

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

COMMISSIONER OF LABOR OF THE	)	DOCKET NO.: OSHANC 2021-6390
STATE OF NORTH CAROLINA	)	INSPECTION NUMBER: 318218849
	)	CSHO ID: L1173
COMPLAINANT,	)	
	)	
v.	)	
	)	<u>ORDER</u>
KAUFMAN LYNN CONSTRUCTION, INC.	)	
<i>and its successors,</i>	)	
	)	
RESPONDENT.	)	

THIS CAUSE came on for hearing and was heard before the undersigned Hearing Examiner R. Joyce Garrett, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on May 9, 2023, at 10:00 A.M. pursuant to a Notice of Hearing. The Notice of Hearing was posted as required by the Rules of the North Carolina Occupational Safety and Health Review Commission. The Notice of Hearing explicitly stated that the purpose of the hearing is to determine all matters relating to Respondent’s Notice of Contest in this matter.

Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, appeared remotely for Complainant. S. McKinley Gray, Attorney at Ward and Smith, P.A. appeared remotely for Respondent. No other affected employee of Respondent attended to have a say in, or participate as a party in, the Hearing.

At the Hearing, Complainant and Respondent notified the Undersigned that the parties agree upon certain stipulations as set forth in Court’s Exhibit 1 admitted into evidence.

As a result of this Hearing, based upon consideration of Complainant’s Complaint, Respondent’s Answer, and the stipulations of the parties, the Undersigned makes the Findings of Fact as hereinafter set forth. During the Hearing, Complainant made the motion set forth in Complainant’s Motion. Complainant’s Motion being granted, Respondent made the Motion set forth in Respondent’s Motion.

**FINDINGS OF FACT**

Based on the stipulations of the parties at the time of Hearing and the record, the Undersigned makes the following Findings of Fact:

1. The Complainant, as Commissioner of Labor of the State of North Carolina, is charged by law with compliance with 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”), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§95-133 et seq.

2. Pursuant to N.C.G.S. §95-135, the Review Commission has jurisdiction over the parties and the subject matter to this action. The Complainant filed Complainant’s Complaint in accordance with Rules .0303 and .0304 of the Rules of Procedure adopted by the Review Commission.

3. Respondent, Kaufman Lynn Construction, Inc., is a Florida corporation, duly organized and existing under the laws of the State of Florida, which does business in the State of North Carolina and maintains a place of business in Charlotte, North Carolina.

4. Respondent is a general construction contractor engaged in the business of constructing buildings and other structures, which business affects interstate commerce. Respondent retains the services of individuals who perform work such as construction work.

5. For purposes of this Hearing, Respondent considers itself to be an “employer” within the meaning of N.C.G.S. Section 95-127(11); and considers all of Respondent’s employees referred to in this matter to be “employees” within the meaning of N.C.G.S. Section 95-127(10).

6. On or about April 20, 2021, Ted Hendrix, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection (the “Inspection”) of Respondent’s worksite located at 210 S. Main Street in Kannapolis, North Carolina (the “Work Site”).

7. At the time of the Inspection, the Work Site was a multi-employer site and the Respondent was the general contractor at the Work Site.

8. As a result of the Inspection, on May 12, 2021, Complainant issued two citations (“Citation 01” and “Citation 02”), more specifically described as follows (collectively the “Original Citation”):

**Citation 01 (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.100(a)	Corrected	\$2,100.00
002	29 CFR 1926.453(b)(2)(v)	Corrected	\$3,500.00

**Citation 02 (Nonserious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1904.40(a)	Immediate	\$700.00

9. Respondent submitted a timely notice of Contest dated July 6, 2021.

10. On or about July 11, 2021, Complainant received “Employer’s/Respondent’s Statement of Position” which requested formal pleadings be served.

