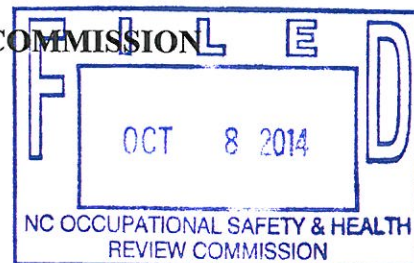


**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**



COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2014 - 5618
)	
)	INSPECTION
)	NO: 316779800
Complainant,)	
)	CSHO ID: K0768
v.)	
SOUTH ATLANTIC CONSTRUCTION COMPANY)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on September 17, 2014 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina (the “Hearing Location”) at 10:00 a.m. Jason Rosser, Assistant Attorney General appeared as counsel for the Complainant, and Jay M. Wilkerson, Attorney At Law, appeared as counsel for the Respondent. Also present for the Complainant was Phillip Hooper, Eastern Bureau Chief, and Ron Wells, District Supervisor, and for the Respondent was Randy Robertson, Vice President of Respondent. At the request of both parties this matter was continued to October 8, 2014 at 9:45 a.m. at the Hearing Location.

Pursuant to the Hearing Order a pre-hearing conference was held on September 17, 2014 continued to October 8, 2014 (collectively the “Hearing”) 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 the Statement of Employer's/Respondent's Position, it appears that no injuries were sustained in connection with the violation alleged in the Original Citation and that: Respondent was providing construction services at a construction site in Raleigh, North Carolina; pursuant to an Inspection (hereinafter defined) the Commissioner alleged in Citation 01 Item 001 a violation of 29 CFR 1926.452(j)(2)¹, specifically alleging that "Scaffolding system attached to 5741 Goodstone Drive, Raleigh, NC 27616 – The pump jack scaffolding system, (Qual-Craft, All Pro, aluminum, NON), was not braced on the lower legs at the foot to prevent displacement or swaying."; such alleged violation was classified as "Serious" with a penalty assessed of \$450.00; the alleged violation was 'Corrected During Inspection'; Respondent denied all such allegations and objected to the classification of the alleged violation and to the proposed penalty.

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 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 Raleigh, North Carolina. 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 January 23, 2014, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at 5741 Goodstone Drive in Raleigh, North Carolina (the "Inspection").
4. As a result of the Inspection, on June 19, 2014, Complainant issued a citation with one item (herein sometimes referred to as "Citation 1" or as "Original Citation") as more specifically set forth in body and footnote to this Final Order.
5. Respondent submitted a timely Notice of Contest dated July 8, 2014.

¹ 29 CFR 1926.452(j)(2): Poles were not secured to the structure by rigid triangular bracing or equivalent at the bottom, top, and other points as necessary.

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, the Hearing Order and the Order to Continue 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 violation alleged in Citation 1 has been abated, and agrees to continue to use its best efforts to comply with the requirements of the Act.

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:

- * that it shall provide scaffold training to its competent persons;
- * that it shall require bottom bracing in compliance with 29 CFR 1926.452(j)(2) for pump jack scaffolds;
- * to continue with its present safety program, including conducting periodic meetings with employees; during such meetings, employees will be able to communicate safety suggestions or complaints to their supervisor who will forward the information to Respondent's safety spokesperson; and
- * to pay the penalty assessed in this matter of \$450.00 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 any stage of these proceedings up to and including the filing of this Final 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 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

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 October, 2014.



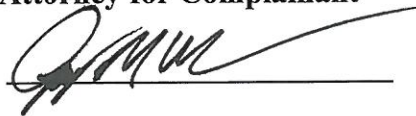
R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



**Jason Rosser, Assistant Attorney General
Attorney for Complainant**



**Jay M. Wilkerson, Attorney At Law
Representative for Respondent**

CERTIFICATE OF SERVICE

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

JAY M WILKERSON
CONNOR GWYN SCHENCK
PO BOX 30933
RALEIGH NC 27622

JASON ROSSER
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 October 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
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