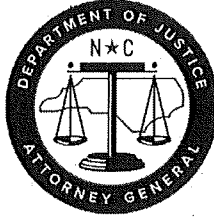


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March 13, 2023

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North Carolina Occupational Safety and Health Review Commission  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101  
NCOSHRC@labor.nc.gov


**VIA U.S. MAIL AND ELECTONIC MAIL**

Re: Lennar Carolinas, LLC v. Commissioner of Labor of the State of North Carolina; 21 CVS 17818 (Mecklenburg); OSHANC No. 2018-6039; Order Following Judicial Review with Certificate of Service

Dear Mr. Jacobson, Ms. Stratton, Ms. Pace, Mr. Selden, and N.C. OSH Review Commission:

Enclosed please find an **Order Following Judicial Review** entered on March 1, 2023, which was filed with Mecklenburg County Clerk of Superior Court on March 2, 2023. Please contact me at the above address or telephone number with any questions.

Sincerely,

  
Sage A. Boyd  
Assistant Attorney General

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 17818

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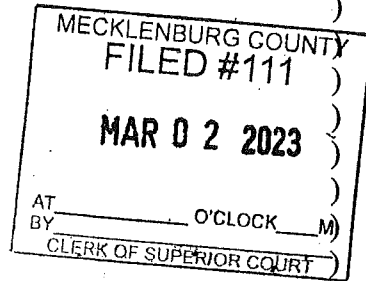
LENNAR CAROLINAS, LLC )

PETITIONER, )

v. )

COMMISSIONER OF LABOR OF THE )  
STATE OF NORTH CAROLINA )

RESPONDENT. )



MAK - 7 2023

NC DEPT. OF JUSTICE  
LABOR SECTION

ORDER  
FOLLOWING JUDICIAL REVIEW

(OSHANC 2018-6039)

The above-captioned matter having come before the undersigned Superior Court Judge, presiding in Mecklenburg County, the matter having been calendared and called for hearing comes before this Court upon the petition of Lennar Carolinas, LLC (“the Petitioner”) for Judicial Review of the Order of the North Carolina Occupational Safety and Health Review Commission (“Review Commission”) pursuant to N.C.G.S. §95-141 and §150B-43 *et seq.*

This matter was heard during an evidentiary hearing on August 12, September 17 and 18, 2020 before Hearing Examiner Richard Koch. Following the hearing, Hearing Examiner Koch entered an Order dated November 4, 2020 (filed November 9, 2020) holding that the Commissioner met the burden of proving by a preponderance of the evidence and by substantial evidence that the Petitioner committed serious violations of 29 CFR 1926.100(a) (Citation One, Item 1), 29 CFR 1926.102(a)(1) (Citation One, Item 2), 29 CFR 1926.501(b)(13) (Citation One, Item 3), 29 CFR 1926.1053(b)(1) (Citation One, Item 4), 29 CFR 1926.1053(b)(4) (Citation One, Item 5), 29 CFR 1926.1053(b)(5)(i) (Citation One, Item 6), 29 CFR 1926.1053(b)(13) (Citation

One, Item 7). Hearing Examiner Koch affirmed the proposed penalties and abatement dates associated with each violation in Citation One, Items 1 through 7 for a total penalty of \$33,350.00. On December 10, 2020, Petitioner filed a petition for review to the Review Commission. On October 4, 2021, the Review Commission entered an Order adopting the Hearing Examiner's findings of fact and affirming the Hearing Examiner's decision. (OSHANC 2018-6039)

Petitioner filed its Petition for Judicial Review in this Court on November 5, 2021, in which Petitioner has objected and excepted to Findings of Fact 3 through 5, 7 through 12, 14 through 18 (13 abandoned for review by not advancing it in Petitioner's brief before the Review Commission) and Conclusion of Law 3 through 9 and ordered in paragraphs 1 through 7 on page 5 from the Hearing Examiner's Order that were adopted in Finding of Fact 9 in the Review Commission's Order as well as Finding of Fact 5 and Conclusions of Law 4, 5, and misnumbered 5 in the Review Commission's Order.

