

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

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

COMPLAINANT,

v.

**DEPENDABLE CONSTRUCTION AND
ROOFING, INC.
*and its successors***

RESPONDENT.

) **DOCKET NO.: OSHANC 2020-6252**
) **INSPECTION NUMBER: 318178886**
) **CSHO ID: G9061**

ORDER

JUL 25 2022

*NC Occupational & Safety
Health Commission*

THIS CAUSE came on for hearing and was heard before the undersigned, Reagan H. Weaver, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, July 25, 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. Royce Brown, Owner of Dependable Construction and Roofing, Inc., 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 Dependable Construction and Roofing, Inc. Respondent is an active Georgia corporation, formed on December 20, 2010, and maintains a place of business in Kennesaw, Georgia. Respondent is not registered to do business in the State of North Carolina at the North Carolina Office of the Secretary of State. 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 September 20, 2019, Mr. Lafayette Atkinson, District X Supervisor with the Occupational Safety and Health Division (“OSH Division”) of the North Carolina Department of Labor (NCDOL), accompanied by Mr. Alexander Lee, Compliance Safety and Health Officer (CSHO) with the OSH Division of NCDOL, conducted an inspection of the Respondent’s work site at 5208 Ringo Drive, Wilmington, North Carolina (in New Hanover 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 January 15, 2020:

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1a	29 CFR 1926.501(b)(13)	Immediately Upon Receipt	\$2,100.00
1b	29 CFR 1926.20(b)(2)	Immediately Upon Receipt	grouped w/ 1a

6. The Respondent submitted a timely Notice of Contest, dated February 25, 2020.
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) Continue with the development and implementation of a comprehensive safety and health program and (or) policies that will address hazards on the job site for the protection of all employees. As a part of this program, the Respondent will ensure that frequent and regular inspections are conducted during roofing activities to include the removal of and replacement of roofing material, and staging roofing material. The Respondent will require their subcontractors to install and utilize fall protection such as but not limited to guardrails and personal fall arrest systems (pfas) when feasible; when the use of conventional fall protection is not feasible the Respondent will ensure subcontractors will develop a written a fall protection plan that comply with 29 CFR 1926.502(k);
- b) Continue to conduct and enforce safety training for Respondent's employees and (or) Respondent's subcontractor employees, as necessary, to ensure they are adequately trained under the direction of a competent person in the recognition and avoidance of hazards associated with fall protection; and
- c) Continue to conduct safety and health inspections on a periodic basis and maintain documentation of the hazards identified and the corrective actions taken to eliminate the hazards; these records shall be maintained

for a period of at least one year and released to the NCDOL-OSH Division upon request.

15. Respondent agrees to pay the new proposed total penalty of **\$500.00 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. **318178886**) 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) Reduce the penalty in Citation One, Item 1 from \$2,100.00 to \$500.00.

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 \$500.00 in the manner set forth herein.

This the 25th day of July, 2022.



REAGAN H. WEAVER
Hearing Examiner

CERTIFICATE OF SERVICE

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

ROYCE BROWN
DEPENDABLE CONSTRUCTION AND ROOFING, INC.
533 DELPHINIUM WAY
ACWORTH, GA 30102

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

SAGE BOYD
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 27 DAY OF July 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