

JUL 23 2020

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

COMMISSIONER OF LABOR OF THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

TRIPP BRO'S, INC., and its successors

RESPONDENT.

DOCKET NO.: OSHANC 2018-6106 INSPECTION NUMBER: 318150026 CSHO ID: J9128

ORDER

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, July 23, 2020 at 9:30 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Hearing. Stacey A. Phipps, Assistant Attorney General for the North Carolina Department of Justice, appeared for Complainant. Stephen T. Parascandola, Attorney with Smith Anderson, appeared 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 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").
2. The Review Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent Tripp Bro's, Inc. is a domestic corporation duly organized and existing under the laws of the State of North Carolina, formed February 24, 1999. Respondent is a construction enterprise providing site work, water and sewer, demolition, concrete, asphalt paving, and milling services.
4. Respondent is an "employer" as defined by N.C.G.S. Sec. 95-127(10).
5. On or about November 19, 2018, Luis D'Elia, a Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located on West Wilson Street, between North Walnut Street and North Main Street in Farmville, Pitt County, North Carolina.
6. The partial scope inspection, based on a complaint, was conducted pursuant to OPN 123R Special Emphasis Program for Construction Activities; Pitt County is a SEP county.
7. As a result of the inspection, which was completed on November 19, 2018, Complainant issued the following Citation on February 4, 2019:

**CITATION 01 (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.652(a)(1)	Immed. Upon Receipt	\$ 2,100.00
002	29 CFR 1926.651(c)(2)	Immed. Upon Receipt	\$ 2,100.00
003	29 CFR 1926.651(j)(2)	Immed. Upon Receipt	\$ 2,100.00
004	29 CFR 1926.600(a)(6)	Immed. Upon Receipt	\$ 1,500.00
<b>TOTAL</b>			<b>\$7,800.00</b>

8. The Respondent submitted a timely Notice of Contest, dated March 20, 2019.
9. A hearing in this matter was scheduled pursuant to the Rules of Procedure of the Occupational Safety and Health Review Commission of North Carolina ("the Rules").
10. Complainant and Respondent waived the making of a transcript of the proceeding before the undersigned, and neither objected, either procedurally or otherwise, to this Hearing and the entry of this Order.
11. Respondent posted the original citation and the Hearing Order as required by the Rules. Neither Complainant nor Respondent has 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.
12. Respondent confirms that the violations alleged in the Original Citation have been abated.
13. 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.
14. Complainant and Respondent 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; (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 a waiver of defense, 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 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.

15. Respondent agrees to continue its best efforts to comply with the requirements of the Act. Further, Respondent agrees to continue with its present safety program, including conducting periodic meetings with employees.
16. Respondent further agrees that within ninety (90) days of issuance of the Order in this matter, Respondent will:
  - a. ensure that the employer has a designated competent person on site for the duration of any trench excavation work.
  - b. provide relevant employees with training and information regarding the hazards of working in trench excavations prior to any such work.
  - c. develop and maintain a written checklist for each trench inspection which should include an assessment of any overhead electrical hazards, including verifying with the local utility that the power lines are deenergized prior to conducting work where there is potential contact with such lines.
17. Respondent agrees to pay the total, reduced penalty of \$ 4,650.00 (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (Identifying Inspection No. 318150026) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina, 27699-1101, within 30 days of the issuance of this Order.

### MOTIONS

1. Complainant moves to make the following amendments to the Original Citation ("Complainant's Motion"):

- (a) delete Citation 1, Item 1, and the penalty associated therewith;
- (b) delete Citation 1, Item 2, and the penalty associated therewith;
- (c) delete Citation 1, Item 3, and the penalty associated therewith; and
- (d) increase the penalty for Citation 1, Item 4 to \$ 4,650.00, such total representing a 50% reduction in the amounts initially assessed as penalties for Items 1, 2 and 3 (deleted herein), and retaining the original amount for Item 4.

Such changes result in a revised total penalty of \$4,650.00.

Except as expressly set forth above 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, 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. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State charged by law with and enforcement of the provisions of the Act.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this action.
4. Neither party has any objection, procedural or otherwise, to this Hearing.
5. The stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

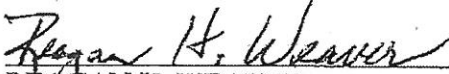
### CONCLUSIONS OF LAW

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:**

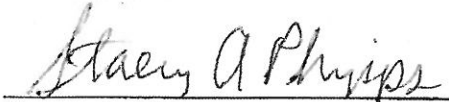
1. The Complainant's Motion is hereby **GRANTED**; and
2. The Respondent's Motion is hereby **GRANTED**, and Respondent shall pay the penalty of \$4,650.00 in the manner set forth herein.

This the 23 day of July, 2020.

  
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REAGAN H. WEAVER  
Administrative Law Judge

### **CONSENTED TO:**

JOSHUA H. STEIN  
Attorney General

  
\_\_\_\_\_  
Stacey A. Phipps  
Assistant Attorney General  
North Carolina Department of Justice  
P O Box 629/Labor Section  
Raleigh, NC 27602-0629  
[sphipp@ncdoj.gov](mailto:sphipp@ncdoj.gov)  
Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT

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Stephen T. Parascandola  
Smith Anderson, LLP  
P O Box 2611

Raleigh, NC 27602-2611  
[sparascandola@smithlaw.com](mailto:sparascandola@smithlaw.com)  
Telephone No. (919) 821-1220

ATTORNEY FOR RESPONDENT



1. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State charged by law with and enforcement of the provisions of the Act.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this action.
4. Neither party has any objection, procedural or otherwise, to this Hearing.
5. The stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

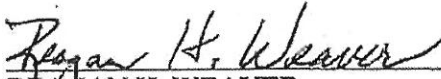
### CONCLUSIONS OF LAW

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 \$4,650.00 in the manner set forth herein.

This the 23 day of July, 2020.


  
\_\_\_\_\_  
REAGAN H. WEAVER  
Administrative Law Judge

### **CONSENTED TO:**

JOSHUA H. STEIN  
Attorney General

\_\_\_\_\_  
Stacey A. Phipps  
Assistant Attorney General  
North Carolina Department of Justice  
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Telephone No. (919) 821-1220

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

STEPHEN T PARASCANDOLA  
SMITH ANDERSON  
PO BOX 2611  
RALEIGH NC 27602

by depositing same in the United States Mail, First Class postage prepaid at Raleigh, North Carolina, and upon:


STACEY PHIPPS  
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 28 DAY OF July 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