

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

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

COMPLAINANT,

v.

**PRIVADO MASONRY, INC.
*and its successors***

RESPONDENT.

) **DOCKET NO.: OSHANC 2017-5936**
) **INSPECTION NUMBER: 318107232**
) **CSHO ID: V2763**

**FILED
ORDER**

SEP 25 2018

**NC Occupational Safety
Health Commission**

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 19, 2018, at 10:00 A.M. pursuant to a Notice of Hearing. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Jose Carlos Privado, President, 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 North Carolina corporation, active and in good standing, in the State of North Carolina, and maintains a place of business in Winston-Salem, 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. On May 16, 2017, an Occupational Safety and Health Officer with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at 5398 Summer Hill Lane in Winston-Salem, North Carolina ("the Inspection").

4. As a result of the Inspection, on June 20, 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 1926.451(b)(1)(i)	Immediate	\$1200.00
002a	29 CFR 1926.451(c)(2)(ii)	Immediate	\$900.00
002b	29 CFR 1926.451(c)(2)	Immediate	\$Grouped with 2a

CITATION 02 (Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.25(a)	Immediate	\$0.00
002	29 CFR 1926.451(b)(5)(i)	Immediate	\$450.00
003	29 CFR 1926.451(e)(5)(i)	Immediate	\$450.00
004	29 CFR 1926.451(f)(3)	Immediate	\$450.00
005	29 CFR 1926.452(c)(4)	Immediate	\$450.00

5. The Respondent submitted a timely Notice of Contest.
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. The parties agree to bear their own attorney's fees (if any), 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.
10. 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 claim 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.

11. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further :
- a. Respondent agrees to inspect his scaffolding daily prior to using the scaffolding on each job to ensure it is set up in a safe way in compliance with all applicable safety regulations;
 - b. Respondent agrees to document the inspection in writing; and
 - c. Respondent agrees to take a scaffolding safety course within the next SIX (6) months and submit documentation evidencing the training to the Review Commission.
 - d. Respondent agrees to pay the penalty of \$2000.00 in the manner set forth in Complainant's Motion (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318107232) 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"):

1. Reduce the penalty associated with Citation 01, Item 001 to \$950.00;
2. Reduce the grouped penalty associated with Citation 01, Item 002a and 002b to \$600.00;
3. Group Citation 02, Items 001-005 together with a total grouped penalty of \$450.00; and
4. Allow for payment of the new total \$2000.00 penalty over 20 months, each payment \$100.00.

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 on 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 the Order.

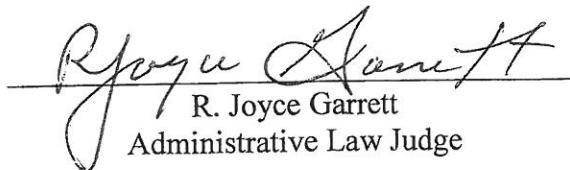
CONCLUSIONS OF LAW

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 the Stipulations.

This the 19th day of September, 2018.


R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

Rory Agan
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629/Labor Section
Raleigh, North Carolina 27602-0629

Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT

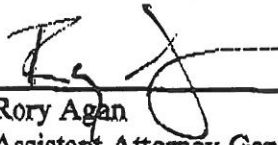


Carlos Privado
Owner
Privado Masonry, Inc.
2416 School Road
Winston-Salem, North Carolina 27105

Telephone No. (336) 345-0999

FOR RESPONDENT

CONSENTED TO:



Rory Agan
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629/Labor Section
Raleigh, North Carolina 27602-0629

Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT

Carlos Privado
President
Privado Masonry, Inc.
2416 School Road
Winston-Salem, North Carolina 27105

Telephone No. (336) 345-0999

FOR RESPONDENT