

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

**FILED**

**SEP 12 2022**

**COMMISSIONER OF LABOR OF )  
THE STATE OF NORTH CAROLINA, )  
)  
COMPLAINANT, )  
)  
v. )  
)  
)  
NATURAL GALLERY STONE & )  
CABINET LLC )  
*and its successors,* )  
RESPONDENT. )**

**FINAL ORDER** *NC Occupational & Safety  
Review Commission*

**OSHANC NO.: 2019-6214  
INSPECTION NO.'s: 318175817  
CSHO ID: E0113**

THIS MATTER came on for hearing and was heard remotely before the undersigned on July 28, 2022. The Complainant, Commissioner of Labor of the State of North Carolina, hereafter referred to as Complainant or Commissioner, was represented by Rory Agan, Assistant Attorney General, North Carolina Department of Labor. Respondent did not appear, nor did any employees of Respondent. Notice of the live video hearing had been filed on May 26, 2022 and proper notice of the hearing was served on May 27, 2022 to Joanna Tong at the last known address for her, that being 2201 Brentwood Road, Suite 109, Raleigh, NC 27603.

Also appearing for the hearing were Yan Ling Chen and Brian Yi Lei who purchased the assets of Respondent's business. Counsel for Complainant noted that his review of the Asset Purchase Agreement indicated that the successor business has replaced Natural Gallery Stone & Cabinet LLC which no longer operates. He indicated that from the Complainant's viewpoint, the successor business has no responsibility for the Citations issued against the Respondent.

As set out below, pursuant to the provisions of Commission Rule .0503, failure of a party to appear at a duly noticed hearing of the Commission shall be deemed to be a waiver of all rights to participate and be heard. An unjustified failure to appear may result in a declaration of default and a decision against the defaulting party consistent with Rule .0309(a) of the Commission's Rules. The applicable Rules appear below:

**.0503 FAILURE TO APPEAR**

- (a) Subject to the provisions of Paragraph (c) of this Rule, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights to participate and be heard in the hearing. Unjustifiable failure to appear may result in a declaration of default and a decision against the defaulting party in accordance with Rule .0309( a) of this Chapter. Such parties shall be served with a copy of the decision of the Board.

**.0309 FAILURE TO OBEY RULES**

- (a) Sanctions. Failure to file or serve any pleading or otherwise proceed as provided by these rules, may result in a declaration of default and a decision against the defaulting party. The declaration and decision may be initiated by the hearing examiner . . . .

Respondent, having failed to appear, waived its right to participate and be heard in the hearing. In support of Complainant's citation, the Complainant offered, and the undersigned admits, the Complainant's certified inspection file. Based on the contents of that file and information publicly available, the undersigned makes the following:

**FINDINGS OF FACT**

1. Pursuant to N.C. Gen. Stat. §95-135, the Review Commission has jurisdiction over the parties and subject matter of this action.
2. Complainant is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of Article 16 of Chapter 95 of the General Statutes, to wit, the Occupational Safety and Health Act of North Carolina, hereafter the Act, including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C. Gen. Stat. §95-133 *et seq.*
3. Respondent, Natural Gallery Stone and Cabinet, LLC, was at all times relevant, in the business of processing and selling stone for various purposes and was an employer within the meaning of N.C. Gen. Stat. §95-127(11) and it employed individuals within the meaning of N.C. Gen. Stat. §95-127(10).
4. In response to a complaint, the Occupational Safety and Health Division of the North Carolina Department of Labor properly conducted an inspection of Respondent's facilities at 1245 Wicker Drive, Raleigh, NC 27604 beginning on or about August 16, 2019 and continuing through August 28, 2019.
5. Respondent consented to the inspection.
6. As a result of the inspection, Complainant issued multiple citations that are set out below:

