

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

FILED

SEP 22 2017

COMMISSIONER OF LABOR FOR)	DOCKET NO: 2016-5851
THE STATE OF NORTH CAROLINA)	Occupational Safety
)	Health Review Commission
)	INSPECTION
Complainant,)	NO: 318067469
)	
v.)	CSHO ID: H6414
ELROD ELECTRICAL SERVICES, INC.)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

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 September 20, 2017, at 10 A.M. pursuant to a Notice of Hearing. Ms. Melissa Taylor, Assistant Attorney General appeared by teleconference as counsel for the Complainant, and Mr. Michael Lord, Attorney with Williams Mullen in Raleigh, 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 and Complainant mutually agree to the correction of the typographical error in setting forth the name of the Respondent, and Respondent and Complainant agree that each and every reference in this case to "Elrod Electrical Services, Inc." shall be, and hereby is, replaced by "Elrod Electrical Service, Inc." without any further action on the part of either party. Respondent is a corporation duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Greensboro, 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. On April 29, 2016 an Occupational Safety and Health Officer with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at 3316 W. Friendly Ave, Greensboro, North Carolina.

5. As a result of the inspection, on July 20, 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>
Grouped			
001a	29 CFR 1926.405(a)(2)(ii)(A)	Immediately Upon Receipt	\$2,800.00
001b	29 CFR 1926.403(b)(1)	Immediately Upon Receipt	
001c	29 CFR 1926.403(b)(2)	Immediately Upon Receipt	
001d	29 CFR 1926.404(d)(1)(i)	Immediately Upon Receipt	
001e	29 CFR 1926.404(f)(1)(iv)(A)	Immediately Upon Receipt	
001f	29 CFR 1926.405(a)(2)(ii)(B)	Immediately Upon Receipt	
001g	29 CFR 1926.405(a)(2)(ii)(J)	Immediately Upon Receipt	
001h	29 CFR 1926.405(b)(2)	Corrected During Inspection	
001i	29 CFR 1926.405(e)(1)	Immediately Upon Receipt	
001j	29 CFR 1926.405(g)(2)(iv)	Immediately Upon Receipt	

CITATION 02 (NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.1200(e)(2)(i)	Corrected During Inspection	\$ 0.00

6. The Respondent submitted a timely Notice of Contest.

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. 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; and (f) there has been no employee objection to the reasonableness of any abatement period.

MOTIONS

Complainant moved to make the following amendments to the Original Citation ("Complainant's Motion"): Delete Citation 01 and Citation 02, together with any proposed penalty, in their entirety.

Respondent did not object to Complainant's Motion and Respondent stipulates that Respondent will continue to conduct jobsite safety inspections and document such in writing to be made available to the North Carolina Department of Labor upon reasonable request from the North Carolina Department of Labor.

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**.

This 20th day of September, 2017.

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant



Melissa Taylor, Assistant Attorney General
North Carolina Department of Justice

For Respondent

Michael Lord, Attorney at Law
Williams Mullen, Raleigh, North Carolina

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 20th day of September, 2017.

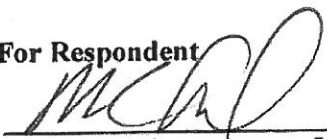
R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Melissa Taylor, Assistant Attorney General
North Carolina Department of Justice

For Respondent



Michael Lord, Attorney at Law
Williams Mullen, Raleigh, North Carolina


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 20th day of September, 2017.



R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Melissa Taylor, Assistant Attorney General
North Carolina Department of Justice

For Respondent

Michael Lord, Attorney at Law
Williams Mullen, Raleigh, North Carolina

CERTIFICATE OF SERVICE

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

MICHAEL C. LORD
WILLIAMS MULLEN
P O BOX 1000
RALEIGH, NC 27602

MELISSA TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

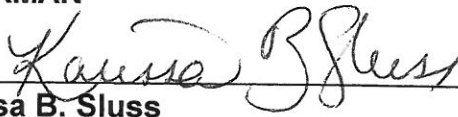
by depositing a copy of the same in the United States Mail, First Class;

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 27 DAY OF September 2017.

ARLENE K. EDWARDS
CHAIRMAN



Karissa B. Sluss

Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
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