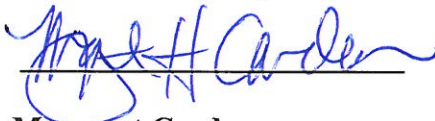
Administrative Law Judge

**CONSENTED TO:**



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**-Jill F. Cramer**  
**Attorney for Complainant**



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**Margaret Carden**  
**Representative for Respondent**



**Exhibit "A"**  
**Original Citation**

**CITATION NUMBER 1 (Type of Violation: Serious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
1	29 CFR 1926.451(f)(3)	10/16/2013	\$ 1,000.00
Grouped			
2a	29 CFR 1926.451(g)(4)(i)	Immediately Abated	\$1,000.00
2b	29 CFR 1926.451(c)(2)(i)	Immediately Abated	
2c	29 CFR 1926.451(e)(1)	Immediately Abated	

**CITATION NUMBER 2 (Type of Violation: Nonserious)**

1	29 CFR 1910.1200(e)(1)(i)	10/16/2013	\$ 0.00
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**TOTAL**                      **\$ 2,000.00**

CERTIFICATE OF SERVICE

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

MARGARET CARDEN  
PARALEGAL  
EILERSON DEVELOPMENT CORP  
1660 HUGUENOT ROAD  
MIDLOTHIAN VA 23113

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 9<sup>th</sup> DAY OF April 2014.

OSCAR A. KELLER, JR.  
CHAIRMAN

  
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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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