

FILED

APR - 9 2020

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

COMMISSIONER OF LABOR FOR)	DOCKET NO: 2019 - 6080
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
)	NO: 318143104
Complainant,)	
)	CSHO ID: Y3077
v.)	
3 RD GENERATION SPARKS MASONRY, LLC)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to a Notice of Hearing on March 4, 2020 at 10:30 a.m. Sage Boyd, Assistant Attorney General appeared by teleconference as counsel for the Complainant, and Andy Sparks, Owner/President of Respondent, appeared by teleconference pro se for the 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 Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”). 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 limited liability company, which was duly organized and authorized to do business in North Carolina on August 2, 2011. In accordance with N.C.G.S. Section 57D-6-06, the Office of the North Carolina Secretary of State has administratively dissolved Respondent on February 4, 2020 for failure to file an annual report. Respondent may apply to the Secretary of State for reinstatement by complying with the procedures set forth in N.C.G.S. 57D-6-06. Respondent continues to do business and maintains a place of business in Stokesdale, North Carolina. Respondent is in the construction business. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(10); all of Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(9).

3. During the period of July 26 through July 30, 2018, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor conducted an inspection of Respondent’s worksite located at 5500 Freedom Lane, James Landing, Jamestown, North Carolina (the “Inspection”).

4. As a result of the Inspection, on October 30, 2018, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the “Original Citation”):

CITATION 01 (Repeat Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.100(a)	Corrected During Inspection	\$ 7,000.00
002	29 CFR 1926.451(b)(1)	Corrected During Inspection	\$ 7,000.00
003	29 CFR 1926.451(c)(2)	Corrected During Inspection	\$ 7,000.00
004	29 CFR 1926.451(e)(1)	Immediately Upon Receipt	\$ 7,000.00
005	29 CFR 1926.451(g)(4)(i)	Corrected During Inspection	\$ 7,000.00

CITATION 02 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.451(b)(5)(i)	Corrected During Inspection	\$ 1,200.00
002	29 CFR 1926.451(c)(2)(i)	Corrected During Inspection	\$ 3,500.00
Grouped			
003a	29 CFR 1926.451(f)(3)	Immediately Upon Receipt	\$ 3,500.00
003b	29 CFR 1926.451(f)(4)	Corrected During Inspection	\$ 0.00
003c	29 CFR 1926.451(f)(7)	Immediately Upon Receipt	\$ 0.00
004	29 CFR 1926.451(h)(2)(ii)	Corrected During Inspection	\$ 2,000.00

5. Respondent submitted a timely Notice of Contest dated January 3, 2019 .
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 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**
 - (a) **To continue with the development and implementation of a comprehensive safety and health program and (or) policies that will address hazards on their job site(s) for the protection of all employees.**
 - (b) **That all daily scaffold inspections as required by 29 CFR 1926.451(f)(3) will be documented in writing and specifically include an evaluation of the following: any and all visible defects which could affect a scaffold’s structural integrity; proper decking or planking on all working levels; the use of base plates and mud sills or other adequate firm foundation; appropriate ladder access to working levels; guardrail systems on all open sides and ends of platforms; and proper bracing on the scaffold and to the structure. The inspection documentation shall be completed, signed, and dated by the competent person prior to releasing the scaffold for**

use. The completed inspection forms shall be maintained for a period of 30 days following completion of the inspection and made available to the OSH Division upon request.

(c) To conduct training for all employees within thirty (30) days of signing this agreement, that either work on a scaffold or are involved with the erection or dismantling of a scaffold. The training shall be conducted by a competent person and specifically include a review of the hazardous conditions identified during this Inspection, the corrective action taken for each, and the daily inspection & documentation program. The training shall be documented in writing, maintained for a period of 12 months following completion of the training, and made available to the OSH Division upon request.

(d) To pay the new proposed penalty of \$22,600.00 in twenty-four (24) monthly installments, by making the first twenty-three (23) monthly installments in the amount of \$941.67 and one (1) final installment in the amount of \$941.59, with the first installment due and payable on April 1, 2020. All subsequent installments shall be due and payable on the first business day of each month following payment of the first installment. In no event shall the payment term extend beyond a consecutive twenty-four (24) month period, unless agreed upon by Complainant. In the event that the Respondent does not pay each monthly installment as agreed upon, all remaining installments become immediately due and payable, and the Commissioner retains the right to institute collection proceedings as allowed by law. Respondent agrees to pay attorneys' fees to Complainant in the event that the Complainant has to institute collection proceedings to collect the debt. Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318143104) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 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, 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 make the following amendments to the citations (“Complainant’s Motion”):

- (a) Reduce the penalty in Citation 01, Item 001 from \$7,000.00 to \$3,500.00;**
- (b) Reduce the penalty in Citation 01, Item 002 from \$7,000.00 to \$3,500.00;**
- (c) Reduce the penalty in Citation 01, Item 003 from \$7,000.00 to \$3,500.00;**
- (d) Reduce the penalty in Citation 01, Item 004 from \$7,000.00 to \$3,500.00;**
- (e) Reduce the penalty in Citation 01, Item 005 from \$7,000.00 to \$3,500.00;**
- (f) Reduce the penalty in Citation 02, Item 001 from \$1,200.00 to \$600.00;**
- (g) Reduce the penalty in Citation 02, Item 002 from \$3,500.00 to \$1,750.00;**
- (h) Reduce the penalty in Citation 02, Item 003a from \$3,500.00 to \$1,750.00;**
- and**
- (i) Reduce the penalty in Citation 02, Item 004 from \$2,000.00 to \$1,000.00.**

Except as set forth in this 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 procedural objection 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 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**.

This the 4th day of March, 2020

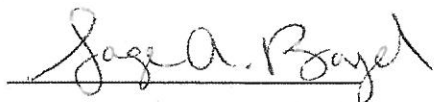


R. Joyce Garrett
Administrative Law Judge

3rd Generation Sparks Masonry, LLC
2019-6080

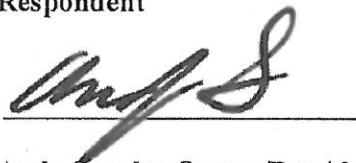
CONSENTED TO:

Complainant

A handwritten signature in cursive script that reads "Sage A. Boyd". The signature is written in black ink and is positioned above a horizontal line.

**Sage Boyd, Assistant Attorney General
Attorney for Complainant**

Respondent

A handwritten signature in cursive script that reads "Andy Sparks". The signature is written in black ink and is positioned above a horizontal line.

**Andy Sparks, Owner/President
Representative for Respondent
Pro Se**

CERTIFICATE OF SERVICE

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

ANDY SPARKS
3RD GENERATION SPARKS
MASONRY, LLC
170 SPARKLE LANE
STOKESDALE, NC 27357

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

SAGE BOYD
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 15 DAY OF April 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