

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

COMMISSIONER OF LABOR OF THE
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

ROBCO RESIDENTIAL, INC.,
and its successors,

RESPONDENT.

) DOCKET NO.: OSHANC 2017-5946
)
) INSPECTION NO.: 318110384
)
) CSHO ID: P3338
)
) ORDER

FILED

JAN 9 2020

THIS CAUSE came on for hearing and was heard before the undersigned Reagan H. Weaver, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on December 16, 2019 at 9:00 am, pursuant to a Notice of Hearing. Melissa H. Taylor, Special Deputy Attorney General for the North Carolina Department of Justice, appeared in person for Complainant. Michael C. Lord, Attorney with Williams Mullen, appeared by telephone for 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 "the Act").
2. The Review Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent is a North Carolina corporation, and actively maintains a place of business in Benson, North Carolina. Respondent is an "employer" as defined by N.C.Gen. Stat. Section 95-127(10).
4. On June 26, 2017, Occupational Safety and Health Officers with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at Lot #29, 645 Avenue of the Carolinas, Southern Pines, North Carolina.
5. As a result of the Inspection, on August 14, 2017, Complainant issued the following Citations and Notification of Penalty (herein referred to collectively as the "Original Citation"):

CITATION 01 (Repeat Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.102(a)(1)	Corrected during inspection	\$5,000.00
002	29 CFR 1926.501(b)(13)	Corrected during inspection	\$5,000.00

003	29 CFR 1926.1053(b)(1)	Corrected during inspection	\$5,000.00
CITATION 02 (Serious)			
001	29 CFR 1926.20(b)(2)	Corrected during inspection	\$1,250.00

6. The Respondent submitted a timely Notice of Contest.
7. 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").
8. After the hearing for December 16, 2019 was scheduled but before the hearing, Complainant moved to amend its Original Citation which motion was approved such that the Original Citation was thereby modified, as follows:

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.102(a)(1)	Corrected during inspection	\$1,250.00
002	29 CFR 1926.501(b)(13)	Corrected during inspection	\$1,250.00
003	29 CFR 1926.1053(b)(1)	Corrected during inspection	\$1,250.00

CITATION 02 (Serious)

001	29 CFR 1926.20(b)(2)	Corrected during inspection	\$1,250.00
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9. Respondent and Complainant waived the making of a transcript of the proceeding before the undersigned, and neither objected, either procedurally or otherwise, to this Hearing and to the entry of this Order.
10. 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 his or her 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.
11. Respondent confirms that the violations alleged in the Original Citation were abated at the time of inspection.
12. 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.
13. Respondent and Complainant agree that provided the respective Motions below 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 and as further amended pursuant to Complainant's Motion below; (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 or as amended or as a waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Order brought

directly under 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 and as amended further pursuant to the Complainant's Motion below has been calculated in accordance with the standard Field Operations Manual procedure 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.

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

Further, Respondent agrees to:

- a. Continue with its present safety program, including conducting periodic meetings with employees. During such meetings, employees will be able to communicate safety suggestions or complaints to their supervisor(s) who will forward the information to Respondent's safety spokesperson. Respondent agrees to meet regularly with its employees to discuss safety issues and receive safety suggestions or complaints. Respondent agrees that all employees that submit complaints or suggestions shall have the same protection as employees under Article 21, Chapter 95 of the North Carolina General Statutes;
- b. Pay the penalty of \$2,500.00 (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318110384) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101;
- c. Send its foreman, Juan Verastegui Araujo, to OSH-related construction safety training; and
- d. Document its frequent and regular inspections for crews that do punch list items and make it available to OSH upon reasonable request.

MOTIONS

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

1. Reclassify Citation 1, Item 1 from the amended "Serious" to "Non-Serious" and reduce the penalty to \$500;
2. Group Citation 1, Items 2 and 3 and change the penalty to \$2,000; and
3. Delete Citation 2, Item 1.

Except as expressly set forth above in Complainant's Motion, the amended Original Citation, as further amended in this Motion, shall remain unmodified or amended.

Respondent did not object to Complainant's Motion.

Respondent requested that, upon the granting of Complainant's Motion, the undersigned consider its Motion to Withdraw Respondent's Notice of Contest to the Original Citation.

Complainant did not object to Respondent's Motion.

Based on the Stipulations at the time of the Hearing and as memorialized herein, 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 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. The Complainant's Motion is hereby **GRANTED**, and
2. The Respondent's Motion is hereby **GRANTED**, and Respondent shall pay the penalty of \$2,500 in the manner set forth herein.

This the 18 day of December, 2019.



Reagen H. Weaver
Administrative Law Judge

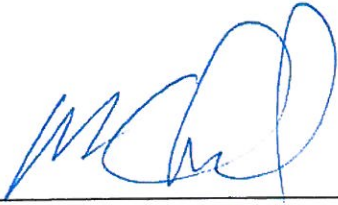
CONSENTED TO:

Melissa H. Taylor
Special Deputy Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, NC 27602-0629
Attorney for Complainant

Michael C. Lord
Williams Mullen
301 Fayetteville Street, Suite 1700
Raleigh, NC 27602
Attorney for Respondent

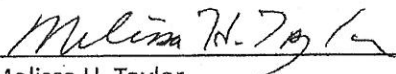
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Attorney for Complainant

Michael C. Lord
Williams Mullen
301 Fayetteville Street, Suite 1700
Raleigh, NC 27602
Attorney for Respondent

CERTIFICATE OF SERVICE

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

MICHAEL C. LORD
WILLIAMS MULLEN
301 FAYETTEVILLE STREET, SUITE 1700
RALEIGH, NC 27602

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

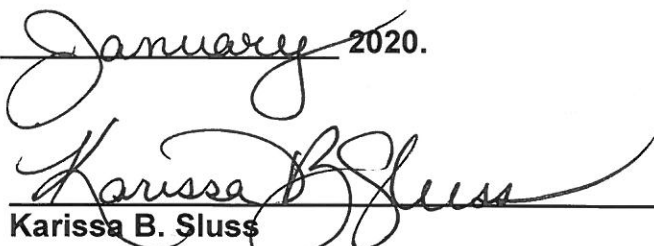
MELISSA TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

By depositing a copy of the same in the United States Mail, First Class, postage prepaid at Raleigh, North Carolina, and upon:

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 10 DAY OF January 2020.



Karissa B. Sluss
Docket and Office Administrator
NC OSH Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589
FAX: (919) 733-3020