

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

**COMMISSIONER OF LABOR FOR  
THE STATE OF NORTH CAROLINA**

**Complainant,**

**v.**

**DAVID MCMILLAN dba MCMILLAN  
CONTRACTORS, INC  
and its successors**

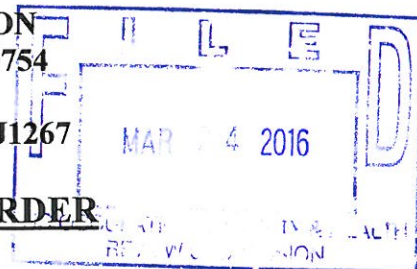
**Respondent.**

**DOCKET NO: 2015 - 5721**

**INSPECTION  
NO: 317989754**

**CSHO ID: J1267**

**FINAL ORDER**



**APPEARANCES:**

For Complainant: Cara Byrne, Assistant Attorney General  
For Respondent: David McMillan

Administrative Law Judge: R. Joyce Garrett

**THIS MATTER** came on for Hearing before the Undersigned on March 9<sup>th</sup>, 2016, at the Lee House, Oak Hearing Room, 2<sup>nd</sup> Floor, 422 North Blount Street, Raleigh, North Carolina. No employees of Respondent or other persons wishing to provide comment or testimony in the Matter were present other than witnesses for the Complainant.

Following a pre-hearing conference conducted by the Undersigned with the parties, the Complainant and Respondent each informed the Undersigned that it wished to make certain Motions in the matter and that provided such Motions were granted an evidentiary Hearing would not be required. No person attending the Hearing made any objection to the Motion presented by Complainant and by Respondent.

Complainant made the following Motion To Amend: (1) to group Citation 1 Items 1 and 5 with a single penalty of \$2,100; (2) to group Citation 1 Items 2 and 3 with a single penalty of \$2,100; (3) to group Citation 1 Items 4, 6, 7 and 8 with a single penalty of \$2,100; (4) to withdraw Citation 1 Item 9 with its penalty; (5) to renumber Citation 1 Item 10 (non-serious without penalty) to Citation 2 Item 1 (non-serious without penalty); and (6) to adjust the resulting \$6,300 penalty by giving a credit of 35%, resulting in a total penalty due of \$4,095; which penalty of \$4,095 can be paid by Respondent in 24 equal successive monthly installments of \$170.63 due and payable on the fifth (5<sup>th</sup>) day of each calendar month beginning with May 5, 2016; payment is to be by check payable to North Carolina Department of Labor, OSHA

**DATABASE**  
*BN*


Division and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The Citation and Notification of Penalty shows that all alleged violations were "Corrected During Inspection"; accordingly all items have been abated.

Respondent made the following motion: Motion to Withdraw Its Notice of Contest to the Citation as Amended by Complainant's Motion To Amend.

Neither party objecting to the other party's Motion, **IT IS ORDERED, ADJUDGED AND DECREED:**

1. That Complainant's Motion To Amend as set forth above is hereby **GRANTED**; and
2. That Respondent's Motion to Withdraw Its Notice of Contest to the Citation As Amended is hereby **GRANTED**. Respondent shall pay the penalty of \$4,095 in the manner set forth in the Motion To Amend.

Effective the 9<sup>th</sup> day of March, 2016.

  
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R. Joyce Garrett  
Administrative Law Judge