

FILED

American Granite-Carolinas, LLC
2019-6179

JUN 23 2020

BEFORE THE NORTH CAROLINA **NC Occupational & Safety**
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION **Commission**
RALEIGH, NORTH CAROLINA

**COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA**

Complainant,

v.

AMERICAN GRANITE – CAROLINAS, LLC
and its successors

Respondent.

) **DOCKET NO: 2019 - 6179**
)
) **INSPECTION**
) **NO: 318174802**
) **CSHO ID: H8087**
)
) **FINAL ORDER**
)
)
)
)

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on June 12, 2020 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:30 a.m. Stacey A. Phipps, Assistant Attorney General appeared as counsel for the Complainant, and Travis W. Vance, of Fisher & Phillips LLP, appeared for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. Based on the Original Citation, Complainant’s Complaint, and Respondent’s Answer filed in the matter, it appears that: (1) on August 6, 2019 a Safety and Health Compliance Officer conducted an inspection of Respondent’s worksite located at 10350-G Nations Ford Road, Charlotte, North Carolina (the “Work Site”); (2) as a result of the inspection a Citation and Notification of Penalty (the “Citation”) was issued alleging a serious violation of 29 CFR 1910.176(b) relating to storage of material creating a hazard with a proposed penalty of \$6,300 (Item 001), and a serious violation of 29 CFR 1910.178(l)(4)(iii) relating to a

truck an evaluation of a powdered industrial truck operator's performance not being conducted at least once every three years with a proposed penalty of \$6,300 (Item 002), and (3) Respondent denied all such violations and fully contested all issues and matter relating to the Citation, including abatement dates and proposed penalties.

As a result of this Hearing, Complainant and Respondent request 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 an Illinois limited liability company authorized to do business in the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Charlotte, North Carolina. Respondent is a wholesale stone merchant and supplier of natural and synthetic stone products. 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. On August 6, 2019, Griselle Negron, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted a partial inspection (the "Inspection") of Respondent's worksite located at 10350-G Nations Ford Road in Charlotte, North Carolina (the "Work Site"). On or about September 3, 2019 a closing conference relative to the Inspection was held.
4. As a result of the Inspection, on September 5, 2019, Complainant issued the Citation.
5. Respondent filed/submitted a timely Notice of Contest dated October 7, 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. Neither party has any objection, procedural or otherwise, to this Hearing.
8. Respondent posted the Citation and the Hearing Order 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. The parties agree that upon granting of Complainant's Motion the penalty for each Item designated in the 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.

10. Respondent agrees

* to pay the penalty, if any, assessed in this matter within 10 business 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. 318174802) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101;

* to the additional terms, if any, set forth on Exhibit 1 attached hereto and incorporated herein by reference.

11. The parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, 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 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 Citation, as amended pursuant to Complainant's Motion. The parties further agree that (i) the modification of any portion of the 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 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

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Complainant moved to amend/modify the Citation as set forth on Exhibit 2 attached hereto and incorporated herein by reference (“Complainant’s Motion”); except as set forth in Complainant’s Motion, the Citation shall remain unmodified or amended.

Respondent did not object to Complainant’s Motion.

Respondent confirmed that the violations alleged in the Citation as amended by Complainant’s Motion have been abated, and requested that upon the granting of Complainant’s Motion that the motion by the Respondent set forth on Exhibit 3 attached hereto and incorporated herein by reference (“Respondent’s Motion”) be granted.

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 Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter “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**.

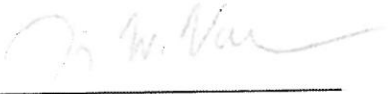
This the _____ day of June, 2020.

R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:

**Stacey A. Phipps, Assistant Attorney General
Attorney for Complainant**




**Travis W. Vance, Attorney At Law
Fisher & Phillips LLP
Attorney for Respondent**

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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 23 day of June, 2020.


R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:



Stacey A. Phipps, Assistant Attorney General
Attorney for Complainant

Travis W. Vance, Attorney At Law
Fisher & Phillips LLP
Attorney for Respondent

Exhibit 1
Stipulations, Paragraph 10, Additional Terms

Respondent agrees

* with respect to the A-Frame racks referenced in Citation 01 Item 001, to implement additional administrative controls and engineering controls at the Work Site as follows:

Administrative Controls:

- * to have an equal number of slabs on each side of an A-Frame rack, with no more than 10 slabs per side ("Slab Limitation"); the number of slabs on a side will be readjusted as soon as practical after a slab has been added to or removed from a side of an A-Frame rack;
- * to prepare a report daily to confirm that the Slab Limitation is being complied with;
- * commencing on June 27th, 2020, a copy of the daily report will be delivered by e-mail to the District Supervisor designated by Complainant ("District Supervisor") for a period of two weeks; thereafter the daily report will be available to the District Supervisor upon request;

Engineering Controls:

- * Respondent will notify the District Supervisor of Respondent's proposed permanent engineering control measures, which measures shall be designed to help secure or prevent the slabs from falling, shifting, or slipping; upon Respondent's request the District Supervisor will provide advice and technical assistance to Respondent in developing its engineering control measures; Respondent shall implement appropriate engineering control measures by January 15, 2021.

* with respect to the evaluation of each powered industrial truck operator's performance referenced in Citation 01 Item 002 as follows:

- * Respondent will provide additional documentation to District Supervisor to verify that each current operator of a powered industrial truck has been trained and evaluated as a powered industrial truck operator.

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Exhibit 2
Complainant's Motion

Complainant moved to do the following ("Complainant's Motion"):

***amend Citation 01 Item 001 by reducing the amount of the proposed penalty from \$6,300.00 to \$4,095.00;**

***amend Citation 01 Item 002 by reclassifying from Serious to Non-Serious and by reducing the amount of the proposed penalty from \$6,300.00 to \$4,095.00.**

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Exhibit 3
Respondent's Motion

Respondent moved to do the following ("Respondent's Motion"):

***to withdraw Respondent's Notice of Contest to the Citation as amended pursuant to Complainant's Motion.**

CERTIFICATE OF SERVICE

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

STACEY PHIPSS
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

TRAVIS W. VANCE
FISHER & PHILLIPS LLP
227 W TRADE ST
STE 2020
CHARLOTTE NC 28202

By email to sphipp@ncdoj.gov and tvance@fisherphillips.com respectively

And by depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, within 30 days and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101

By email to jill.cramer@labor.nc.gov and by depositing a copy of the same in the NCDOL Interoffice Mail within 30 days.

THIS THE 13 DAY OF July 2020.



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
FAX: (919) 733-3020