

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

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

LINDY ANTONIA LEE DBA TONY
and its successors

RESPONDENT.

) DOCKET NO.: OSHANC 2019-6090
) INSPECTION NUMBER: 318141462
) CSHO ID: E7152

FILED

ORDER

NC Occupational & Safety
Commission

THIS CAUSE came on for hearing and was heard before the undersigned, Reagan H. Weaver, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, December 8, 2020 at 10:00 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Hearing. Sage A. Boyd, Assistant Attorney General for the North Carolina Department of Justice, appeared for Complainant. Mr. Lindy Antonia Lee, Representative for Respondent, 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 compliance 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 does various handy work services for payment including but not limited to tree felling in North Carolina.
4. On or between July 13, 2018 and December 19, 2018, Mr. Horace Dozier, a Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located on 3522 Barron Way, Fayetteville, North Carolina pursuant to a fatality report.
5. As a result of the inspection, Complainant issued one citation with two items carrying the following proposed abatement dates and penalties on December 21, 2018:

CITATION NUMBER ONE (Serious)

<u>Item No</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.132(a)	Immediately Upon Receipt	\$1,500.00
2	29 CFR 1910.132(d)(1)	Immediately Upon Receipt	\$1,500.00

6. The Respondent submitted a timely Notice of Contest, dated February 14, 2019.
7. 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”).
8. 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.
9. 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.
10. Respondent confirms that the violations alleged in the Original Citation have been abated.
11. 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.
12. 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 purposes 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.
13. Respondent agrees to continue its best efforts to comply with the requirements of the Act.
14. Respondent further agrees that on any and all projects in North Carolina that Respondent will:
 - a) Obtain a written contract or some form of written documentation of an agreement between Respondent and any non-employee individuals or entities assisting

Respondent with performing work on any future projects that involve payment. The abovementioned written contract or some form of written documentation of an agreement shall describe the working relationship between Respondent and the other individual or entity, describe work responsibilities, and describe payment.

- b) Utilize IRS 1099 forms when applicable in accordance with the Internal Revenue Code when Respondent makes payments to non-employees for work performed on Respondent's projects.
 - c) Provide training to or determine through reasonable effort that any employee or individual contracted to perform tree felling operations has the requisite knowledge and experience to perform tree felling in a safe manner prior to starting the project and document that determination in writing.
 - d) Provide and require all employees and (or) contracted workers performing tree felling operations to have and use all applicable personal protective equipment when employees and (or) contracted workers are performing tree felling operations; such as chaps, face shields, hearing protection, etc. Respondent will not allow any employee or contracted worker to perform work without such applicable personal protective equipment.
15. Respondent agrees to pay the new proposed total penalty of \$ 1,500.00 in twenty-four (24) equal monthly installments of \$62.50 each with the first payment due January 4, 2021. All subsequent payments 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 North Carolina Department of Labor, OSHA Division (Identifying Inspection No. **318141462**) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center Raleigh, North Carolina 27699-1101.

MOTIONS

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

- (a) Reduce the penalty for Citation One, Item 1 from \$1,500.00 to \$750.00; and
- (b) Reduce the penalty for Citation One, Item 2 from \$1,500.00 to \$750.00.

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.

2. 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 Conference.
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:

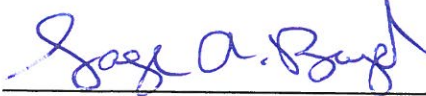
1. The Complainant's Motion is hereby **GRANTED**; and
2. The Respondent's Motion is hereby **GRANTED**, and Respondent shall pay the penalty of \$1,500.00 in the manner set forth herein.

This the 8th day of December, 2020.


REAGAN H. WEAVER
Hearing Examiner

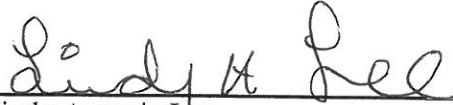
CONSENTED TO:

JOSHUA H. STEIN
Attorney General



Sage A. Boyd
Assistant Attorney General
North Carolina Department of Justice
P O Box 629/Labor Section
Raleigh, NC 27602-0629
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Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT



Lindy Antonia Lee
6034 Concho Ct.
Fayetteville, NC 28303

lindyalee1964@gmail.com
Telephone No. (910) 578-7121

REPRESENTATIVE FOR RESPONDENT

CERTIFICATE OF SERVICE

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

LINDY ANDTONIA LEE
DBA TONY
6034 CONCHO CT
FAYETTEVILLE NC 28303

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

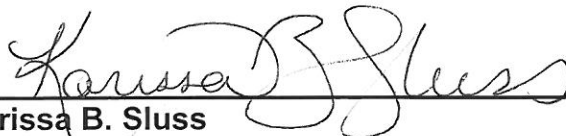
VICTORIA VOIGHT
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

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 30 DAY OF December 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