

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

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA,

Complainant,

-vs-

GUY ROOFING, INC.,
and its successors,

Respondent.

) DOCKET NO.: OSHANC 2020-6301
) INSPECTION NUMBER: 318188224
) CSHO ID: A2210

FILED

MAR 24 2023

CONSENT ORDER

NC OSH Review Commission

The parties having appeared before the undersigned for a duly-noticed hearing, and having informed the undersigned hearing officer that they have reached a resolution of the citations issued in this matter, and the undersigned having reviewed the citations, the documents filed by the parties, and the representations of counsel, now pursuant to Rule .0507 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commissions, the undersigned makes the following:

FINDINGS OF FACT:

1. Respondent is a corporation duly organized and existing under the laws of the State of South Carolina.
2. During 2020, Respondent maintained a worksite in Fremont, North Carolina.
3. On January 29, 2020, Compliance Safety and Health Officer Scott Justice and Cristina Almonte, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite at 304 W. Wayne Street in Fremont, North Carolina.

4. As a result of the inspection, on June 12, 2020, Complainant issued the following

Citations:

CITATION NUMBER ONE (Serious)

<u>Item Number</u>	<u>Standard</u>	<u>Abatement</u>	<u>Penalty</u>
1	1926.102(a)(1)	6/16/2020	\$600.00
2a	1926.501(b)(13)	6/16/2020	\$2000.00
2b	1926.502(d)	6/16/2020	Grouped
3a	1926.1101(d)(5)	6/16/2020	\$3500.00
3b	1926.1101(e)(1)	6/16/2020	Grouped
4a	1926.1101(g)(8)(ii)(A)	6/16/2020	\$3500.00
4b	1926.1101(g)(8)(ii)(B)	6/16/2020	Grouped
4c	1926.1101(g)(8)(ii)(E)	6/16/2020	Grouped
4d	1926.1101(g)(8)(ii)(F)	6/16/2020	Grouped

CITATION NUMBER TWO (Nonserious)

<u>Item Number</u>	<u>Standard</u>	<u>Abatement</u>	<u>Penalty</u>
1a	1926.1101(h)(2)(i)	6/22/2020	\$600.00
1b	1926.1101(k)(9)(iv)(A)	6/22/2020	Grouped
1c	1926.1101(k)(9)(viii)(B)	6/22/2020	Grouped
1d	1926.1101(k)(9)(viii)(H)	6/22/2020	Grouped

5. The Respondent submitted a timely Notice of Contest dated July 15, 2020.

6. The parties have mutually agreed to resolve the Citation(s) upon the following terms, and seek the undersigned's approval of the same:

- a. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended below, have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as "the Act").
- b. Complainant agrees to make the following amendments to the Citation items:
 - i. Change the standard cited for Citation 1, Item 2a to 1926.21(b)(2), maintaining the penalty of \$2000.00 and a serious classification;
 - ii. Delete Citation 1, Item 2b;
 - iii. Delete Citation 1, Item 3b;
 - iv. Delete Citation 1, items 4a, 4b, 4c, and 4d and associated penalty; and,
 - v. Delete Citation 2, Items 1a, 1b, 1c, and 1d and associated penalty.
- c. Without admitting any allegations of the Citation and Notice of Penalty, or waiving any defense to the Citation, Respondent agrees to the following:
 - i. Guy Roofing shall continue to implement its written safety and health jobsite inspections in North Carolina which identify the task to be performed and the hazards it addresses on site. The written inspection shall be maintained on the jobsite for the length of Guy Roofing's control of the project;
 - ii. Guy Roofing agrees that prior to asbestos work taking place at their jobsites in North Carolina that a copy of the asbestos survey be obtained as well as a copy of the subcontractor's safety and health programs in regards to asbestos abatement including but not limited to: asbestos training, respiratory protection use, as well as disposal methods. Guy

Roofing agrees to follow up with subcontractors to ensure that the work is being completed as required per the 29 CFR 1926.1101 Asbestos Standard;

- iii. Guy Roofing shall provide retraining for all designated competent persons performing work in North Carolina in regard to the use and limitations of fall protection equipment.
 - iv. With respect to the foregoing stipulations, nothing shall require Guy Roofing to continue beyond a period of twelve months from the signing of this agreement. However, nothing shall stop Guy Roofing from continuing the new programs beyond twelve months' time if it wishes to continue; and
 - v. If at any time Guy Roofing determines a safer and more effective way to conduct the above stipulations it may take whatever action it determines best protects the health and safety of its employees and subcontractor employees on its jobsites in North Carolina. Guy Roofing is not required to provide notice of this change to NCDOL but may provide notice of changes if it so wishes.
- d. Each party agrees to bear its own attorney's fees, costs and other expenses that have been incurred in connection with these proceedings.
 - e. The parties agree that this Stipulation and Notice of Settlement is a full and final settlement of the claims set out in the underlying Citation and Notification of Penalty, and none of the foregoing agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent of any of the

allegations contained in the Citation and Notification of Penalty or waiver of defenses; provided, however, that in any subsequent proceeding with respect to matters covered by this Stipulation and Notice of Settlement brought directly under the Act by Complainant, this Agreement shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein are made solely for the purpose of settling 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 Occupational Safety and Health Act and Article 21, Chapter 95 of the North Carolina General Statutes. Respondent's agreement to accept any Citation in this Agreement under a particular standard shall not be deemed as an admission by Respondent that the cited standard applies to its operations for purposes of any other matter.

- f. There are no other outstanding matters to be addressed in this proceeding.
 - g. Neither party has received any notification from any employee indicating an intent to participate in or attend the hearing in this matter.
7. The foregoing terms are reasonable and supported by the underlying facts.
8. No outstanding issues remain to be resolved by a hearing of this matter.

Based on the foregoing, the undersigned makes the following

CONCLUSIONS OF LAW

- 1. This Court has jurisdiction over the parties and over the subject matter.
- 2. The parties' proposed resolution of this matter is consistent with the purpose and

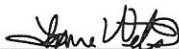
objectives of the Act.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The parties' agreement, as set out above, is approved.
2. The parties shall comply with the terms and conditions set out above.
3. The Respondent shall pay the penalty of \$6100.00 within 45 days of this Consent

Order.

This Mar 24, 2023.



Laura Wetsch (Mar 24, 2023 16:06 EDT)

Laura Wetsch
Hearing Examiner


CONSENTED TO:

JOSHUA H. STEIN, Attorney General




Rory Agan (Mar 24, 2023 15:18 EDT)

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McCord Wilson (Mar 24, 2023 14:13 CDT)

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Counsel for Respondent

CERTIFICATE OF SERVICE

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

JAMES MCCORD WILSON
READER & CAMPBELL PC
2777 N STEMMONS FRWY STE 1125
DALLAS TX 75207

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

H. BERNARD TISDALE III
JACKSON LEWIS PC
200 S COLLEGE ST STE 1550
CHARLOTTE NC 28202

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
carla.rose@labor.nc.gov

via email.

THIS THE 27 DAY OF March 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
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