

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

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
ROBERTO G. AMAYA DBA GARCIA AMAYA)
MASONRY and its successors)
)
RESPONDENT.)
_____)

ORDER

OSHANC NO. 2019-6171

FILED

APR 13 2022

NC Occupational & Safety
Review Commission

THIS MATTER was before the undersigned for hearing and on complainant's motion to dismiss respondent's notice of contest, filed April 13, 2022.

Counsel for the complainant is Rory Agan, Assistant Attorney General; the respondent is unrepresented by counsel but appeared through its owner, Roberto Garcia Amaya.

The complainant's motion states that the respondent was served with citation items in this matter by certified mail, return receipt requested, on July 23, 2019. Included with the citation items served on respondent was a document entitled "Citation and Notification of Penalty", Form OSHA-2. This form informed the respondent in two different places, including one in bold print, that it may request an informal conference in writing or contest the citation in writing within fifteen (15) working days of the receipt of the citation. This form also reminded the respondent in bold print that the citation and proposed penalties would become a final order of the Review Commission unless a notice of contest or a request for an informal conference was timely filed.

The time for the respondent to file such a response was on or before August 13, 2019, on which date the citation and proposed penalties would automatically become a final order. On September 11, 2019, the respondent filed a notice of contest with the complainant. The respondent offered an explanation that he was out of town for about four weeks during that period of time and was not aware of the receipt of the citations by his office. The respondent received a copy of the motion to dismiss by email and had an opportunity to read and review it during the hearing, and indicated that the time periods in the motion were correct.

The respondent also filed an unsigned Statement of Employer's/Respondent's Position on October 15, 2019, which indicated that the citation items were admitted and that the only objection was to the penalty.

Pursuant to the case of *Lost Forest Development, LLC v. Commissioner of Labor of the State of North Carolina*, 2021 NCCOA 587, the citation and penalty in the matter became a final order of the North Carolina Occupational Safety and Health Review Commission and may not be reviewed by the undersigned.

IT IS ORDERED that the notice of contest filed by the respondent is hereby stricken and that judgment against the respondent is hereby entered in the amount of \$2,100.00, plus any interest and late payment penalties.

IT IS FURTHER ORDERED that the citation and the individual items contained within it are affirmed as serious violations of the cited standards which must be corrected immediately if not already done.

This 13th day of April, 2022.

Richard M. Koch

RICHARD M. KOCH
HEARING EXAMINER

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

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)

COMPLAINANT,)

v.)

ROBERTO G. AMAYA DBA GARCIA AMAYA)
MASONRY and its successors)

RESPONDENT.)

ORDER

OSHANC NO. 2019-6171

THIS MATTER was before the undersigned for hearing and on complainant's motion to dismiss respondent's notice of contest, filed April 13, 2022.

Counsel for the complainant is Rory Agan, Assistant Attorney General; the respondent is unrepresented by counsel but appeared through its owner, Roberto Garcia Amaya.

The complainant's motion states that the respondent was served with citation items in this matter by certified mail, return receipt requested, on July 23, 2019. Included with the citation items served on respondent was a document entitled "Citation and Notification of Penalty", Form OSHA-2. This form informed the respondent in two different places, including one in bold print, that it may request an informal conference in writing or contest the citation in writing within fifteen (15) working days of the receipt of the citation. This form also reminded the respondent in bold print that the citation and proposed penalties would become a final order of the Review Commission unless a notice of contest or a request for an informal conference was timely filed.

The time for the respondent to file such a response was on or before August 13, 2019, on which date the citation and proposed penalties would automatically become a final order. On September 11, 2019, the respondent filed a notice of contest with the complainant. The respondent offered an explanation that he was out of town for about four weeks during that period of time and was not aware of the receipt of the citations by his office. The respondent received a copy of the motion to dismiss by email and had an opportunity to read and review it during the hearing, and indicated that the time periods in the motion were correct.

The respondent also filed an unsigned Statement of Employer's/Respondent's Position on October 15, 2019, which indicated that the citation items were admitted and that the only objection was to the penalty.

Pursuant to the case of *Lost Forest Development, LLC v. Commissioner of Labor of the State of North Carolina*, 2021 NCCOA 587, the citation and penalty in the matter became a final order of the North Carolina Occupational Safety and Health Review Commission and may not be reviewed by the undersigned.

IT IS ORDERED that the notice of contest filed by the respondent is hereby stricken and that judgment against the respondent is hereby entered in the amount of \$2,100.00, plus any interest and late payment penalties.

IT IS FURTHER ORDERED that the citation and the individual items contained within it are affirmed as serious violations of the cited standards which must be corrected immediately if not already done.

This 13th day of April, 2022.

Richard M. Koch

RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

ROBERTO G AMAYA
AMAYA MASONRY
1217 RHUE RD
WINSTON SALEM NC 27101

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

RORY AGAN
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO 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

via email to carla.rose@labor.nc.gov.

THIS THE 15 DAY OF April 2022.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589
NCOSHRC@labor.nc.gov