

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

COMMISSIONER OF LABOR OF THE	)	DOCKET NO.: OSHANC 2020-6292
STATE OF NORTH CAROLINA,	)	INSPECTION NUMBER: 318187325
	)	CSHO ID: Q0750
COMPLAINANT,	)	
	)	
v.	)	
	)	<b><u>ORDER</u></b>
DAN RYAN BUILDERS - NORTH	)	
CAROLINA, LLC DBA CRESCENT APEX,	)	
LLC	)	
<i>and its successors</i>	)	
	)	
RESPONDENT.	)	

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, October 19, 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. Stephen T. Parascandola, Attorney with Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., 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, Dan Ryan Builders – North Carolina, LLC, is a North Carolina limited liability Company, 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 Morrisville, North Carolina. Respondent does business as Crescent Apex, LLC, a foreign limited liability company, which was authorized to do business in North Carolina on August 15, 2016. It is active and currently maintains a place of business in

Morrisville, North Carolina. Respondent is in the business of building new homes. 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).

4. On or between January 21, 2020 and March 3, 2020, Compliance Safety and Health Officer Chris Jason, employed by the North Carolina Department of Labor, inspected Respondent's worksite located at 2918 Angelica Rose Way, Apex, North Carolina pursuant to an accident referral.
5. As a result of the inspection, Complainant issued the following citations carrying the following proposed abatement dates and penalties on May 8, 2020:

**CITATION NUMBER ONE (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1a	29 CFR 1926.20(b)(2)	Corrected	\$4200.00
1b	29 CFR 1926.501(b)(13)	Corrected	Grouped with 1a
2	29 CFR 1926.20(b)(3)	Corrected	\$2500.00

6. The Respondent submitted a timely Notice of Contest, dated June 22, 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 conduct training and (or) re-training on conducting frequent and regular inspections for Respondent's North Carolina Safety Manager(s), Project Manager(s), and Construction Manager(s) within one-hundred twenty (120) days of the date on this Order.
15. Respondent agrees to pay the proposed total penalty of **\$6,700.00 within twenty (20) days of this Order**. Payment is to be by check payable to North Carolina Department of Labor, OSHA Division (Identifying Inspection No. **318187325**) 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) Reclassify Citation One, Item 1a from Serious to Non-Serious;
  - (b) Reclassify Citation One, Item 1b from Serious to Non-Serious; and
  - (c) Reclassify Citation One, Item 2 from Serious to Non-Serious.

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 **\$6,7000.00** in the manner set forth herein.

This the Oct 20, 2022 day of 2022

Reagan H. Weaver

Reagan H. Weaver (Oct 20, 2022 10:27 PDT)

**REAGAN H. WEAVER**

Hearing Examiner

**CONSENTED TO:**

JOSHUA H. STEIN  
Attorney General

Sage A. Boyd

Sage A. Boyd (Oct 20, 2022 11:37 EDT)

Sage A. Boyd  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629/Labor Section  
Raleigh, North Carolina 27602-0629  
Telephone No. (919) 716-6680  
sboyd@ncdoj.gov

ATTORNEYS FOR COMPLAINANT

Stephen T. Parascandola

Stephen T. Parascandola  
Partner, Attorney at Law  
Smith, Anderson, Blount, Dorsett, Mitchell  
& Jernigan, LLP  
Post Office Box 2611  
Raleigh, North Carolina  
Telephone No. (919) 821-6800  
sparascandola@smithlaw.com

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

STEPHEN T. PARSCANDOLA  
SMITH, ANDERSON, BLOUNT  
DORSETT, MITCHELL & JERNIGAN, LLP  
PO BOX 2611  
RALEIGH, NC 27602-2611

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

SAGE A. 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](mailto:carla.rose@labor.nc.gov).

THIS THE 24 DAY OF October 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](mailto:NCOSHRC@labor.nc.gov)