

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

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

**COMPLAINANT,**

**v.**

**HARVEY BARTLEY dba H & B STUMP  
REMOVAL & TREE SERVICE  
*and its successors***

**RESPONDENT.**

) **DOCKET NO.: OSHANC 2021-6404**  
) **INSPECTION NUMBER: 318223088**  
) **CSHO ID: L4494**

**CONSENT ORDER**

**FILED**

**AUG - 8 2023**

**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 Commission, the undersigned makes the following:

**FINDINGS OF FACT**

1. Respondent, Mr. Harvey Bartley, is the owner and sole proprietor of H & B Stump Removal & Tree Service.
2. Respondent does business as H & B Stump Removal & Tree Service in the State of North Carolina.
3. Respondent is in the business of various tree services to include stump and tree removal, predominantly in Greensboro, North Carolina and surrounding areas.

4. Respondent maintains a business address at Post Office Box 79098 in Greensboro, North Carolina.
5. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
6. Complainant is an agency of the State of North Carolina charged by law with the administration and enforcement of the provisions of the North Carolina Occupational Safety and Health Act.
7. This Court has jurisdiction over the parties and the subject matter of this action.
8. On and between June 22, 2021 and July 9, 2021, Mr. Kevin McGuire, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 822 Lisa Run Ct. in Kernersville, North Carolina.
9. As a result of the inspection, on July 22, 2021, Complainant issued the following Serious citation carrying the following proposed abatement date and penalty:

**CITATION NUMBER ONE (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.132(a)	Corrected during inspection	\$1,200.00

10. The Respondent submitted a timely Notice of Contest, on September 3, 2021.
11. 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").
12. Neither party has any objection, procedural or otherwise, to the hearing and entry of this Consent Order.

13. Respondent posted the Notice of Hearing as required by the Rules.
14. Neither party has received notice that any employee intends to participate in this matter as a party, nor has the Commission received any document from an employee indicating such intent.
15. The parties have mutually agreed to resolve the Citation upon the following terms, and seek the undersigned's approval of the same:
  - a. Respondent confirms that the violation alleged in the original Citation and Notification of Penalty has been abated and agrees to continue 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 amendment to the Citation item:
    - i. Reduce the penalty in Citation One, Item 1 from \$1,200.00 to \$700.00.
  - c. Without admitting any allegations of the Citation and Notification of Penalty, or waiving any defense to the Citation, Respondent withdraws its Notice of Contest.
  - d. Each party agrees to bear its own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Consent Order.
  - e. Respondent agrees to pay the new total penalty of **\$700.00** (payment is to be made by check payable to "North Carolina Department of Labor, OSHA Division", Identifying Inspection No. 318223088 on the check, and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center Raleigh, North Carolina 27699-1101) **within thirty (30) days of this Consent Order.**

- f. 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 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.
- g. Neither party is aware of outstanding matters to be resolved by a hearing of this matter.

16. The foregoing terms are reasonable and supported by the underlying facts.
17. 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 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; and
3. The Respondent shall pay the penalty of \$700.00 within thirty (30) days of this Consent Order.

This Aug 8, 2023.

Mary-Ann Leon

Mary-Ann Leon (Aug 8, 2023 13:24 EDT)

MARY-ANN LEON

Hearing Examiner

**CONSENTED TO:**

JOSHUA H. STEIN  
Attorney General

Sage A. Boyd

Sage A. Boyd (Aug 8, 2023 13:23 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

Harvey Bartley

Harvey Bartley (Aug 8, 2023 13:21 EDT)

Harvey Bartley  
Owner and Sole Proprietor of  
H & B Stump Removal & Tree Service  
Post Office Box 79098  
Greensboro, North Carolina 27407  
Telephone No. (336) 855-7589  
handbstump@bellsouth.net

REPRESENTATIVE FOR RESPONDENT

CERTIFICATE OF SERVICE

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

HARVEY BARTLEY  
H&B STUMP REMOVAL AND  
TREE SERVICE  
PO BOX 79098  
GREENSBORO NC 27407

By depositing a copy of same in the United States Mail, Certified Mail, return receipt requested, at Raleigh, North Carolina, and upon:

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

By depositing a copy of 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

By email.

THIS THE 9 DAY OF August 2023.



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Karissa B. Sluss  
Docket and Office Administrator  
NC OSH Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
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