**Citation 1 (Serious)**

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001a	29 CFR 1910.134(f)(2)	Corrected during inspection	\$2,100.00
001b	29CFR 1910.134(h)(1)(i)	Immediately upon receipt	-0-
001c	29 CFR 1910.134(k)(3)	11/27/19	-0-
001d	29 CFR 1910.134(g)(1)(i)(A)	Immediately upon receipt	-0-
003	29 CFR 1910.242(b)	Immediately upon receipt	\$1,000.00
004	29 CFR 1910.243(b)(2)	Immediately upon receipt	\$ 300.00
005	29 CFR 1910.243(c)(3)	Immediately upon receipt	\$ 600.00
006	29 CFR 1910.305(j)(2)(iv)	Immediately upon receipt	\$2,100.00
007a	29 CFR 1910.1053(c)	12/20/19	\$2,100.00
007b	29 CFR 1910.1053(f)(1)	12/20/19	-0-
008	29 CFR 1910.1053(d)(1)	12/20/19	\$2,100.00
009	29 CFR 1910.1053(e)(1)	Immediately upon receipt	\$2,100.00
010a	29 CFR 1910.1053(f)(2)(i)	12/20/19	\$2,100.00
010b	29 CFR 1910.1053(i)(2)	12/20/19	-0-
010c	29 CFR 1910.1053(j)(3)(i)	11/27/19	-0-
011a	29 CFR 1910.1053(h)(1)	Immediately upon receipt	\$2,100.00
011b	29 CFR 1910.1053(h)(2)	Immediately upon receipt	-0-
<b>Citation 2 (Non-Serious)</b>			
001	29 CFR 1910.134(e)(1)	Corrected during inspection	\$ 300.00
002	29 CFR 1910.1020(d)(1)(ii)	Immediately upon receipt	\$ 200.00

7. The above two citations and their respective Items being no longer contested are deemed wholly admitted.

8. The gravity-based penalties for the above Citations and all the Items listed were calculated based on criteria in the North Carolina OSHA Field Operations Manual. The penalties calculated are appropriate and correct for these violations.
9. Respondent failed to appear at the hearing despite having been served with Notice of the Hearing on May 27, 2022. The Notice was sent to Joanna Tong at the last known address for her, that being 2201 Brentwood Road, Suite 109, Raleigh, NC 27603.
10. Complainant believes Respondent, having sold its business, is no longer operating.
11. The ownership of the successor business possesses a similar but not identical name and is a distinctly separate business entity from the one that is the subject of this hearing.

### CONCLUSIONS OF LAW

1. 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.
2. Respondent is subject to the provisions of the Act.
3. Respondent's failure to appear and defend the Citations operates as a waiver of all rights to participate and be heard in the hearing.
4. Failure to file or serve any pleading or otherwise proceed as provided by the Rules of the Review Commission as codified at Chapter 24 of the North Carolina Administrative Code may result in a declaration of default and a decision against the defaulting party.

**WHEREFORE**, based on the Findings of Fact and the Conclusions of Law, IT IS ORDERED as follows:

Citation 1, Items 001a, 001b, 001c, 001d, 003, 004, 005, 006, 007a, 007b, 008, 009, 010a, 010b, 010c, 011a, and 011b are affirmed as Serious violations of the regulations cited herein and a penalty of \$16,600.00 is hereby imposed; and

Citation 2, Items 001 and 002 are affirmed as Non-Serious violations of the regulations cited herein and a penalty of \$500.00 is hereby imposed; and

The total penalty of \$17,100.00 shall be paid within twenty (20) days of the filing date of this Order.

This the 10 day of September, 2022.



Reagan Weaver

Hearing Officer

CERTIFICATE OF SERVICE

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

NATURAL GALLERY STONE & CABINET LLC  
2201 BRENTWOOD RD STE 109  
RALEIGH NC 27603

By depositing a copy of same in the United States Mail, Certified Mail, return receipt requested, at Raleigh, North Carolina, and upon:

RORY AGAN  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
P O BOX 629  
RALEIGH, NC 27602-0629

By depositing a copy of 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](mailto:carla.rose@labor.nc.gov) .

THIS THE 14 DAY OF September 2022.



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Karissa B. Sluss  
Docket and Office Administrator  
NC OSH Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
[NCOSHRC@labor.nc.gov](mailto:NCOSHRC@labor.nc.gov)  
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