

FILED

JUN 22 2022

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

NC Occupational & Safety  
Health Commission

COMMISSIONER OF LABOR OF THE	)	DOCKET NO.: OSHANC 2019-6203
STATE OF NORTH CAROLINA,	)	INSPECTION NUMBER: 318176153
	)	CSHO ID: T5134
COMPLAINANT,	)	
	)	
v.	)	
	)	<u>ORDER</u>
H & S ROOFING COMPANY, INC.	)	
<i>and its successors</i>	)	
	)	
RESPONDENT.	)	

THIS CAUSE came on for hearing and was heard before the undersigned, Richard M. Koch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, June 22, 2022 at 10:00 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Hearing. Sage A. Boyd, Assistant Attorney General, North Carolina Department of Justice, appeared for Complainant. G. Bryan Adams III, Attorney with VAN HOY, REUTLINGER, ADAMS & PIERCE, PLLC, 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 in this matter is H & S Roofing Company, Inc. Respondent is an active and current North Carolina corporation, authorized to do business in the State of North Carolina on May 18, 1979. Respondent maintains a place of business in Charlotte, North Carolina. Respondent is an "employer" within the meaning of N.C.G.S. § 95-127(11); and maintains "employees" within the meaning of N.C.G.S. § 95-127(10). Respondent is in the business of roofing construction.
4. On August 21, 2019, Mr. Robert Maedje, Compliance Safety and Health Officer (CSHO) with the Occupational Safety and Health Division ("OSH Division") of the North Carolina Department of Labor (NCDOL), conducted an inspection of the Respondent's

work site at 6250 Caden Road, Charlotte, North Carolina (in Mecklenburg County) pursuant to the OSH Division's Special Emphasis Program for Construction after observing serious hazards from a public right of way.

5. As a result of the inspection, Complainant issued the following citations carrying the following proposed abatement dates and penalties on October 28, 2019:

**CITATION NUMBER ONE (Repeat Serious)**

<u>Item No</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.501(b)(11)	Immediately Upon Receipt	\$5,600.00

**CITATION NUMBER TWO (Serious)**

<u>Item No</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.502(d)(15)	Immediately Upon Receipt	\$2,800.00
2	29 CFR 1926.1053(b)(1)	Immediately Upon Receipt	\$2,800.00

6. The Respondent submitted a timely Notice of Contest, dated December 4, 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. Provided the respective Motions below of each party are granted, Complainant and Respondent agree that:

(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 to:

- a) Improve and maintain an effective and comprehensive safety and health program. As part of the safety and health program, Respondent will conduct job hazard analyses of all tasks that might expose workers to hazards. Respondent will implement elements to meet the requirements of the OSH Division Focused Construction Inspection criteria and revise existing safety and health programs to thoroughly address issues resulting from this inspection. This program will include written plans for Fall Protection, Scaffolding, Machine Guarding, Ladders, Powered Industrial Trucks, PPE/Hazard Assessment, Hazard Communication and others as required by 29 CFR 1926. In addition, Respondent will conduct and document a preconstruction fall hazard analysis to address which engineering controls, administrative controls and personal protective equipment will be utilized. This analysis will be conducted for each job site, will be maintained on each jobsite, employees and subcontractors' employees will be trained on the fall protection analysis and specific equipment to be utilized prior to commencing any work at

elevated heights. As part of the subcontractor selection process, Respondent will implement a review process of subcontractor safety and health programs, which will include evaluation of a subcontractor's Workers' Compensation Experience Modification Rates, OSHA 300 logs, OSHA inspection history and subcontractor safety and health program. The analysis and programs will be made available to the NCDOL-OSH Division upon request. Respondent will also develop and implement a written enforcement disciplinary action policy;

- b) Conduct safety training, as necessary, to ensure that all employees are adequately and effectively trained in the recognition and control or avoidance of hazards associated with their work environment. Provisions will be made for periodic retraining as needed. This training will include but is not limited to: fall protection, electrical hazards, scaffolds, ladders, power tools and equipment, and the use of personal protective equipment;
  - c) Ensure that safety and health rules are enforced (by Respondent) through regular, scheduled and unscheduled, worksite inspections and established, documented progressive disciplinary procedures. In addition, Respondent will document the worksite inspections and will maintain records of all worksite inspections and disciplinary actions associated with safety and health issues. Where hazards and/or unsafe conditions are observed, Respondent should take immediate action to remove employees, or subcontractor's employees, from the hazardous condition until the condition is corrected. In addition, Respondent will develop a rapid notification system to the subcontractor's main office and (or) upper management notifying them of the hazardous conditions and what corrective measures will be implemented to ensure the unsafe conditions have been properly addressed; and
  - d) Continue any present Safety Program, including conducting periodic safety meetings with employees and subcontractors at regular intervals. Respondent will conduct tool box talks on at least a weekly basis with employees and subcontractors. Respondent will actively encourage all workers to participate in workplace safety activities. During such meetings, employees should be able to communicate safety suggestions or complaints to their supervisor.
15. Respondent agrees to pay the proposed total penalty of \$11,200.00 within ten (10) days of this Order. Payment is to be by check payable to North Carolina Department of Labor, OSHA Division (Identifying Inspection No. 318176153) 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) Reclassify Citation One, Item 1 from Repeat Serious to Serious.

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.

### FINDINGS OF FACT

Based on the stipulations at the time of the Hearing and as memorialized herein, the Undersigned makes the following:

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 \$11,200.00 in the manner set forth herein.

This the 22nd day of June, 2022.

*Richard Koch*

Richard Koch (Jun 22, 2022 12:44 EDT)

RICHARD M. KOCH  
Hearing Examiner

**CONSENTED TO:**

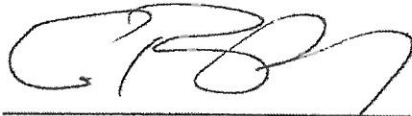
JOSHUA H. STEIN  
Attorney General

*Sage A. Boyd*

Sage A. Boyd (Jun 22, 2022 12:35 EDT)

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ATTORNEYS FOR COMPLAINANT



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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

G. BRYAN ADAMS III  
VANHOY, REUTLINGER, ADAMS & PIERCE PLLC  
737 EAST BLVD  
CHARLOTTE NC 28203

SAGE BOYD  
NC DEPARTEMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH NC 27602-0629

By email to [sboyd@ncdoj.gov](mailto:sboyd@ncdoj.gov) and [bryan.adams@vraplaw.com](mailto:bryan.adams@vraplaw.com) respectively

And by depositing a copy of the same in the United States Mail, 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 [carla.rose@labor.nc.gov](mailto:carla.rose@labor.nc.gov).

THIS THE 24<sup>th</sup> DAY OF June 2022.

  
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Karissa B. Sluss  
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