

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

FILED

MAR 28 2019

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

Complainant,

v.

**CLAPP'S NURSING CENTER, INC.
and its successors**

Respondent.

) **DOCKET NO: 2017 - 5971**
)
) **INSPECTION**
) **NO: 318114782**
) **CSHO ID: L4494**
) **FINAL ORDER**
)
)
)
)

THIS CAUSE coming on pursuant to the Order For Pre-Hearing Conference (“Hearing Order”) on March 25, 2019 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:30 a.m. Victoria Voight, Special Deputy Attorney General appeared as counsel for the Complainant; Travis W. Vance, Esq. of Fisher Phillips LLP, Charlotte, North Carolina, appeared as counsel for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. Based on the Original Citation, Complainant’s Complaint, and

Respondent's Answer filed in the matter, it appears that: (1) during the period of August 10, 2017 to August 11, 2017 a Safety Compliance Officer conducted an inspection of Respondent's worksite located at 5229 Appomattox Road, Pleasant Garden, North Carolina (the "Work Site"); (2) as a result of the inspection the Inspector (hereinafter defined) alleged certain serious and nonserious violations as hereinafter set forth, and (3) Respondent denied all such violations.

As a result of this Hearing, Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

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, duly organized and existing under the laws of North Carolina, and does business in North Carolina and maintains a place of business in Pleasant Garden, North Carolina. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(11); all of Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(10).
3. During the period of August 10, 2017 to August 11, 2017, Safety Compliance Officer, Kevin McGuire, employed by the North Carolina Department of Labor (the "Inspector"), conducted an inspection of the Work Site (the "Inspection").
4. As a result of the Inspection, on or about September 26, 2017, Complainant issued two citations ("Citation 01" and "Citation 02") as more specifically described on Exhibit "A" (sometimes hereinafter referred to collectively as the "Original Citation").
5. Respondent submitted a timely Notice of Contest dated November 6, 2017. On or about December 14, 2017 Complainant received "Respondent's/ Employer's Statement of Position" which requested that formal pleadings be served. Complainant filed an Amended Complaint on July 25, 2018, and Respondent filed its Answer on August 13, 2018.
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 this 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 Final Order.

8. Respondent posted the Original Citation and the Order For Pre-Hearing Conference as required by the Rules. Neither Complainant nor Respondent has 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 violation alleged in the Original Citation as amended pursuant to Complainant's Motion (hereinafter defined) has been abated.

10. The parties agree that upon granting of Complainant's Motion 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.

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

Respondent shall provide within 90 days to Complainant certification that all alleged violations in the Original Citation as amended pursuant to Complainant's Motion have been abated if such item was not corrected during the Inspection.

Respondent agrees to pay the penalty of \$ 1,125 .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. 318114782) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101).

12. The parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, that have been incurred in connection with any stage of these proceedings up to and including the filing of this Final Order.

13. Complainant and Respondent agree that provided the respective Motions of each party are granted 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. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion. The parties further agree that (i) 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, and (ii) none of the foregoing 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 Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein by

Complainant and 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.

MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

amend the Original Citation as follows:

Citation 01, Item 001 shall be deleted in its entirety;

Citation 01, Items 002a, 002d, 002e shall be deleted; Items 002b, 002c and 002f shall remain Grouped and shall be reclassified from Serious to NonSerious with a penalty of \$1,125.00;

Citation 02 Items 01, 02, and 06 shall be deleted.

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 Act.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Final 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 Final 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 \$ 1,125.00 in the manner set forth in the Stipulations.

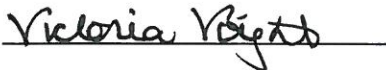
This the 25th day of March, 2019.



R. Joyce Garrett
Administrative Law Judge

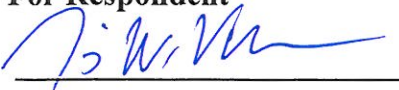
CONSENTED TO:

For Complainant



Victoria Voight
Special Deputy Attorney General
North Carolina Department of Justice

For Respondent



Travis W. Vance, Esq.
Fisher & Phillips LLP

Exhibit "A"

Original Citation

CITATION NUMBER 01 (Type of Violation: Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.305(j)(1)(i)	Immediately Abated	\$ 2,250.00
Grouped			
002a	29 CFR 1910.1030(g)(2)(iv)	Immediately Abated	\$ 2,250.00
002b	29 CFR 1910.1030(c)(1)(iv)	Immediately Abated	Grouped
002c	29 CFR 1910.1030(c)(1)(v)	November 13, 2017	Grouped
002d	29 CFR 1910.1030(g)(2)(vii) (A)	November 13, 2017	Grouped
002e	29 CFR 1910.1030(g)(2)(vii) (D)	November 13, 2017	Grouped
002f	29 CFR 1910.1030(g)(2)(vii) (N)	November 13, 2017	Grouped

CITATION NUMBER 02 (Type of Violation: NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.23(c)(3)	Immediately	\$ 00.00
002	29 CFR 1910.37(b)(2)	Immediately Abated	\$ 00.00
003	29 CFR 1910.147(c)(6)(i)	October 20, 2017	\$ 00.00
004	29 CFR 1910.303(b)(2)	Immediately Abated	\$ 00.00
005	29 CFR 1910.303(b)(7)	Immediately Abated	\$ 00.00
006	29 CFR 1910.303(g)(1)(ii)	Immediately Abated	\$ 00.00
007	29 CFR 1910.334(a)(1)	Immediately Abated	\$ 00.00
008	29 CFR 1910.1200(e)(1)	Immediately Abated	\$ 00.00

TOTAL \$ 4,500.00

CERTIFICATE OF SERVICE

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

TRAVIS W. VANCE
FISHER PHILLIPS
227 W. TRADE ST.
CHARLOTTE, NC 28236

VICTORIA VOIGHT
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

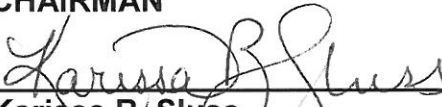
by depositing a copy of the same in the United States Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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 28 DAY OF March, 2019.

ARLENE K. EDWARDS
CHAIRMAN



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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