

“Inspection”). At the time of the Inspection NWR Construction, LLC, was the general contractor at the worksite and Respondent was a subcontractor performing electrical work.

4. As a result of the Inspection, on October 6, 2017, Complainant issued the following Citations and Notifications 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 1926.1053(b)(4)	Immediately Upon Receipt	\$ 1,500.00

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	\$ 750.00
002	29 CFR 1904.40(a)	Corrected During Inspection	\$ 300.00

5. The Respondent submitted a timely Notice of Contest dated November 6, 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 (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.
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 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.

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

- Issue a safety alert to all North Carolina employees that extension ladders may not be dismantled, and, if they are, they are to be immediately removed from the site, and stating that if an employee is caught dismantling an extension ladder or utilizing a part of a dismantled ladder, he/she will be subject to discipline;
- Upgrade the ladder safety training policy to prohibit the dismantling of extension ladders, and otherwise prohibiting employees from modifying ladders in any way;
- Respondent agrees with respect to work conducted in North Carolina: to 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 who will forward the information to Respondent's safety spokesperson; that Respondent shall meet regularly with its employees to discuss safety issues and receive safety suggestions or complaints from employees; Respondent's safety spokesperson shall also make recommendations regarding safety to supervisors who will then present such information to employees at the periodic meetings; and, all employees who make suggestions or complaints to their supervisor or the safety spokesperson shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes;
- Respondent will pay the penalty of \$ 1,800.00 assessed in this matter within 30 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. 318116043) 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) Reclassify Citation 01, Item 001 from Serious with a penalty of \$1,500.00 to NonSerious with a penalty of \$1,500.00; and
- b) Delete Citation 02, Item 001 and its associated penalty in its entirety;
- c) Citation 02, Item 002 and its associated penalty of \$300.00 shall remain unchanged.

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**; and
2. That Respondent's Motion is hereby **GRANTED**; Respondent shall pay the penalty of \$1,800.00 in the manner set forth in the Stipulations.

This 24th day of October, 2018.


R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Melissa H. Taylor, Assistant Attorney General
North Carolina Department of Justice, Raleigh, North Carolina

Respondent


H. Bernard Tisdale, III, Attorney
Ogletree Deakins, Charlotte, 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:

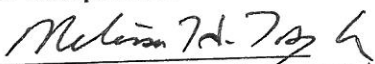
1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**; Respondent shall pay the penalty of \$1,800.00 in the manner set forth in the Stipulations.

This 24th day of October, 2018.

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant


Melissa H. Taylor, Assistant Attorney General
North Carolina Department of Justice, Raleigh, North Carolina

Respondent

H. Bernard Tisdale, III, Attorney
Ogletree Deakins, Charlotte, North Carolina

CERTIFICATE OF SERVICE

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

H. BERNARD TISDALE, III
OGLETREE DEAKINS
201 S. COLLEGE ST.
SUITE 2300
CHARLOTTE, NC 28244

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, 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 31 DAY OF October, 2018.

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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