This Court held a hearing in this matter on February 28, 2023. Present at this hearing were Daniel D. Stratton, Tuggle Duggins P.A., local counsel for Petitioner, and David A. Selden, Messner Reeves, pro hac vice counsel for Petitioner, and Sage A. Boyd, Assistant Attorney General, North Carolina Department of Justice, counsel for the Respondent. The Court heard argument on the Petition and has considered the full record in this case, including all briefs as to the issues presented, and the entire record of proceedings before Review Commission.

Based on the consideration of these matters, this Court makes the following FINDINGS and CONCLUSIONS pursuant to N.C. Gen Stat. §§ 95-141 and 150B-51:

- (1) The proper standard for review of an agency decision is determined by the nature of the error asserted in judicial review. The whole record test is employed to determine the sufficiency of the evidence for an asserted error of fact, while *de novo* review is appropriate for errors of law, including misinterpretation of a statutory term. The Court

may substitute its judgment for that of the Review Board (now “Commission”) if the Board's decision was affected by an error of law. *See Associated Mech. Contrs. v. Payne*, 342 N.C. 825, 467 S.E.2d 398 (1996); *Brooks v. McWhirter Grading Co.*, 303 N.C. 573, 281 S.E.2d 24 (1981); *Rector v. North Carolina Sheriffs' Educ. & Training Stds. Comm'n*, 103 N.C. App 527, 406 S.E.2d 613 (1991); *N.C. Dep't of Corr. v. Brunson*, 152 N.C. App. 430, 567 S.E.2d 416 (2002).

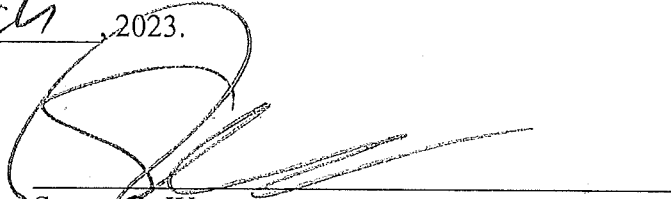
- (2) The Review Commission's Findings of Fact, Conclusions of Law, and Order, including those adopted from the decision of the Hearing Examiner, are supported by competent, material and substantial evidence and are not otherwise erroneous.
- (3) The Review Commission's Findings of Fact, Conclusions of Law, and Order, including those adopted from the decision of the Hearing Examiner, are not arbitrary, capricious, or an abuse of discretion.
- (4) There is no violation of due process as appropriately held in the Review Commission's Order.
- (5) Because there is no error of law or fact as the Review Commission's Findings of Fact, Conclusions of Law, and Order, including those adopted from the decision of the Hearing Examiner, with respect to its ruling that Petitioner committed serious violations as alleged in Citation One, Items 1 through 7, with the total assessed penalty of \$33,350.00, the Order of the Review Commission is upheld.

Based on the foregoing, Petitioner's exceptions as set forth in the Petition for Judicial Review are without merit and are accordingly overruled.

This Court further finds that Petitioner paid the full penalty of \$33,350.00 to the North Carolina Department of Labor on November 1, 2021.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Order of the North Carolina Occupational Safety and Health Review Commission in this case is **AFFIRMED**.

This the 1st day of March, 2023.

A handwritten signature in black ink, appearing to read "Steven R. Warren", written over a horizontal line.

Steven R. Warren  
Superior Court Judge Presiding,  
Mecklenburg County



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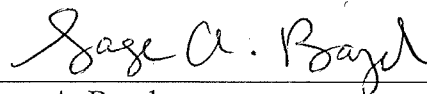
DSelden@messner.com

and served a copy upon the North Carolina Occupational Safety and Health Review Commission by United States Mail, first class postage prepaid at Raleigh, North Carolina and electronic mail:

North Carolina Occupational Safety and Health Review Commission  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101

NCOSHRC@labor.nc.gov

This the 13<sup>th</sup> day of March, 2023.



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