

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

**COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA,**

COMPLAINANT,

v.

**HIGHLAND ROOFING COMPANY
*and its successors***

RESPONDENT.

) **DOCKET NO.: OSHANC 2020-6298**
) **INSPECTION NO.: 318187283**
) **CSHO ID: P0118**
)

) **DOCKET NO.: OSHANC 2021-6353**
) **INSPECTION NO.: 318198538**
) **CSHO ID.: A6044**
)

ORDER

FILED

NOV 17 2022

NC OSH Review Commission

THESE CAUSES came on for Pre-Hearing Conference in accordance with Rule.0402 of the Rules of Procedure for the North Carolina Occupational Safety and Health Review Commission and was heard before the undersigned, Mary-Ann Leon, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, October 27, 2022 at 10:00 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Pre-Hearing Conference. Ms. Sage A. Boyd, Assistant Attorney General, North Carolina Department of Justice, appeared as counsel for Complainant. Mr. Benton Toups, Cranfill Sumner LLP, appeared as counsel for Respondent.

Pursuant to the Notice of Pre-Hearing Conference, a Pre-Hearing Conference was held for the purpose of considering matters which would tend to simplify the issues or expedite the proceedings, and if possible, to reach a resolution without the necessity for hearing. This Pre-Hearing Conference was not an evidentiary hearing. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Pre-Hearing Conference. At the Pre-Hearing Conference, the parties requested additional time to discuss informal resolution of the matters before the Commission. Pursuant to the parties' request, these matters were held open and the pre-hearing conference was scheduled to resume on November 17, 2022 at 10:00 A.M. via internet and/or telephone before the Undersigned. On October 31, 2022, a formal Notice and Order Regarding the Pre-Hearing Conference and a Notice of Hearing were filed scheduling the matters for Hearing on November 17, 2022.

On November 15, 2022, the parties notified the Undersigned that the parties wish to agree upon certain stipulations ("Stipulations") and to make certain motions ("Motions") and requested that the Stipulations and Motions be made part of the record and that the Undersigned issue a Final Order at the noticed hearing date and time.

On November 17, 2022, these matters came on for Hearing and was heard before the undersigned, Mary-Ann Leon, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, November 17, 2022 at 10:00 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice and Order Regarding the Pre-Hearing Conference and Notice of 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 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, Highland Roofing Company, is a North Carolina corporation, which was authorized to do business in the State of a North Carolina on October 12, 2005. It is active and current and maintains a place of business in Wilmington, North Carolina. 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 a roofing contractor engaged in the business of roofing construction, repair and maintenance.

DOCKET NO. OSHANC 2020-6298 - INSPECTION NO. 318187283

4. On January 21, 2020, Compliance Safety and Health Officer (CSHO), Donald Payne, employed by the North Carolina Department of Labor (NCDOL), accompanied by CSHO Holly Pups, who was in-training at the time of the inspection and also employed by NCDOL, inspected Respondent's worksite located at 715 Greenfield Street, Wilmington, North Carolina, pursuant to an accident referral (Inspection No. 318187283).
5. On June 8, 2020, as a result of the inspection (Inspection No. 318187283), Complainant issued the following citations, carrying the following proposed abatement dates and penalties ("the Original Citation"):

CITATION NUMBER ONE (Repeat Serious)

| <u>Item</u> | <u>Standard</u> | <u>Abatement Date</u> | <u>Penalty</u> |
|-------------|-----------------------|--------------------------|----------------|
| 1 | 29 CFR 1926.20(b)(2) | Immediately Upon Receipt | \$5,000.00 |
| 2 | 29 CFR 1926.501(a)(2) | Immediately Upon Receipt | \$5,000.00 |

6. Respondent submitted a timely Notice of Contest, dated July 1, 2020 (Inspection No. 318187283).

7. Respondent's contestment of Inspection No. 318187283 was docketed at the Review Commission as OSHANC 2020-6298.

DOCKET NO. OSHANC 2021-6353 - INSPECTION NO. 318198538

8. On or between July 6, 2020 and July 21, 2020, Compliance Safety and Health Officer (CSHO) Howard Laurie, employed by the North Carolina Department of Labor (NCDOL), inspected Respondent's worksite located at 112 North College Road, Wilmington, North Carolina, pursuant to an accident referral (Inspection No. 318198538).
9. On November 30, 2020, as a result of the inspection (Inspection No. 318198538), Complainant issued the following citations, carrying the following proposed abatement dates and penalties ("the Original Citation"):

CITATION NUMBER ONE (Repeat Serious)

| <u>Item</u> | <u>Standard</u> | <u>Abatement Date</u> | <u>Penalty</u> |
|-------------|----------------------|--------------------------|----------------|
| 1 | 29 CFR 1926.20(b)(2) | Immediately Upon Receipt | \$7,000.00 |

