

BEFORE THE N.C. OCCUPATIONAL SAFETY
AND HEALTH REVIEW COMMISSION

FILED

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA,)
)
COMPLAINANT,)
)
)
v.)
)
FOUR BROTHERS FRAMING, LLC)
)
and its successors,)
)
RESPONDENT.)

AUG 2 2022

NC Occupational & Safety
Commission

ORDER ON COMPLAINANT'S
MOTION TO DISMISS, OR IN
THE ALTERNATIVE, TO DEEM
RESPONDENT'S FAILURE
TO APPEAR AS A WAIVER
OF RIGHT TO NOTICE

DOCKET NO. 2020-6281
INSPECTION NO. 318191475
CSHO ID: N3070

This matter is before the undersigned on Complainant's Motion to Dismiss Respondent's Contest of the Citations issued by Complainant for Failure to File An Answer as required by Rule .0304(2) of the N.C. Occupational Safety and Health Review Commission or, in the alternative, to determine that Respondent had waived its right to notice of the hearing and to enter findings of fact against Respondent and affirm the citation and penalties assessed by Complainant.

- (1) On 2 April 2020 Complainant issued a citation to Respondent for violations of 29 C.F.R. 1926.102(a)(1), 29 C.F.R. 1926.501(b)(13), and 29 C.F.R. 1926.1053(b)(1) based on an inspection of Respondent's worksite at 438 Duggins Point, Lot 116, Apex, NC.
- (2) Respondent submitted a timely Notice of Contest on or around 30 April 2020.
- (3) On 5 June 2020 the Commission received Respondent's Statement of Position which, *inter alia*, requested a formal statement of pleadings.
- (4) Respondent's Statement of Position provided the following address: "1212 Pheasant Run Circle." No city, state or zip code was provided.
- (5) On 2 July 2020 Complainant filed and served its formal pleading in this matter. Complainant's Certificate of Service indicated that the Complaint was served via first-class U.S. mail upon "Hernandez Brachamonte, President, Four Brothers Framing LLC, 1212 Pheasant Run Circle, Raleigh, NC 27610."
- (6) Complainant's Complaint contained a prominent notice that "WITHIN 20 DAYS AFTER RECEIPT OF THE COMPLAINT, RESPONDENT MUST FILE AN ANSWER WITH THE REVIEW COMMISSION."

- (7) On or after 7 July 2020 a letter purporting to be from the Respondent was sent to Mr. Rory Agan, Assistant Attorney General, representing the Complainant in this matter. The letter was sent to the address of the N.C. Occupational Safety & Health Review Commission and forwarded to Mr. Agan.
- (8) A Notice of Hearing from the N.C. Occupational Safety & Health Review Commission was sent 22 June 2022 via certified mail to “Hernandez Brachamonte, President, Four Brothers Framing LLC, 1212 Pheasant Run Circle, Raleigh, NC 27610.” The Notice advised that this matter would be called for hearing on 2 August 2022 beginning at 10:00 a.m. for the purpose of determining all matters relating to Respondent’s Notice of Contest.
- (9) The undersigned was advised by Review Commission staff that the Notice of Hearing was returned undelivered.
- (10) Pursuant to the Notice of Hearing this matter was called for hearing at 10:10 a.m.. Appearing for the Complainant was Mr. Rory Agan. Respondent did not appear at the hearing.
- (11) At the hearing Complainant moved this Court to dismiss Respondent’s Notice of Contest based upon Respondent’s failure to file an Answer to the Complaint, as required by Rule .0304(2) of the Commission’s Rules of Procedure, or in the alternative, to enter findings of fact against Respondent based upon Respondent’s failure to follow the Commission’s Rules, especially Rule .0106.
- (12) In support of its motion Complainant presented the letter that it had received on or after 7 July 2020, referenced in paragraph seven (7) above. Respondent’s letter indicated that it did not intend to file any further pleading and, instead, referenced material previously sent to the Commission on or around 22 April 2020.
- (13) Respondent’s letter attached Complainant’s 2 July 2020 Complaint.
- (14) None of Respondent’s communication subsequent to its 5 June 2020 Statement of Position contained any address nor a list of parents, subsidiaries or affiliates, as required by Rules .0106 and .0304, respectively.
- (15) Commission Rule .0106 provides that an “initial pleading filed by any person shall contain that person’s name, address and telephone number.” However, Commission Rule .0101(13) defines a pleading as “Complaints and Answers filed under Rule .0304.”
- (16) In this case, the Respondent has either not filed a pleading or it has incorporated by reference material sent to the Commission on 22 April 2020 as its pleading. In neither instance has Respondent provided an address or a list of parents, subsidiaries or affiliates, as required.

