

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

AUG 21 2018

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

Complainant,

v.

SUMMIT CONTRACTING GROUP, INC.

and its successors

Respondent.

DOCKET NO: 2017 - 5931

INSPECTION NO: 318097433

CSHO ID: G7653

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, 2018, at 10:00 A.M. pursuant to a Notice of Hearing. Larissa S. Williamson, Special Deputy Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Nicole Slaughter, attorney with Hamlet & Associates, PLLC, 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. 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, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act"). The Review Commission has jurisdiction over the parties and the subject matter to this action.

2. Respondent is a Florida corporation, which was authorized to do business in North Carolina on March 23, 2007, is active and in good standing in the State of North Carolina, and maintains a place of business in Raleigh, North Carolina. Respondent is an "employer" as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).

3. During the period of January 26, 2017 through June 7, 2017, Richard Kraemer, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted

an inspection of Respondent's worksite located at 424 East 36th Street, Charlotte, North Carolina (the "Inspection").

4. As a result of the Inspection, on June 8, 2017, Complainant issued the following Citation and Notification of Penalty (herein referred to collectively as the "Original Citation"):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.706(a)(1)	Immediately	\$4,900.00
002	29 CFR 1926.706(b)	Immediately	\$4,900.00

5. The Respondent submitted a timely Notice of Contest dated July 12, 2017.

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. Respondent and Complainant waive the presence of a court reporter at the Hearing and the making of a transcript of the Hearing. 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.

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 confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated.

10. 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.

11. 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; (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 further 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.

12. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further :

- Respondent agrees to improve and maintain an effective and comprehensive safety and health program. As part of the safety and health program, the Respondent will conduct job hazard analyses of all tasks that might expose workers to hazards. The Respondent will implement elements to meet the requirements of the OSH Division Focused Construction Inspection criteria and revise existing safety and health programs to thoroughly address issues resulting from this inspection. This program will include written plans for working around masonry walls and bracing requirements, Limited Access Zones, Fall Protection, Scaffolding, Machine Guarding, Electrical, Emergency Action Planning, PPE/Hazard Assessment, hazard Communication and others as required by 29 CFR 1926. As part of the subcontractor selection process, the Respondent will implement a review process of subcontractor safety and health programs which will include evaluation of OSHA inspection history and subcontractor safety and health program;
- Respondent agrees to conduct safety training, as necessary, to ensure that all employees are adequately and effectively trained in the recognition and control or avoidance of hazards associated with their work environment. Provisions will be made for periodic retraining as needed. This training will include but is not limited to: masonry wall bracing, limited access zones, fall protection, electrical hazards, machine guarding, chemical hazards, scaffolds, ladders, the use of personal protective equipment and other requirements as necessary which are contained in 29 CFR 1926;
- Respondent agrees to ensure that safety and health rules are enforced by the Respondent through regular, scheduled and unscheduled, worksite inspections and established, documented progressive disciplinary procedures. The Respondent will ensure that the worksite inspections are conducted on at least a daily basis and are documented at least weekly. The Respondent will maintain records of all worksite inspections, audits, evaluations and disciplinary actions associated with safety and health issues;

- Respondent agrees to continue any present Safety Program, including conducting periodic safety meetings with employees at regular intervals. The Respondent will conduct weekly toolbox talks with employees and subcontractors. The Respondent will actively encourage all workers to participate in workplace safety activities. During such meetings, employees should be able to communicate safety suggestions or complaints to their supervisor; and
- Respondent agrees to pay the penalty of \$6,370.00 assessed in this matter within 10 days of the date of this Final Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318097433) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

MOTIONS

Complainant moved to make the following amendments to the Original Citation (“Complainant’s Motion”):

- a) Group Citation One, Item 1 and Citation One, Item 2; and
- b) Reduce the penalty for the grouped item to \$6370.

Except as expressly set forth in Complainant’s 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”):

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.

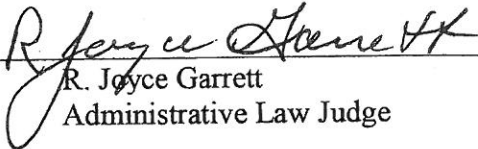
CONCLUSIONS OF LAW

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**;
2. That Respondent's Motion is hereby **GRANTED**; Respondent shall pay the penalty of \$ 6,370.00 in the manner set forth in the Stipulations.

This 14th day of August, 2018.



R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Larissa S. Williamson, Special Deputy Attorney General
North Carolina Department of Justice

For Respondent

Nicole Slaughter, Attorney at Law
Hamlet & Associates, PLLC
Wilmington, NC

Summit Contracting Group, Inc. 2017-5931

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.
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This 14th day of August, 2018.

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant


Larissa S. Williamson, Special Deputy Attorney General
North Carolina Department of Justice

For Respondent

Nicole Slaughter, Attorney at Law
Hamlet & Associates, PLLC
Wilmington, NC

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3. Neither party has any objection, procedural or otherwise, to this Hearing.
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This 14th day of August, 2018.

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Larissa S. Williamson, Special Deputy Attorney General
North Carolina Department of Justice

For Respondent

Nicole Slaughter

Nicole Slaughter, Attorney at Law
Hamlet & Associates, PLLC
Wilmington, NC

CERTIFICATE OF SERVICE

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

**NICOLE SLAUGHTER
HAMLET & ASSOCIATES
5215 JUNCTION PARK CIRCLE
SUITE 202
WILMINGTON, NC 28412**

**MELISSA H. TAYLOR
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, 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 21 DAY OF August 2018.

**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**