

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

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)

COMPLAINANT,)

v.)

NATIONAL PIPE & PLASTIC, INC.)
and its successors)

RESPONDENT.)

ORDER

OSHANC NO. 2022-6429

FILED

APR 25 2022

**NC Occupational & Safety
Commission**

THIS MATTER was before the undersigned on complainant's motion to dismiss respondent's notice of contest, filed April 11, 2022.

Counsel for the complainant is Victoria L. Voight, Special Deputy Attorney General; the respondent is represented by Tony C. Jones and David Toolan, Assistant Secretary of respondent.

The complainant's motion states that the complaint conducted an inspection of one of respondent's worksites on June 2, 2021. On October 28, 2021, a closing conference was held with respondent's division manager during which he received and signed OSHA form 59, "Employer and Employee Rights and Responsibilities". This form states that "penalties must be paid within 15 working days after receipt of citation and notification of penalty unless a written request is made either for an informal conference or a contestment of the citation or proposed penalty."

As a result of the inspection, one (1) serious citation item, with a proposed penalty of \$5,000.00, was issued on October 28, 2021, and was served on the respondent by certified mail, return receipt requested, on November 1, 2021, as indicated by the green card that was returned to the complainant. The citation states that "You have the right to contest this Citation and Notice of Penalty now or after an informal conference." It also informed the respondent in bold-faced print of the following, "15 working days after you receive the results of the informal conferences, the citation(s) and/or proposed penalty(ies) will become a final order of the North Carolina Occupational Safety and Health Review Commission and may not be reviewed by any court or agency, unless you file a notice of contestment."

On November 5, 2021, the complainant timely received a letter from respondent requesting an informal conference. On November 16, 2021, an informal conference was held remotely via telephone with respondent. As a result of that conference an informal

settlement agreement was mailed to respondent by certified mail, return receipt requested, which respondent received on December 3, 2021 as indicated by the green card. The cover letter with the informal settlement agreement also reminded the respondent that if the signed settlement agreement or notice of contest is not received by the complainant by the close of business on the 15th working day, the citation and penalty will become a final order and not subject to change.

The 15th working day after December 3, 2021 was December 29, 2021. As of that date, the complainant had not received either the informal settlement agreement or a notice of contest from respondent. The respondent did send a notice of contest by email on December 31, 2021, which was shown as received by the complainant on January 3, 2022 and filed with the Review Commission on January 5, 2022.

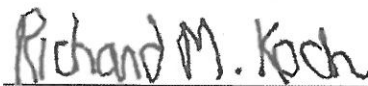
Also, the respondent filed a brief in opposition to complainant's motion to dismiss respondent's notice of contest on April 20, 2022, which has been considered by the undersigned. In that brief, the respondent admits that the above dates of notice are correct but somehow claims that its notice of contest was timely. It contests the applicability of the *Lost Forest* case to this matter and claims excusable neglect, but does not describe the circumstances that constitute the delay in responding.

Pursuant to the case of *Lost Forest Development, LLC v. Commissioner of Labor of the State of North Carolina*, 2021 NCCOA 587, the citation and penalty in the matter became a final order of the North Carolina Occupational Safety and Health Review Commission and may not be reviewed by the undersigned. This case is clearly controlling with reference to this set of facts, although the period of time of the delay in filing the notice of contest was much longer in that case.

IT IS ORDERED that the notice of contest filed by the respondent is hereby stricken and that judgment against the respondent is hereby entered in the amount of \$5,000.00, plus any interest and late payment penalties.

IT IS FURTHER ORDERED that the citation item is affirmed as a serious violation of the cited standard which must be abated immediately if not already done.

This 25th day of April, 2022.



RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

TONY C. JONES
SENIOR COUNSEL
CRH AMERICAS, INC.
900 ASHWOOD PKWY
SUITE 600
ATLANTA, GA 30338

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

VICTORIA VOIGHT
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

via email to carla.rose@labor.nc.gov.

THIS THE 27 DAY OF April 2022.



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