

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

AUG - 6 2019

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA

Complainant,

v.

MANUEL CRUZ dba MANUEL CRUZ
and its successors

Respondent.

DOCKET NO: 2019 - 6126

INSPECTION
NO: 318158813

CSHO ID: U6613

ORDER GRANTING MOTION
TO DISMISS RESPONDENT'S
NOTICE OF CONTEST

THIS MATTER coming on upon Complainant's Motion to Dismiss Respondent's Notice of Contest (the "Motion") asserting that Respondent's Notice of Contest was untimely. To support its Motion Complainant recited or referenced, in part, that:

(1) an inspection was conducted of Respondent's workplace on March 7, 2019 (the "Inspection") and a closing conference was conducted on that date;

(2) during the closing conference the Respondent signed and received the Employer and Employee Rights and Responsibility Form (OSHA 59), written in Spanish, which clearly states on its face that the Respondent/Employer may request an informal conference in writing or contest the citations in writing within 15 working days following receipt of the citations;

(3) on March 15, 2019 the North Carolina Department of Labor issued a Citation and Notification of Penalty, classified as 'Serious', consisting of 5 items with a total proposed penalty of \$7,950.00 (the "Citation") to Respondent; the Citation was sent to Respondent by certified mail, return receipt requested, and the return receipt showed that it was received by and signed for by Manuel Cruz on 03/18/2019;

(4) the Citation explicitly stated the following:

* **"Right to Contest** - You have the right to contest this Citation and Notification of Penalty now or after an informal conference. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations." "15 working days after you receive this Citation and Notification of Penalty (if you do not request an informal conference) or 15 working days after you receive the results of the informal conference, the citation(s) and/or proposed penalty(ies) will become a final order of the North Carolina Occupational Safety and Health Review