



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

COMMISSIONER OF LABOR FOR)	DOCKET NO: 2014 - 5582
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
)	NO: 317359479
Complainant,)	
)	CSHO ID: R6552
v.)	
RENAISSANCE CONTRACTING LLC)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on June 10, 2014 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:30 a.m. Jason Rosser, Assistant Attorney General appeared as counsel for the Complainant, and William Brandon Freeman, Manager 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 the Respondent is in the business of residential construction and had a work site at 1300 Glenwood Avenue in Raleigh, North Carolina (the “Work Site”); the Inspector (hereinafter defined) conducted an Inspection (hereinafter defined) of Respondent’s Work Site, and alleged that each employee engaged in

residential construction activities 6 feet (1.8m) or more above lower levels was not protected by guardrail systems, safety net systems, or personal fall arrest systems, and specifically that at the Work Site Respondent's employee supervising the renovation of a single family home by subcontractors, on the roof of the dwelling approximately 12 feet above the ground, was not provided fall protection and allowed the employees of the sub contractor to work near the edge of the roof without fall protection; 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 manager managed North Carolina limited liability company organized and duly 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 at 7009 Brecken Ridge Ave, Raleigh, 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 December 13, 2013 an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted a special event inspection (the "Inspection") of Respondent's Work Site located at 1300 Glenwood Avenue in Raleigh, North Carolina
4. As a result of the Inspection, on December 23, 2013, Complainant issued a citation ("Citation 1" or the "Original Citation") as more specifically described on **Exhibit "A"**. Citation 1 pertained to an alleged serious violation of 29 CFR 1926.501(b)(13).
5. Respondent submitted a timely Notice of Contest on or about March 13, 2014.
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 violation alleged in the Original Citation has 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.

11. Respondent agrees to pay the penalty assessed in this matter of \$600.00 within 10 business days of 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 this case. Respondent agrees that it shall undertake additional safety and health training and shall seek consultative services with respect to safety and health compliance as applicable.

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 by reclassifying from serious to non-serious with a change in the proposed penalty from \$1,000.00 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 violation alleged in the Original Citation as amended has 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 10th day of June, 2014.



R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



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



**William Brandon Freeman, Manager of Respondent
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>
1	29 CFR 1926.501(b)(13)	Immediately Abated	\$1,000.00
		TOTAL	\$ 1,000.00

CERTIFICATE OF SERVICE

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

WILLIAM BRANDON FREEMAN
OWNER
RENAISSANCE CONTRACTING LLC
4225 BRINTONS COTTAGE STREET
RALEIGH NC 27616

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 11th DAY OF June, 2014.

OSCAR A. KELLER, JR.
CHAIRMAN



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