CITATION NUMBER TWO (Serious)

| <u>Item</u> | <u>Standard</u> | <u>Abatement Date</u> | <u>Penalty</u> |
|-------------|----------------------------|--------------------------|----------------|
| 1 | 29 CFR 1926.501(b)(4)(i) | Immediately Upon Receipt | \$3,500.00 |
| 2 | 29 CFR 1926.501(b)(10) | Immediately Upon Receipt | \$3,500.00 |
| 3 | 29 CFR 1926.503(a)(2)(iii) | 12/29/2020 | \$3,500.00 |

10. Respondent submitted a timely Notice of Contest, dated January 25, 2021 (Inspection No. 318198538).
11. Respondent's contestment of Inspection No. 318198538 was docketed at the Review Commission as OSHANC 2021-6353.
12. A hearing in these matters was scheduled pursuant to the Rules of Procedure of the Occupational Safety and Health Review Commission of North Carolina ("the Rules").
13. 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.
14. Respondent posted the Original Citations 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.

15. Respondent confirms that the violations alleged in the Original Citations have been abated.
16. 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.
17. 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.
18. Respondent agrees to continue its best efforts to comply with the requirements of the Act.
19. Respondent further agrees to:
 - (a) Continue to develop and implement a comprehensive safety and health program and (or) policies that will address hazards on the job site for the protection of all employees. As part of this program and (or) policies, the Respondent agrees to expand their site-specific program to include an effective competent survey for the detection

of hazards that could result from weakened, deteriorated, and (or) structurally comprised systems to include roofs, floors, walls, or loosened material from roofing operations. Any and all hazards identified in the aforementioned survey, the Respondent will develop a plan of action to address how the employees will safely perform the work to ensure hazards are corrected prior to employees accessing the structure and that plan of action shall be maintained throughout the duration of the project and made available to NCDOL-OSH upon request;

- (b) Conduct safety training, as necessary, to ensure its employees and sub-contractors are adequately trained in the recognition and avoidance of hazards associated with roofing operations; and
- (c) Designate a competent person for each job site to conduct frequent and regular inspections on a periodic basis and maintain documentation of the hazards identified and corrective actions taken to eliminate those hazards. These records shall be maintained for at least one year from the date of the aforementioned inspection(s), and released to the NCDOL-OSH Division upon request.

20. Respondent agrees to pay the new total penalty of **\$17,000.00 within thirty (30) days of this Order**. Payment is to be by check payable to North Carolina Department of Labor, OSHA Division (**Identifying Inspection Numbers: 318187283 and 318198538**) 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 Citations in **Inspection Number 318187283** (Docket No. OSHANC 2020-6298) and **Inspection Number 318198538** (Docket No. OSHANC 2021-6353) (“Complainant’s Motion”):

(a) **Inspection Number 318187283** (Docket No. OSHANC 2020-6298):

- i. Increase the penalty in Citation One, Item 1, from \$5,000.00 to \$10,000.00;
- and
- ii. Delete Citation One, Item 2 and delete the penalty associated with it.

(b) **Inspection Number 318198538** (Docket No. OSHANC 2021-6353):

- i. Delete Citation One, Item 1 and delete the penalty associated with it; and
- ii. Delete Citation Two, Item 1 and delete the penalty associated with it.

Except as expressly set forth above in Complainant’s Motion, the Original Citations 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 \$17,000.00 in the manner set forth herein.

This the _____ day of **Nov 17, 2022**, 2022.

Mary-Ann Leon

Mary-Ann Leon (Nov 17, 2022 10:25 EST)

MARY-ANN LEON
Hearing Examiner

CONSENTED TO:

Sage A. Boyd

Digitally signed by Sage A.
Boyd
Date: 2022.11.16 14:57:42
-05'00'

Sage A. Boyd
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629/Labor Section
Raleigh, North Carolina 27602-0629
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ATTORNEY FOR COMPLAINANT

Benton Toups

Digitally signed by Benton
Toups
Date: 2022.11.16 12:51:02
-05'00'

Benton Toups
Attorney at Law
Cranfill Sumner LLP
Post Office Box 1950
Wilmington, NC 28402
btoups@cshlaw.com
Telephone No. (910) 777-6011

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

BENTON TOUPS
CRANFILL SUMNER LLP
PO BOX 150
WILMINGTON, NC 28402

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

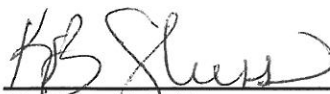
SAGE A. BOYD
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

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.

THIS THE 18 DAY OF November 2022.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
TEL.: (919) 733-3589
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