

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

NC OSH Review Commission

| | | |
|------------------------------|---|------------------------------|
| COMMISSIONER OF LABOR OF THE |) | DOCKET NO.: OSHANC 2020-6260 |
| STATE OF NORTH CAROLINA, |) | INSPECTION NUMBER: 318184744 |
| |) | CSHO ID: W4970 |
| Complainant, |) | |
| |) | |
| -vs- |) | |
| |) | CONSENT ORDER |
| BMC EAST, LLC, |) | |
| <i>and its successors,</i> |) | |
| |) | |
| Respondent. |) | |

The parties having appeared before the undersigned for a duly-noticed hearing, and having informed the undersigned hearing officer that they have reached a resolution of the citations issued in this matter, and the undersigned having reviewed the citations, the documents filed by the parties, and the representations of counsel, now pursuant to Rule .0507 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commissions, the undersigned makes the following:

FINDINGS OF FACT:

1. Respondent is a limited liability company duly organized and existing under the laws of the State of North Carolina.
2. On or about December 6, 2019, Respondent was the first tier framing subcontractor for a worksite located at Lot 24, on Havenbrook Drive, of the Ashlyn Creek development in Mooresville, North Carolina.
3. On December 6, 2019, Compliance Safety and Health Officer Marcus Bandy, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted

an inspection of Respondent's worksite at Lot 24 on Havenbrook Drive in Mooresville, North Carolina.

4. As a result of the inspection, on February 10, 2020, Complainant issued the following Citation(s):

CITATION NUMBER ONE

| <u>Item No.</u> | <u>Standard</u> | <u>Abatement Date</u> | <u>Penalty</u> |
|-----------------|------------------------|-----------------------|----------------|
| 1 | 29 CFR 1926.102(a)(1) | Corrected | \$2700.00 |
| 2 | 29 CFR 1926.501(b)(13) | Corrected | \$7000.00 |

5. The Respondent submitted a timely Notice of Contest dated March 11, 2020.

6. The parties have mutually agreed to resolve the Citation(s) upon the following terms, and seek the undersigned's approval of the same:

a. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended below, have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as "the Act").

b. Complainant agrees to make the following amendments to the Citation items:

i. Delete Citation 1, Item 1 and associated penalty;

ii. Reduce penalty of Citation 1, Item 2 to \$4000.00

c. Without admitting any allegations of the Citation and Notice of Penalty, or waiving any defense to the Citation, Respondent agrees to the following:

i. In consideration of this Agreement, if BMC East, LLC were to resume business operations as such in North Carolina, then before its employees, or employees of its subcontractors, started any work in North Carolina, BMC East, LLC agrees to ensure that safety and

health rules continue to be enforced through regular scheduled, as well as unscheduled, worksite inspections and established, documented disciplinary procedures. These inspections and disciplinary actions will be directed toward employees and subcontractors for whom BMC is responsible. BMC East, LLC will maintain records of all worksite inspections and disciplinary actions associated with safety and health issues. These records will be maintained for one calendar year from creation and released to the OSH Division upon request in connection with an inspection.

- d. Each party agrees to bear its own attorney's fees, costs and other expenses that have been incurred in connection with these proceedings.
- e. There are no other outstanding matters to be addressed in this proceeding.
- f. The parties agree that this Stipulation and Notice of Settlement is a full and final settlement of the claims set out in the underlying Citation and Notification of Penalty, and none of the foregoing agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Citation and Notification of Penalty or waiver of defenses; provided, however, that in any subsequent proceeding with respect to matters covered by this Stipulation and Notice of Settlement brought directly under the Act by Complainant, this Agreement shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein are made solely for the purpose of settling this matter economically and amicably without further litigation and shall not be used for any other purpose except for proceedings and

matters arising under the Occupational Safety and Health Act and Article 21, Chapter 95 of the North Carolina General Statutes

- g. Neither party has received any notification from any employee indicating an intent to participate in or attend the hearing in this matter.
- 7. The foregoing terms are reasonable and supported by the underlying facts.
- 8. No outstanding issues remain to be resolved by a hearing of this matter.

Based on the foregoing, the undersigned makes the following

CONCLUSIONS OF LAW

- 1. This Court has jurisdiction over the parties and over the subject matter.
- 2. The parties' proposed resolution of this matter is consistent with the purpose and

objectives of the Act.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

- 1. The parties' agreement, as set out above, is approved.
- 2. The parties shall comply with the terms and conditions set out above.
- 3. The Respondent shall pay the penalty specified above within 30 days of this

Consent Order.

This the 13th day of March, 2023.

**Laura J.
Wetsch**


Digitally signed by Laura J. Wetsch
DN: cn=Laura J. Wetsch, o=Winslow Wetsch
PLLC, ou=Attorney, email=lwetsch@winslow-
wetsch.com, c=US
Date: 2023.03.13 19:17:34 -0400

Laura Wetsch
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General
Digitally signed by Rory Agan
Rory Agan
Foxit PhantomPDF Version:
9.7.5

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629/Labor Section
Raleigh, NC 27602-0629
Tel. 919-716-0629
Email: ragan@ncdoj.gov
Counsel for Complainant



John Ormand, Partner
Brooks, Pierce, McLendon,
Humphrey & Leonard, L.L.P.
PO Box 1800
Raleigh, NC 27602
Tel. 919-828-5875
Email: jormand@brookspierce.com
Counsel for Respondent

CERTIFICATE OF SERVICE

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

JOHN ORMOND
BROOKS PIERCE MCLENDON
PO BOX 1800
RLEIGH NC 27602


RORY AGAN
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 22 DAY OF March 2023.



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