

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

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

CAMBRIDGE WILSON & CO., LLC
and its successors

RESPONDENT.

) DOCKET NO.: OSHANC 2019-6107
) INSPECTION NUMBER: 318155306
) CSHO ID: A6044
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ORDER

FILED

NOV 10 2020

NC Occupational & Safety
Commission

THIS CAUSE came on for pre-hearing conference and was heard before the undersigned Reagan H. Weaver, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, November 10, 2020 at 10:00 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Pre-Hearing Conference. Sage A. Boyd, Assistant Attorney General for the North Carolina Department of Justice, appeared for Complainant. Michael McKnight, Attorney with Ogletree, Deakins, Nash, Smoak & Stewart, P.C. appeared for Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Pre-Hearing Conference.

At the time of the conference, 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 is a foreign limited liability company duly organized and existing under the laws of the state of Missouri. Respondent is not registered with the North Carolina Secretary of State's Office. Respondent is a roofing contractor.
4. Respondent is an "employer" as defined by N.C.G.S. Sec. 95-127(11).
5. On or about February 1, 2019, Howard Laurie, a Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located on 8201 Coast Guard Road, Building D, Emerald Isle, North Carolina pursuant to a complaint referral.
6. As a result of the inspection, Complainant issued the following Citation on March 6, 2019:

CITATION NUMBER ONE (Serious)

| <u>Item No.</u> | <u>Standard</u> | <u>Abatement Date</u> | <u>Penalty</u> |
|-----------------|------------------------|-----------------------|-----------------|
| 1a | 29 CFR 1926.501(b)(13) | Immed. Upon Receipt | \$ 2,000.00 |
| 1b | 29 CFR 1926.20(b)(2) | Immed. Upon Receipt | grouped with 1a |

7. The Respondent submitted a timely Notice of Contest, dated March 28, 2019.
8. A pre-hearing conference in this matter was scheduled pursuant to the Rules of Procedure of the Occupational Safety and Health Review Commission of North Carolina ("the Rules").
9. 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.
10. Respondent posted the original citation and the Pre-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.
11. Respondent confirms that the violations alleged in the Original Citation have been abated.
12. 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.
13. 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, 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.
14. 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.

15. Respondent further agrees that if it performs future projects in North Carolina within twelve months of issuance of the Order in this matter, Respondent will provide training or re-training for competent persons on fall protection.
16. Respondent agrees to pay the total penalty of \$ 2,000.00 (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (Identifying Inspection No. 318155306) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center Raleigh, North Carolina 27699-1101 within 10 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 1a; and
- (b) amend the alleged violation description in Citation 1, Item 1b as follows while retaining proposed penalty of \$2,000.00:
- (c) The alleged violation description shall state, "a) jobsite – on the day of the inspection on 2/1/19, no competent person inspections were conducted for subcontractor employees of Pedro Cucul, who were not using fall protection when working on the 6:12 slope roof system with falls up to 42 feet above the ground."

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 Pre-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 Pre-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.

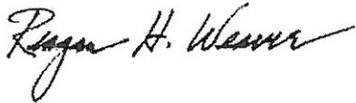
CONCLUSIONS OF LAW

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 \$2,000.00 in the manner set forth herein.

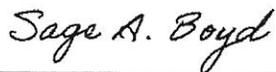
This the 10 day of November, 2020.



REAGAN H. WEAVER
Administrative Law Judge

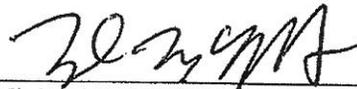
CONSENTED TO:

JOSHUA H. STEIN
Attorney General



Sage A. Boyd
Assistant Attorney General
North Carolina Department of Justice
P O Box 629/Labor Section
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ATTORNEYS FOR COMPLAINANT



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Telephone No. (919) 789-3159

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

MICHAEL D. MCKNIGHT
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
8529 Six Forks Rd., Forum IV, Ste.. 600
Raleigh, NC 27615

by depositing same in the United States Mail, First Class 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 13 DAY OF November 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