

FILED

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

SEP 8 2017

RALEIGH, NORTH CAROLINA NC Occupational & Safety Review Commission

COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)

COMPLAINANT,)

v.)

PREMIER ELECTRICAL)
STAFFING, LLC)
and its successors)

RESPONDENT.)

DOCKET NO.: OSHANC 2016-5794

INSPECTION NO.: 318025459

CSHO ID.: A6044

ORDER

THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on August 14, 2017, at 10 A.M. pursuant to a Notice of Hearing. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Attorney Greg C. Ahlum of Johnston Allison & Hord, Charlotte, North Carolina, appeared by teleconference for the Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the time of the Hearing the parties agreed upon and consented to the following Stipulations.

STIPULATIONS

1. Respondent and Complainant waive the presence of a court reporter at the Hearing and the making of a transcript of the Hearing.
2. Respondent is a corporation duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Cornelius, North Carolina.
3. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned and to entry of this Order.

4. Between October 22, 2015 and October 23, 2015, Howard Laurie and Julie Martin, Occupational Safety and Health Officers with the North Carolina Department of Labor, conducted an inspection of the worksite located at 101 North 3rd Street in Wilmington, North Carolina.

5. As a result of the inspection, on March 29, 2016, Complainant issued the following Citations and Notification of Penalty (collectively herein referred to as the "Original Citation"):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.95(a)	4/6/2016	\$ 7,000.00
002	29 CFR 1926.21(b)(2)	4/22/2016	\$7,000.00

CITATION 02 (NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1904.39(a)(2)	Corrected During Inspection	\$ 2,000.00

6. The Respondent submitted a timely Notice of Contest, dated April 21, 2016.

7. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.

8. Respondent denies any violation of Citation 01, Items 001 and 002, and also denies any liability under Citation 02 Item 001. Complainant and Respondent agree that provided the respective Motions of each party are granted (a) 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; (b) this Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion; (c) 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, (d) none of the 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 Order brought directly under the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act") by Complainant, this Order shall have the full force and effect of a final order; and (e) 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; (f) 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; and (g) there has been no employee objection to the reasonableness of any abatement period.

9. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act.

MOTIONS

Complainant moved to make the following amendments to the Original Citation ("Complainant's Motion"):

a) Delete Citation 01, Items 001 and 002, and all associated penalties;

except as set forth in this motion, the Original Citation shall remain unmodified or amended and Respondent shall pay the proposed penalty of \$ 2,000.00 within ten (10) days following the date of this Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No.318025459) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

Respondent did not object to Complainant's Motion.

Respondent confirmed that:

- the violations alleged in the Original Citation as amended have been abated;
- Respondent agrees to continue to use its best efforts to comply with the requirements of the Act;
- Respondent agrees to continue with its present safety program (subject to the changes set forth below), including conducting meetings with employees. During such meetings, employees will be able to communicate safety suggestions or complaints to their supervisor or directly to Respondent. Respondent agrees to meet with its employees to discuss safety issues and receive safety suggestions or complaints from employees. Respondent agrees that all employees who make suggestions or complaints to their supervisors or directly to the Respondent shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes.
- Respondent agrees to make the following changes to its safety program:
 - (1) "Jobsite" or "Jobsites" shall mean the location that temporary employees provided by Respondent to a host employer are working at on any given day. The Jobsite may change during a placement with the host employer even though the host employer does not change from day to day.
 - (2) Respondent provides basic safety training to its employees as part of its hiring process. As safety training becomes more specific according to the work being performed on each Jobsite, it is more efficient and appropriate to have the host employer

train temporary employees on site for specific hazards that may exist. With this in mind and for contracts entered into after the date of this Order, Respondent will work with host employers and implement contractual language requiring host employers to provide Jobsite safety training for temporary employees prior to the temporary employees being exposed to the hazard on the host employer's Jobsite, and requiring host employers to verify such training.

(3) Respondent will maintain its current general safety training, which covers many of the basic safety topics an employee could be exposed to on a Jobsite.

(4) Respondent will notify employees as part of their basic training that Respondent's employees should notify management of any safety hazards they view and are aware of on any host employer's Jobsites, so that Respondent may take appropriate action.

(5) Respondent will ensure there is an open and welcome communication line for its employees to notify management of anything they view as hazards during their time on a host employer's Jobsite, and that the employee will face no retaliation for any such report.

Respondent requested that upon the granting of Complainant's Motion that the Undersigned consider the following motion by the Respondent ("Respondent's Motion"):

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 objection, procedural or otherwise, 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 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**. Respondent shall pay the penalty of \$2,000.00 in the manner set forth in Complainant's Motion.

This 14th day of August, 2017.

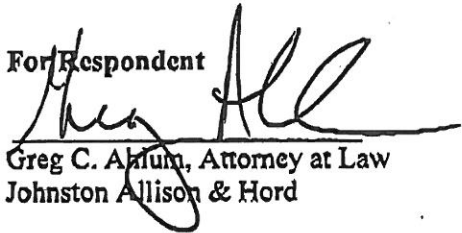
R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Rory Agan, Assistant Attorney General
North Carolina Department of Justice

For Respondent


Greg C. Ahlum, Attorney at Law
Johnston Allison & Hord

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**. Respondent shall pay the penalty of \$2,000.00 in the manner set forth in Complainant's Motion.

This 14th day of August, 2017.

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant



Rory Agan, Assistant Attorney General
North Carolina Department of Justice

For Respondent

Greg C. Ahlum, Attorney at Law
Johnston Allison & Hord

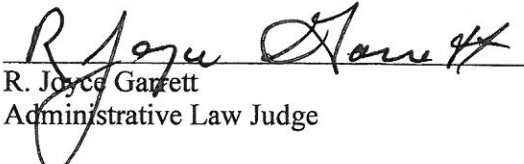
CONCLUSIONS OF LAW

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**. Respondent shall pay the penalty of \$2,000.00 in the manner set forth in Complainant's Motion.

This 14th day of August, 2017.


R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Rory Agan, Assistant Attorney General
North Carolina Department of Justice

For Respondent

Greg C. Ahlum, Attorney at Law
Johnston Allison & Hord

CERTIFICATE OF SERVICE

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

GREG C. AHLUM
JOHNSTON ALLISON & HORD
1065 E. MOREHEAD ST.
CHARLOTTE, NC 28204

RORY AGAN
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

by depositing a copy of the same in the United States Mail, First Class;

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 8 DAY OF September 2017.

ARLENE K. EDWARDS
CHAIRMAN


Karissa B. Sluss

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