

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

FILED

SEP 16 2021

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA

Complainant,

v.

DR HORTON INC -- GREENSBORO
and its successors

Respondent.

) DOCKET NO: 2019-6122 Occupational & Safety
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)

) INSPECTION NO: 318155223
)
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) CSHO ID: # Y3077
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) FINAL ORDER
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THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on September 16, 2021 pursuant to a Notice of Hearing. Sage A. Boyd, Assistant Attorney General, North Carolina Department of Justice, appeared for Complainant. Thomas Olik, Attorney with Martineau King PLLC in Charlotte, North Carolina, appeared for the Respondent together with Lori M. Carr, Attorney with Estes Thorne & Carr PLLC, Dallas, Texas, appearing *pro hac vice* 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 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 foreign corporation, authorized to do business in North Carolina on June 14, 1995, active and in good standing, in the State of North Carolina, and maintains a place of business in Raleigh, North Carolina. Respondent is an "employer" as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).

3. On or about January 30, 2019, Compliance Safety and Health Officers, Lisa Rayborn and Deena Dickinson, both employed by the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at Shelby Katherine Way, Lot 57, Greensboro, North Carolina (the "Inspection"). Mr. Justin Windsor, Superintendent for Respondent, consented to the Inspection.

4. As a result of the Inspection, on March 11, 2019, Complainant issued two citations carrying the following proposed abatement dates and penalties (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 1926.501(b)(13) | Immediately Upon Receipt | \$ 35,000.00 |

CITATION 02 (Serious)

| <u>Item No.</u> | <u>Standard</u> | <u>Abatement Date</u> | <u>Penalty</u> |
|-----------------|------------------------|--------------------------|----------------|
| 001 | 29 CFR 1926.501(b)(14) | Immediately Upon Receipt | \$ 7,000.00 |

5. The Respondent submitted a timely Notice of Contest, dated April 25, 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 agreed that the Hearing in this matter shall be conducted via the video conferencing platform known as "Lifesize", the presence of a court reporter during the Hearing is waived, the Hearing's audio and video will be recorded through Lifesize (the "Recording"), the Recording will be the official record of the Hearing, and the Hearing will be deemed to have taken place in Raleigh, North Carolina. 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 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.

10. 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.

11. Complainant and Respondent agree that provided the respective Motions 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, as amended pursuant to Complainant's Motion; (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 as amended or waiver of defenses; 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 as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure and 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.

12. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further :

- Respondent agrees within 60 days of the date of this Final Order, Respondent shall train all D.R. Horton, Inc. – Greensboro field employees (e.g. superintendents, assistant superintendents, etc.) in the recognition of safety and health hazards, with an emphasis on fall protection for employees and subcontractors working at heights greater than six feet above a lower level. The training shall include acceptable forms of fall protection for the different stages of construction, such as framing, roofing, and siding, and how to evaluate each form of fall protection to ensure its effectiveness.

- Respondent shall ensure that safety and health rules are enforced through regular, scheduled and unscheduled, worksite inspections and established, documented disciplinary procedures. These inspections and disciplinary actions will be directed towards both employees and subcontractors of the Respondent. For a period of one year following date of this Final Order, Respondent shall document these worksite inspections and disciplinary actions associated with safety and health issues. Each record shall include the site address or lot number, the subcontractors inspected, the work activity (e.g. framing, roofing, siding), and the type of fall protection being utilized. These records will be maintained for a period of six months and forwarded to the NCDOL-OSH Division upon request.
- Respondent will pay the penalty of \$35,700.00 assessed in this matter within 30 days of the date of this Final Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318155223)) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

MOTIONS

Complainant moved to make the following amendments to the Original Citation (“Complainant’s Motion”):

- a) reclassify Citation 01, Item 001 from ‘Repeat Serious’ to ‘Serious’ and reduce the penalty of Citation 01, Item 001 from \$35,000.00 to \$29,750.00; and
- b) reduce the penalty of Citation 02, Item 001 from \$7,000.00 to \$5,950.00.

Except as expressly set forth 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 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 objection, procedural or otherwise, 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 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. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**; Respondent shall pay the penalty of \$ 35,700.00 in the manner set forth in the Stipulations

This 16th day of September, 2021.



R. Joyce Garrett
Administrative Law Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER FOR EXTENSION OF TIME TO FILE ANSWER upon:

THOMAS OLIK
MARTINEAU KING PLLC
PO BOX 31188
CHARLOTTE NC 28224

LORI M CARR
ESTES THORNE & CARR PLLC
3811 TURTLE CREEK BLVD STE 2000
DALLAS TX 75219

By depositing a copy of the same in the United States Mail, Certified Mail, receipt requested, 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 email to carla.rose@labor.nc.gov.

THIS THE 23 DAY OF September 2021.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
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