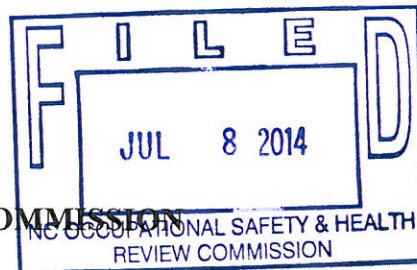


**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**



COMMISSIONER OF LABOR FOR)	DOCKET NO: 2013 - 5533
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
)	NO: 317261162
Complainant,)	
)	CSHO ID: G8007
v.)	
D.R. HORTON INC -)	<u>FINAL ORDER</u>
CHARLOTTE DIVISION)	
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on July 8, 2014 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, by teleconference Lori M. Carr, Attorney at Law, appeared as counsel for Respondent and Stephen Perison, Vice President of Risk Management, 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 services at a construction site in Charlotte, North Carolina; the Inspector (hereinafter defined) alleged that

(a) frequent and regular inspections of the jobsites, materials, and equipment were not made by competent persons designated by the employers (more specifically: Stafford Development. Frequent and regular inspections were not made by a competent person to recognize and correct hazards associated with fall protection, ladders, electrical hazards, use of personal protective equipment and safe work practices); and (b) the employer did not instruct each employee in the recognition and avoidance of unsafe condition(s) and the regulation(s) applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury (more specifically: Stafford Division, employees were not trained how to recognize and avoid unsafe conditions associated with electrical equipment, use of personal protective equipment and site safety hazards); 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 foreign corporation, active and in good standing 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 Charlotte, North Carolina. Respondent is in the business of residential 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. On August 7, 2013, Jermaine Dennis, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 5918 Peppercorn Way in Charlotte, North Carolina (the "Inspection").
4. As a result of the Inspection, on October 1, 2013, Complainant issued two citations ("Citation 1" and "Citation 2") as more specifically described on **Exhibit "A"** (collectively the "Original Citation"). Citation 1 pertained to an alleged Repeat Serious violation of 29 CFR 1926.20(b)(2) and Citation 2 pertained to an alleged Serious violation of 29 CFR 1926.21(b)(2).
5. Respondent submitted a timely Notice of Contest on December 20, 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. 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

* the correct legal name of the Respondent is 'D. R. Horton, Inc.';

* to comply with the applicable standards of the Act, and specifically during the next 3 years, commencing with the date of this Final Order, to insure that its North Carolina construction superintendent(s) and its North Carolina area construction manager(s) have completed the 30 hour OSH construction safety training (such training to be provided within 6 months of the date of this Final Order);

* to pay the penalty assessed in this matter of \$10,000.00 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 this case.

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 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 reclassifying from ‘Repeat Serious’ to ‘Serious’;**
- * **amend Citation 2 by renumbering it as “Citation 1 Item 2”;**
- ***group Citation 1 Items 1 and 2, with a combined penalty of \$10,000.00;**

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.

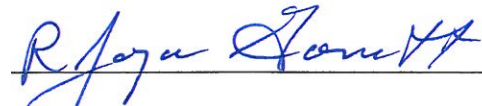
CONCLUSIONS OF LAW

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 8th day of July, 2014.



R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



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

**Lori M. Carr, Attorney at Law
Counsel for Respondent**

From: NC OSH REVIEW COMMISSION

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D. R. Horton Inc
2013 - 5533

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 8th day of July, 2014.

R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:

Melissa Taylor, Assistant Attorney General
Attorney for Complainant



Lori M. Carr, Attorney at Law
Counsel for Respondent

Exhibit "A"
Original Citation

CITATION NUMBER 1 (Type of Violation: Repeat Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.20(b)(2)	10/25/2013	\$12,600.00

CITATION NUMBER 2 (Type of Violation: Serious)

1	29 CFR 1026.21(b)(2)	10/25/2013	\$ 4,000.00
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TOTAL **\$16,600.00**

CERTIFICATE OF SERVICE

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

LORI CARR
ESTES OKON THORNE & CARR PLLC
3811 TURTLE CREEK BLVD
STE 2000
DALLAS TX 75219

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 9th DAY OF July 2014.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swarney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589
FAX: (919) 733-3020