

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

COMMISSIONER OF LABOR OF THE)	DOCKET NO.: OSHANC 2020-6272
STATE OF NORTH CAROLINA,)	INSPECTION NUMBER: 318183514
)	CSHO ID: H8087
COMPLAINANT,)	
)	
v.)	
)	<u>ORDER</u>
CBG BUILDING COMPANY LLC)	
<i>and its successors</i>)	
)	
RESPONDENT.)	

THIS CAUSE came on for a Pre-Hearing Conference (hereafter referred to as “the hearing”) and was heard before the undersigned, Richard M. Koch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, March 22, 2023 at 10:00 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Pre-Hearing Conference. Sage A. Boyd, Assistant Attorney General, North Carolina Department of Justice, appeared for Complainant. Mark S. Dreux, Attorney with ARENTFOX SCHIFF LLP appeared *pro hac vice* for Respondent, and Michael C. Lord, Attorney with Williams Mullen appeared as local counsel 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 CBG Building Company LLC (hereafter referred to as “Respondent” or “CBG”). Respondent is a Virginia limited liability company formed on October 8, 2014. 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 construction.
4. On November 22, 2019, Ms. Griselle Negron and Mr. Eric Travland, Compliance Safety and Health Officers (CSHO) with the North Carolina Department of Labor - Occupational

Safety and Health Division (“NCDOL-OSH Division”), conducted an inspection of the Respondent’s work site at 11120 David Taylor Drive, Charlotte, North Carolina (in Mecklenburg County) pursuant to a complaint referral.

5. As a result of the inspection, Complainant issued the following citations carrying the following proposed abatement dates and penalties on February 28, 2020:

CITATION NUMBER ONE (Serious)

<u>Item No</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.501(b)(4)(i)	Corrected During Inspection	\$4,000.00
2	29 CFR 1926.651(j)(2)	Corrected During Inspection	\$6,300.00
3	29 CFR 1926.652(a)(1)	Corrected During Inspection	\$6,300.00

6. Respondent submitted a timely Notice of Contest, dated April 15, 2020.
7. The 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. 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.
11. 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.

12. Respondent agrees to continue its best efforts to comply with the requirements of the Act.

13. Respondent further agrees to:

a. Maintain an effective and comprehensive safety and health program. In addition, Respondent will ensure subcontractors have a comprehensive written excavation and trenching program that meets the requirements of the applicable regulatory standards. In addition, Respondent will ensure subcontractors utilize an excavation and trenching inspection checklist which will be required to be completed by the designated competent person at the jobsite prior to subcontractors' employees entering the excavation/trench. The inspection checklist shall be maintained on site for six months, and during an inspection by the NCDOL-OSH Division of a CBG worksite in North Carolina, these records will be provided to the NCDOL-OSH Division upon its reasonable request;

b. Continue to conduct safety training, as necessary, to ensure that all CBG employees and subcontractors are adequately and effectively trained in the recognition and control, or avoidance of hazards associated with their work environment. Provisions will be made for periodic retraining as needed. The Respondent will provide annual training/retraining on the topic of excavation and fall protection to all of its employees;

- c. Ensure that safety and health rules are enforced (by the Respondent) through regular, scheduled, and unscheduled worksite inspections and establish written progressive disciplinary procedures. In addition, Respondent will document the worksite inspections and will maintain records of all worksite inspections and disciplinary actions associated with safety and health issues for the duration of the project. During an inspection by the NCDOL-OSH Division of a CBG worksite in North Carolina, these records will be provided to the NCDOL-OSH Division upon its reasonable request; and
- d. Continue its current Safety Program, including conducting periodic safety meetings with on site employees at regular intervals. Respondent will ensure toolbox talks are completed on at least a weekly basis with subcontractors. Respondent will actively encourage all on site workers to participate in workplace safety activities. During such meetings, workers should be able to communicate safety suggestions or complaints to their supervisor or CBG.

MOTIONS

1. Complainant moves to make the following amendments to the Original Citation ("Complainant's Motion"):

- (a) Delete Citation One, Items 1, 2, and 3, and delete the penalties associated therewith.

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**.

This the _____ day of Mar 23, 2023, _____.

Richard M. Koch

Richard M. Koch (Mar 23, 2023 14:45 EDT)

RICHARD M. KOCH

Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN
Attorney General

Sage A. Boyd

Sage A. Boyd (Mar 23, 2023 14:00 EDT)

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ATTORNEYS FOR COMPLAINANT

Mark S. Dreux

Mark S. Dreux (Mar 23, 2023 13:58 EDT)

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

MARK S DREUX
ARENT FOX SCHIFF LLP
1717 K. STREET NW
WASHINGTON DC 20006

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

MICHAEL C LORD
WILLIAMS MULLEN
PO BOX 1000
RALEIGH NC 27602

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 24 DAY OF March 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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