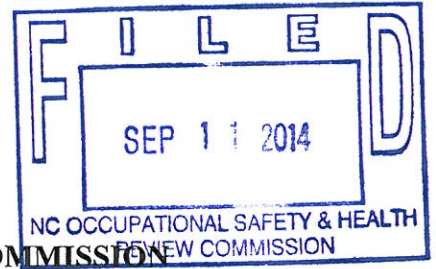


Nancy Perez Vasquez dba Perez Roofing  
2014-5605



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

**RALEIGH, NORTH CAROLINA**

<b>COMMISSIONER OF LABOR FOR</b>	)	<b>DOCKET NO: 2014 - 5605</b>
<b>THE STATE OF NORTH CAROLINA</b>	)	
	)	<b>INSPECTION</b>
	)	<b>NO: 317359065</b>
<b>Complainant,</b>	)	
	)	<b>CSHO ID: S5229</b>
<b>v.</b>	)	
<b>NANCY PEREZ VASQUEZ</b>	)	<b><u>FINAL ORDER</u></b>
<b>dba PEREZ ROOFING</b>	)	
<b>and its successors</b>	)	
<b>Respondent.</b>	)	

**THIS CAUSE** coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on September 10, 2014 at 10:30 a.m. Victoria Voight, Special Deputy Attorney General appeared by teleconference as counsel for the Complainant, and Gregory L. Shelton, Attorney at Law, appeared by teleconference 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”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and to 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 Statement of Employer’s/Respondent’s Position, it appears that no injuries were sustained and that: Respondent was providing roofing services at the Morningside of Raleigh Assisted Living

Facility in Wake County, North Carolina; pursuant to an Inspection (hereinafter defined) the Commissioner alleged (a) (Citation 1 Item 1) a violation of 29 CFR 1926.501(b)(10)<sup>1</sup>, specifically alleging that "...an employee was observed wearing a harness while installing architectural asphalt shingles on a 4:12 pitched roof approximately 20 feet above the dirt ground and was not tied off to an anchor point" and that "...an employee was observed installing architectural asphalt shingles on a 4:12 pitched roof approximately 20 feet above the dirt ground without the benefit of a fall protection system"; such alleged violation was classified as 'Serious Willful' with a penalty assessed of \$28,000.00 and an abatement date of 04/16/2014; (b) (Citation 2 Item 1) a violation of 29 CFR 1926.102(a)(1)<sup>2</sup>, specifically alleging that "...two employees were using Hitachi ¾" to 1-1/4" roofing nail guns operating at 120 psi to replace the architectural asphalt shingles without wearing safety glasses"; such alleged violation was classified as "Serious" with a penalty assessed of \$2,000.00 and an abatement date of 04/17/2014; (c) (Citation 2 Item 2) a violation of 29 CFR 1926.503(a)(1)<sup>3</sup>, specifically alleging that "an employee was observed wearing a harness while installing architectural asphalt shingles on a 4:12 pitched roof approximately 20 feet above the dirt ground and was not tied off to an anchor point" and that "...an employee was installing architectural asphalt shingles on a 4:12 pitched roof approximately 20 feet above the dirt ground without the benefit of a fall protection system"; such alleged violation was classified as 'Serious' with a penalty assessed of \$2,800.00 and an abatement date of 05/05/2014; (d) (Citation 2 Item 3a – grouped with Citation 2 Item 3b) a violation of 29 CFR 1926.1053(b)(4)<sup>4</sup>, specifically alleging that "one employee was using a 6' aluminum stepladder that was sitting on the peak of the lower roof and resting against the building without the spreader bars being locked in the open position to access a 4:12 pitch lower level of roof from a 4:12 pitch upper level so that the new architectural asphalt shingles could be installed on the lower level roof"; such alleged violation was classified as "Serious" with an abatement date of 04/17/2014; and (e) (Citation 2 Item 3b – grouped with Citation 2 Item 3a) a violation of 29 CFR 1926.1060(a)<sup>5</sup>, specifically alleging that "...one employee was using a 6' aluminum stepladder that was sitting on the peak of the lower roof and resting against the building without the spreader bars being locked in the open position to access a 4:12 pitch lower

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<sup>1</sup> 29 CFR 1926.501(b)(10): Each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels, was not protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system.

<sup>2</sup> 29 CFR 1926.102(a)(1): Eye and face protective equipment was not used when machines or operations presented potential eye or face injury from physical, chemical, or radiation agents.

<sup>3</sup> 29 CFR 1926.503(a)(1): The employer did not provide a training program for each employee who might be exposed to fall hazards that would enable each employee to recognize the hazards of falling nor did the employer train each employee in the procedures to be followed in order to minimize these hazards.

<sup>4</sup> 29 CFR 1926.1053(b)(4): Ladders were used for purposes other than the purposes for which they were designed.

<sup>5</sup> 29CFR 1926.1060(a): The employer did not provide a training program for each employee using ladders and stairways which would train each employee in the procedures to be followed to minimize hazards related to ladders and stairways.

**MOTIONS**

Complainant moved to do the following (“Complainant’s Motion”):

**\*amend Citation 1 Item 1 by reclassifying from ‘serious willful’ to ‘serious repeat’ with a change in the proposed penalty from \$28,000.00 to \$5,400.00;**

**\*further amend Citation 1 Item 1 and amend Citation 2 Item 1, Item 2, Item 3a and Item 3b by reducing the amount of the penalty as follows:**

<b>Citation</b>	<b>Item</b>	<b>Initial Proposed Penalty</b>	<b>Final Adjusted Penalty</b>
<b>1</b>	<b>1</b>	<b>\$28,000.00 (adjusted to \$5,400.00 based on reclassification)</b>	<b>\$3,780.00</b>
<b>2</b>	<b>1</b>	<b>\$ 2,000.00</b>	<b>\$1,400.00</b>
<b>2</b>	<b>2</b>	<b>\$ 2,800.00</b>	<b>\$1,960.00</b>
<b>2</b>	<b>3a</b>	<b>\$ 2,000.00</b>	<b>\$1,400.00</b>
<b>2</b>	<b>3b</b>		
			<b>\$8,540.00</b>

**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.

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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 10<sup>th</sup> day of September, 2014.

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R. Joyce Garrett

Administrative Law Judge

### CONSENTED TO:

Victoria Voight

Victoria Voight, Special Deputy Attorney General  
Attorney for Complainant

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Gregory L. Shelton, Attorney at Law  
Attorney for Respondent

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- 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 10<sup>th</sup> day of September, 2014.

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R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

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**Victoria Voight, Special Deputy Attorney General  
Attorney for Complainant**




---

**Gregory L. Shelton, Attorney at Law  
Attorney for Respondent**

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.

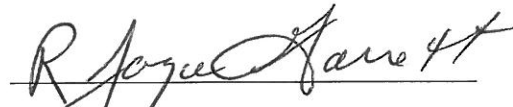
**CONCLUSIONS OF LAW**

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 10<sup>th</sup> day of September, 2014.

  
\_\_\_\_\_  
R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

\_\_\_\_\_  
**Victoria Voight, Special Deputy Attorney General  
Attorney for Complainant**

\_\_\_\_\_  
**Gregory L. Shelton, Attorney at Law  
Attorney for Respondent**

CERTIFICATE OF SERVICE

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

GREGORY L SHELTON  
HORACK TALLEY  
2600 ONE WELLS FARGO CENTER  
301 S COLLEGE STREET  
CHARLOTTE NC 28202-6006

VICTORIA VOIGHT  
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 12<sup>th</sup> DAY OF September 2014.

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  
TEL.: (919) 733-3589  
FAX: (919) 733-3020