

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

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

**Complainant,**

v.

**McLEAN HOMES, INC.  
and its successors**

**Respondent.**

) **DOCKET NO: 2019 - 6076**  
)  
) **INSPECTION**  
) **NO: 318148939**  
)  
) **CSHO ID: L1173**  
)  
) **FINAL ORDER**

**FILED**  
OCT - 6 2020

*Occupational & Safety*

**THIS CAUSE** coming on pursuant to a **Notice of Pre-Hearing Teleconference** (the “Hearing Order”) on September 16, 2020 at 10:00 a.m., continued to September 23, 2020 at 3:00 p.m. Melissa Taylor, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared by teleconference as counsel for the Complainant. John W. Ormand, III, attorney with Brooks Pierce, Raleigh, North Carolina, appeared by teleconference as counsel for 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 this case. No affected employee of Respondent, or its representative, attended, or gave notice they would like to attend, 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”). As a result of the Hearing, Complainant and Respondent requested 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 the State of North Carolina, which does business in the State of North Carolina and maintains a place of business at 5910 S. New Hope Road, Belmont, North Carolina. Respondent is in the business of construction. Respondent asserts that at the time of the Inspection with respect to the Worksite it was not an employer and had no employees; however, for purposes of reaching an amicable resolution of this matter without the necessity of further litigation, Respondent will agree that with respect to the Worksite and the Inspection it is an “employer” within the meaning of N.C.G.S. Section 95-127(10) and Respondent’s employees, if any, at the Worksite referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(9).
3. On November 1, 2018, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor conducted an inspection (the “Inspection”) of a worksite located at 114 S. Central Avenue in Belmont, North Carolina (the “Worksite”).
4. As a result of the Inspection, on November 15, 2018, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the “Original Citation”):

#### **CITATION 01 (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.100(a)	Corrected During Inspection	\$ 900.00
002	29 CFR 1926.102(a)(1)	Corrected During Inspection	\$ 1,500.00
Grouped			
003a	29 CFR 1926.501(b)(1)	Corrected During Inspection	\$ 2,100.00
003b	29 CFR 1926.503(a)(1)	1/9/2019	\$ 0.00
004	29 CFR 1926.503(b)(1)	Corrected During Inspection	\$ 2,100.00

5. Respondent submitted a timely Notice of Contest dated January 2, 2019.
6. The 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 Final Order.

8. Respondent posted the Original Citation and the Notice of Hearing 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, and agrees to use its best efforts to comply with the requirements of the Act with respect to the Standards cited.

10. The parties agree that upon granting of Complainant's Motion that the proposed penalty for each Item designated in the Original Citation has been calculated in accordance with the standard Field Operations Manual procedure; and the new proposed penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been derived in consideration of the standard mitigating factors and specific factors applicable to Respondent.

11. Respondent agrees

(1) that any employee of Respondent performing construction work will receive fall protection training within 30 days from the filing of this Final Order;

(2) that Respondent will require the use of appropriate eye protection, in accordance with the requirements of applicable OSHA standards, whenever roofing activities are being performed by: (i) any of its employees, or (ii) its subcontractors or the subcontractor's employees; and

(3) that Respondent will (i) require its employees working on the ground, and (ii) require any subcontractor of Respondent to require its employees working on the ground, to wear appropriate head protection if work is going on above them in accordance with the requirements of applicable OSHA standards.

Further, Respondent agrees to pay the penalty assessed in this matter \$3,150.00 in twenty-four (24) equal monthly installments of \$131.25 each, with the first installment due and payable on the first business day of November, 2020. All subsequent installments shall be due and payable on the first business day of each month thereafter. In no event shall the payment term extend beyond a consecutive 24 month period commencing in November, 2020, unless agreed upon by the Complainant. In the event Respondent does not pay each monthly installment as agreed upon, all remaining installments become immediately due and payable, and the Complainant retains the right to institute collection proceeding as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant has to institute collection proceedings to collect the debt.

Payment is to be by either (i) check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318148939) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101, or (ii) electronic payments using the process agreed upon by Complainant and Respondent.

12. Subject to the provisions of Paragraph 11 above, the parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, 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 by Respondent are solely for the purpose of resolving this matter economically and amicably without 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 Citation 01 by deleting Item 001, Item 002 and Item 003b, together with any associated penalty, in their entirety;**

**Amend Citation 01 Item 004 (classified as 'Serious') by reducing the penalty to \$1,050.00.**

**Except as set forth in this motion, the Original Citation shall remain unmodified or amended, specifically Citation 01 Item 003a shall remain classified as 'Serious' with a penalty of \$2,100.00.**

**The total penalty for Citation 01 as amended is \$3,150.00.**

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.
4. Neither party has any procedural objection to this Hearing.
5. 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.
6. 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**.

Effective the 23<sup>rd</sup> day of September, 2020.

  
R. Joyce Garrett  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

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

JOHN W. ORMAND, III  
BROOKS PIERCE  
150 FAYETTEVILLE ST.  
SUITE 1700  
RALEIGH, NC 27601

by depositing same in the United States Mail, First Class 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 7 DAY OF October 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