

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

<b>COMMISSIONER OF LABOR OF</b>	)	<b>DOCKET NO: 2020 - 6268</b>
<b>THE STATE OF NORTH CAROLINA</b>	)	
	)	<b>INSPECTION</b>
	)	<b>NO: 318185113</b>
<b>Complainant,</b>	)	
	)	<b>CSHO ID: M3155</b>
<b>v.</b>	)	
<b>CAROCON CORPORATION</b>	)	<b><u>FINAL ORDER</u></b>
<b>and its successors</b>	)	
<b>Respondent.</b>	)	

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THIS CAUSE coming on pursuant to an Order For Continuance and Pre-Hearing Conference (“Hearing Order”) on November 18, 2022 pursuant to a Notice of Pre-Hearing Conference (“Notice of Hearing”). Stacey A. Phipps, Assistant Attorney General, North Carolina Department of Justice, appeared for the Complainant. Greg C. Ahlum, Attorney with Johnston, Allison & Hord, P.A., Charlotte, North Carolina, appeared for the Respondent.

The purpose of this Pre-Hearing Conference (the “Hearing”) as stated in the Notice of Hearing is to provide the parties an opportunity to consider matters which will tend to simplify the issues and expedite the proceedings in this case, including considering such matters that may be necessary or advisable for the completion of this case, and if possible, to reach a resolution without the necessity for an evidentiary hearing.

No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined)

were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth.

As a result of this Hearing, Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

**STIPULATIONS**

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with 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”). The Review Commission has jurisdiction over the parties and the subject matter to this action.

2. Respondent is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Charlotte, North Carolina. Respondent is in the business of construction. Respondent is an “employer” as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).

3. On December 12, 2019, a Compliance Safety and Health Officer for the North Carolina Department of Labor conducted an inspection of a worksite located at 7021 Endhaven Lane in Charlotte, North Carolina (the “Inspection”).

4. As a result of the Inspection, on March 26, 2020, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the “Original Citation”):

**CITATION 01 (Serious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
Grouped			
001a	29 CFR 1926.451(b)(5)(i))	Corrected During Inspection	\$ 3,500.00
001b	29 CFR 1926.451(g)(1)(vii)	Corrected During Inspection	\$ 0.00
002	29 CFR 1926.451(h)(2)(ii)	Corrected During Inspection	\$ 2,000.00
		TOTAL	\$ 5,500.00

5. Respondent submitted a timely Notice of Contest.

6. The Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
7. Complainant and Respondent agree that the Hearing in this matter was conducted in accordance with the Notice of Hearing, the presence of a court reporter during the Hearing is waived, and there will be no recording or official record of the Hearing, and the Hearing will be deemed to have taken place in Raleigh, North Carolina. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned and to entry of this Final Order.
8. Respondent posted the Original Citation and the Notice of Hearing as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its 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.
9. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated.
10. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Final Order.
11. Complainant and Respondent agree that provided the respective Motions of each party are granted (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, as amended pursuant to Complainant's Motion; (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 as amended or waiver of defenses; 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 purpose 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 as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure and 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.

12. Respondent agrees to:

\* train Respondent's management on scaffolding standards contained in 29 CFR 1926.451 and the hazards associated therewith; and

\* to pay the \$4,125.00 assessed in this matter within 30 days of the date of filing this Final Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division, identifying Inspection No. 318185113) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

### MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

**\* to delete Citation 01 Item 001a and its Proposed Penalty in its entirety;**

**\* to reduce the Proposed Penalty of Citation 01 Item 001b by 25%, from \$3,500.00 to \$2,625.00;**

**\* to reduce the Proposed Penalty of Citation 01 Item 002 by 25%, from \$2,000.00 to \$1,500.00.**

**\* based on the reduced Proposed Penalty of Citation 01 Item 001b and Citation 01 Item 002, the total Proposed Penalty of Citation 01 will be \$4,125.00.**

**Except as set forth in this motion, the Original Citation shall remain unmodified or amended.**

Respondent did not object to Complainant's Motion.

Respondent requested that upon the granting of Complainant's Motion that the Undersigned consider the following motion by the Respondent ("Respondent's Motion"):

**\*to withdraw Respondent's Notice of Contest to the Original Citation as amended pursuant to Complainant's Motion set forth above.**

Complainant did not object to Respondent's Motion.

### FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any objection, procedural or otherwise, to this Hearing.
4. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Act.
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. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**; Respondent shall pay \$4,125.00 in the manner set forth in Paragraph 12 of the Stipulations.

This the 18<sup>th</sup> day of November, 2022.

  
\_\_\_\_\_  
R. Joyce Garrett  
Hearing Examiner

CERTIFICATE OF SERVICE

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

GREG C. AHLUM  
JOHNSTON ALLISON HORD  
1065 EAST MOREHEAD ST.  
CHARLOTTE, NC 28204

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

STACEY PHIPPS  
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](mailto:carla.rose@labor.nc.gov).

THIS THE 30 DAY OF November 2022.



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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](mailto:NCOSHRC@labor.nc.gov)