

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

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)
)
 COMPLAINANT,)
)
 v.)
)
KEN'S TREE SERVICE, INC.,)
and its successors,)
)
 RESPONDENT.)

DOCKET NO.: OSHANC 2021-6394

INSPECTION NUMBER: 318221660

CSHO ID: C4570

FILED

OCT 27 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 citation issued in this matter, and the undersigned having reviewed the citation, 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 North Carolina.
2. During June 2021, Respondent maintained a worksite at 5526 Kane Drive in Pfafftown, North Carolina.
3. On June 8, 2021, Compliance Safety and Health Officer Sam Atassi, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite at 5526 Kane Drive in Pfafftown, North Carolina.

4. As a result of the inspection, on June 28, 2021, Complainant issued the following Citation:

CITATION NUMBER ONE-REPEAT SERIOUS

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.132(a)	Corrected	\$5,600.00

5. The Respondent submitted a timely Notice of Contest dated July 15, 2021.

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. Reclassify Citation 1, Item 1 from Repeat-Serious to Serious;
- ii. Reduce the penalty associated with Citation 1, Item 1 to \$3000.00;
- iii. Change the standard cited for Citation 1, Item 1 to 29 CFR 1910.132(f)(1).

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. Conduct retraining on relevant arboreal PPE, specifically to include chaps, within 90 days of the entry of this Order. The training shall be documented in writing and shall be made available upon request to NCDOL OSH during any inspection in the next twelve months.

- 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 Consent Order 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 Consent Order brought directly under the Act by Complainant, this Order 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.
- 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 specified above within 60 days of the entry of this Consent Order.

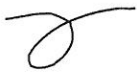
This Oct 27, 2023.


Mary-Ann Leon (Oct 27, 2023 13:55 EDT)
Mary-Ann Leon
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General


Rory Agan (Oct 27, 2023 13:54 EDT)
Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
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Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing Final Consent Order to Continue Hearing upon:

MARC GUSTAFSON
BELL DAVIS PITT
227 W TRADE ST STE 1800
CHARLOTTE NC 28202


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

By depositing 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 30 DAY OF October, 2023.



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