

FILED

MAY 13 2024

NC OSH Review Commission

BEFORE THE NORTH CAROLINA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR FOR)	DOCKET NO: 2021-6425
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
)	NO: 318221348
Complainant,)	
)	CSHO ID: S0077
v.)	
HOUND EARS CLUB, INC.)	<u>CONSENT ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Notice”) on April 9, 2024 (continued to April 10, April 16 and May 9) 2024, Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant. Stephen T. Parascandola, attorney with Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., Raleigh, North Carolina, appeared as counsel for Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the Hearing Complainant and Respondent (i) notified the Undersigned that the parties agree upon certain stipulations (“Stipulations”) and wish to make certain motions (“Motions”), and (ii) request that the Stipulations and Motions be made part of the Hearing record and that a Consent Order be issued. The Stipulations and Motions are as follows.

STIPULATIONS

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"). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Boone, North Carolina. Respondent is in the business of operating the gated community of Hound Ears Club which is a golf course and country club. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(11); all of Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(10).
3. During the period between June 1, 2021 and November 5, 2021, Compliance Safety and Health Officers Kirby Atwood ("CSHO Atwood") and Chris Bellis ("CSHO Bellis"), employed by the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 1860 Hickory Road in Boone, Watauga County, North Carolina (the "Inspection"). The Inspection was conducted pursuant to a reported fatality. CSHO Atwood and CSHO Bellis presented credentials and initiated the Inspection; Russ Curtis, Respondent's General Manager, was on site during the time of the Inspection.
4. As a result of the Inspection, on November 8, 2021, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the "Original Citation"):

CITATION 01 (Willful Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.28(b)(1)(i)	Immediately Upon Receipt	\$ 42,000.00

CITATION 02 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.30(a)(1)	1/3/2022	\$ 4,200.00

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

6. On or about January 10, 2022 Complainant received "Employer's/Respondent's Statement of Position" which requested that formal pleadings be served. The Complaint and The Answer of Respondent were timely served and filed.

7. 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").

8. Complainant and Respondent waived the making of a transcript of this proceeding before the Undersigned, and neither objected, either procedurally or otherwise, to this Hearing and to entry of this Order.

9. Respondent posted the Original Citation and the Hearing Notice as required by the Rules. 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.

10. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated. Complainant confirms that no additional documentation of abatement is required by Complainant.

11. The parties agree that upon granting of Complainant's Motion the penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure, and that the new proposed penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been derived giving consideration of the standard mitigating factors and specific factors applicable to Respondent.

12. Respondent agrees as follows:

a) Respondent agrees to refrain from practices that require employees to work at heights above 4 feet.

b) Should Respondent elect in the future to re-engage in business operations that require employees to work at such heights, then:

- (1) Respondent must perform monthly safety and health inspections;
- (2) Respondent must document these monthly safety and health inspections, and will be expected to produce these records immediately in the event of a future OSHA inspection;
- (3) Respondent will conduct annual fall protection training for all employees who are required or allowed to perform any work at elevated heights.
- (4) Respondent must document the training and will be expected to produce these records immediately in the event of a future OSHA inspection.
- (5) All maintenance work must include all applicable personal protective equipment (PPE) required to complete the work;
- (6) Respondent will be required to conduct a formal fall hazard analysis addressing engineering controls, administrative controls, and PPE that will be utilized prior to commencing any work at elevated heights (this analysis is generally performed by an external safety consultant); and

(7) Respondent will be required to assess installing permanent roof anchors on any homes where work at elevated heights will be performed.

c) Respondent to pay the penalty assessed in this matter within 30 days of the date of this Order. In the event Respondent does not pay as agreed upon, Complainant retains the right to institute collection proceeding as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant has to institute collection proceedings to collect the debt.

Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318221348) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

13. 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 any stage of these proceedings up to and including the filing of this Order.

14. 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 an evidentiary hearing of this matter. The parties agree that this Consent 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 Consent Order brought directly under the Act by Complainant, this Consent Order shall have the full force and effect of a final order. 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 litigation 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"):

to reclassify Citation 01 Item 001 from "Willful Serious" to "Serious".

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"):

to 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.

FINDINGS OF FACT

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

1. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration 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 Hearing.
4. Neither party has any objection, procedural or otherwise, to this Hearing.
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. That Complainant's Motion is hereby **GRANTED**;
2. That Respondent's Motion is hereby **GRANTED**;
3. That the parties shall comply with the terms and conditions as agreed and set out above.

This the 9th day of May, 2024.

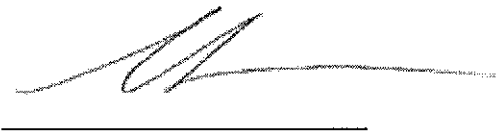
R. Joyce Garrett
R. Joyce Garrett (May 13, 2024 15:21 EDT)

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

Rory Agan
Rory Agan (May 13, 2024 11:04 EDT)

**Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
Raleigh, North Carolina
Attorney for Complainant**



**Stephen T. Parascandola
Partner
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.
Raleigh, North Carolina
Attorney for Respondent**

COURT EXHIBIT 1

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CERTIFICATE OF SERVICE

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

STEPHEN T. PARASCANDOLA
SMITH ANDERSON
PO BOX 2611
RALEIGH, NC 27602-2611

By depositing a copy of the same in the United States Mail, by 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

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101
carla.rose@labor.nc.gov

via email.

THIS THE 15 DAY OF May 2024.

PAUL E. SMITH
CHAIRMAN



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