- (17) Respondent's failure to provide an address on a document identified as its initial pleading is deemed to be a waiver of the right to notice and service under the Commission's Rules. N.C. O.S.H.R.C. Rule .0106.
- (18) Rule .0304 provides, in pertinent part, that an "answer shall contain a short and plain statement denying each of those allegations in the complaint which the party intends to contest and stating the reasons therefor." Respondent has not provided an answer which comports with the aforesaid requirement of Rule .0304.
- (19) Interpreting Respondent's letter sent on or after 7 July 2020 in the light most favorable to the Respondent, the undersigned further concludes:
 - (a) Respondent had notice of the Complaint filed by Complainant;
 - (b) Respondent's letter does not comport with the Requirements of Rule .0304(b) or (c).
 - (c) Respondent's letter does not comport with the requirements of Rule .0106.
- (20) The undersigned takes judicial notice of official filings with the North Carolina Secretary of State by an entity whose legal name is Four Brothers Framing, LLC, including an annual report filed April 27, 2022 (attached to his Order as "Exhibit A" and incorporated herein by reference.)
- (21) Where a party has made a general appearance before a tribunal by requesting that the tribunal enter judgment on any question other than a question of jurisdiction, the party has waived the right to contest the tribunal's jurisdiction for want of proper service. *In Re Blalock*, 233 N.C. 493, 503-04, 64 S.E.2d 848, 855-56 (1951).
- (22) Respondent's letter sent after 7 July 2020, referencing its 22 April 2020 statement, including a request that the citation be "deleted" constitutes a general appearance on Respondent's part.
- (23) In light of the foregoing, the undersigned concludes that Respondent's Notice of Contest must be DISMISSED pursuant to Rule .0309(a) for failure to proceed as provided by the Commission's rules.
- (24) Complainant's Motion to otherwise enter findings of fact is DENIED as moot.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT: Respondent's Notice of Contest is DISMISSED as to the violations set out in Complainant's Citation and subsequent Complaint. Respondent is ORDERED to pay the penalties as assessed within thirty days of the entry of this order.

It is further ORDERED that this order shall be served upon Respondent at the address provided on Respondent's Statement of Position as well as at the address provided for Four Brothers

Framing LLC's Registered Agent with the Secretary of State and the address provided as Four Brothers Framing LLC's principal place of business on the Annual Report attached as Exhibit A.

This the 2nd day of August 2022.

A handwritten signature in cursive script that reads "Mary-Ann Leon". The signature is written in black ink and is positioned above a horizontal line.

Mary-Ann Leon
Hearing Examiner



EXHIBIT A

LIMITED LIABILITY COMPANY ANNUAL REPORT

NAME OF LIMITED LIABILITY COMPANY: FOUR BROTHERS FRAMING, LLC

SECRETARY OF STATE ID NUMBER: 1527989 STATE OF FORMATION: NC

REPORT FOR THE CALENDAR YEAR: 2022

Filing Office Use Only
E - Filed Annual Report
1527989
CA202211703946
4/27/2022 01:30
Ochanges

SECTION A: REGISTERED AGENT'S INFORMATION

1. NAME OF REGISTERED AGENT: Poianco, Sandra M.

2. SIGNATURE OF THE NEW REGISTERED AGENT: _____

SIGNATURE CONSTITUTES CONSENT TO THE APPOINTMENT

3. REGISTERED AGENT OFFICE STREET ADDRESS & COUNTY 4. REGISTERED AGENT OFFICE MAILING ADDRESS

411 ANDREWS RD STE 140

411 ANDREWS RD STE 140

Durham, NC 27705 Durham County

Durham, NC 27705

SECTION B: PRINCIPAL OFFICE INFORMATION

1. DESCRIPTION OF NATURE OF BUSINESS: FRAMING

2. PRINCIPAL OFFICE PHONE NUMBER: (984) 234-1713

3. PRINCIPAL OFFICE EMAIL: Privacy Redaction

4. PRINCIPAL OFFICE STREET ADDRESS

5. PRINCIPAL OFFICE MAILING ADDRESS

550 Riddle Ave

550 Riddle Ave

Hillsborough, NC 27278-9657

Hillsborough, NC 27278-9657

6. Select one of the following if applicable. (Optional see instructions)

The company is a veteran-owned small business

The company is a service-disabled veteran-owned small business

SECTION C: COMPANY OFFICIALS (Enter additional company officials in Section E.)

NAME: ISAIAS FLORES-GUTIERREZ NAME: CARLOS A FLORES-GUTIERREZ NAME: _____

TITLE: President TITLE: Member TITLE: _____

ADDRESS: _____ ADDRESS: _____ ADDRESS: _____

550 RIDDLE AVE

550 RIDDLE AVE

HILLSBOROUGH, NC 27278

HILLSBOROUGH, NC 27278

SECTION D: CERTIFICATION OF ANNUAL REPORT. Section D must be completed in its entirety by a person/business entity.

ISAIAS FLORES-GUTIERREZ

4/27/2022

SIGNATURE

DATE

Form must be signed by a Company Official listed under Section C of This form.

ISAIAS FLORES-GUTIERREZ

President

Print or Type Name of Company Official

Print or Type Title of Company Official

This Annual Report has been filed electronically.

MAIL TO: Secretary of State, Business Registration Division, Post Office Box 29525, Raleigh, NC 27626-0525

CERTIFICATE OF SERVICE

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

HERNANDEZ BRACHAMONTE
FOUR BROTHERS FRAMING LLC
1212 PHEASANT RUN CIRCLE
RALEIGH, NC 27610

HERNANDEZ BRACHAMONTE
FOUR BROTHERS FRAMING LLC
550 RIDDLE AVE
HILLSBOROUGH, NC 27278

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

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 5 DAY OF August 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