11. Complainant's Complaint was filed September 2, 2021 and Respondent's Answer was filed December 21, 2021.
12. The Hearing in this matter was scheduled pursuant to Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
13. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned.
14. Respondent posted the Original Citation and the Notice of Hearing as required by the Rules of the Review Commission. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its 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 Citation as amended pursuant to Complainant's Motion have been abated.
16. The parties agree that upon granting of Complainant's Motion that the proposed penalty for each Item designated in the Original Citation has been calculated in accordance with the standard Field Operations Manual procedure; and the new proposed penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been derived in consideration of the standard mitigating factors and specific factors applicable to Respondent.
17. Respondent agrees:
  - a. To pay the penalty assessed in this matter, as amended by Motion below, within 30 days of the date of this Final Order. In the event Respondent does not pay the penalty as agreed upon, Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to collection proceedings to collect the debt.
  - b. Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318218849) and mailed to North Carolina Department of Labor, Financial Services Division. ATTN: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.
18. The parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, that have been incurred in connection with this case.
19. Complainant and Respondent agree that provided the respective Motions of each party are granted 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 additional evidentiary hearing of this matter. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as

amended pursuant to Complainant's Motion. The parties further agree that (i) 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, and (ii) none of the foregoing 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 as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.

### MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

1. Citation 01, Item 001 be reclassified as non-serious;
2. Citation 02, Item 001 and associated penalty be deleted.

**Except as set forth in this Motion, the Original Citation shall remain unmodified or amended.**

Respondent did not object to Complainant's Motion.

Respondent requested that upon the granting of Complainant's Motion, that the Undersigned consider the following motion by the Respondent ("Respondent's Motion"):

1. Withdraw Respondent's Notice of Contest to the Original Citation as amended pursuant to Complainant's Motion set forth above.

Complainant did not object to Respondent's Motion.

### CONCLUSIONS OF LAW

1. 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.
2. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11); Respondent's employees referred to in the Complaint are "employees" within the meaning of N.C.G.S. §95-127(10).
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
4. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.

Based on the foregoing Findings of Fact and Conclusions of Law, **NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:**

1. That Complainant's Motion is hereby **GRANTED**; and,
2. That Respondent's Motion is hereby **GRANTED**. Respondent shall pay the penalty of \$5,600.00 within 30 days of this Order.

This May 10, 2023.

**SO ORDERED**

*R. Joyce Garrett*

R. Joyce Garrett (May 10, 2023 14:38 EDT)

R. Joyce Garrett  
Hearing Examiner

## Court's Exhibit 1

### Stipulations

1. The Hearing in this matter shall be conducted via the video conferencing platform known as "Lifesize".
2. The presence of a court reporter during the Hearing is waived.
3. The Hearing's audio and video will be recorded through Lifesize (the "Recording").
4. The Recording will be the official record of the Hearing.
5. The Recording will be made available to all counsel after the Hearing concludes (the Host will send a link to the Recording as soon as is practicable after the Hearing concludes).
6. The Hearing Examiner shall control when the Hearing is on and off the record.
7. The Hearing will be deemed to have taken place in Raleigh, North Carolina.
8. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with 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"), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§95-133 et seq.
9. Pursuant to N.C.G.S. §95-135, the Review Commission has jurisdiction over the parties and the subject matter to this action. The Complainant filed Complainant's Complaint in accordance with Rules .0303 and .0304 of the Rules of Procedure adopted by the Review Commission.
10. Respondent, Kaufman Lynn Construction, Inc., is a Florida corporation, duly organized and existing under the laws of the State of Florida, which does business in the State of North Carolina and maintains a place of business in Charlotte, North Carolina.
11. Respondent is a general construction contractor engaged in the business of constructing buildings and other structures, which business affects interstate commerce. Respondent retains the services of individuals who perform work such as construction work.
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17. On or about July 11, 2021, Complainant received "Employer's /Respondent's Statement of Position" which requested that formal pleadings be served.

18. Complainant's Complaint was filed September 2, 2021 and Respondent's Answer was filed December 21, 2021.

19. The Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").

20. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned.

21. Respondent posted the Original Citation and the Notice of Hearing as required by the Rules of the Review Commission. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its 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.

22. All items as amended have been abated by Respondent. No further documentation is required to be produced.



CERTIFICATE OF SERVICE

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

S. MCKINLEY GRAY III  
WARD & SMITH PA  
PO BOX 867  
NEW BERN NC 28563-0867

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

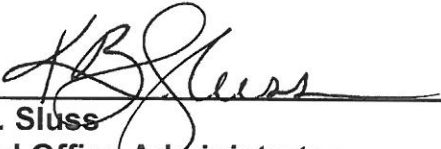
RORY AGAN  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629

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  
carla.rose@labor.nc.gov

via email.

THIS THE 10 DAY OF May 2023.

  
\_\_\_\_\_  
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