

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

NC OSH Review Commission

COMMISSIONER OF LABOR OF THE STATE OF NORTH CAROLINA
COMPLAINANT,
v.
LENNAR CAROLINAS, LLC and its successors,
RESPONDENT.
DOCKET NO.: OSHANC 2022-6434
INSPECTION NUMBER: 318224458
CSHO ID: N3070
CONSENT ORDER

THIS CAUSE came on for a hearing before the undersigned, Laura J. Wetsch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission pursuant to the Notice of Hearing ("Hearing Notice") at 10:00 a.m. on April 24, 2024, via Lifesize teleconferencing platform. Sage A. Boyd, Assistant Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant, David A. Selden, Attorney with PSGM Law, in Phoenix, Arizona, appeared as counsel pro hac vice for Respondent. 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 agreed upon and consented to certain stipulations ("Stipulations") and wish to make wish to make certain motions ("Motions"). This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth.

At the time of the Hearing, Complainant and Respondent requested that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Consent Order. 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").

2. The Review Commission has jurisdiction over the parties and the subject matter to this action.
3. Respondent, Lennar Carolinas, LLC, is an active and current Delaware limited liability company that maintains a registered agent address in Charlotte, North Carolina. Respondent is in the business of residential construction. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); and Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).
4. On July 16, 2021, Ms. Doreen Makaya, a Compliance Safety and Health Officer, employed by the North Carolina Department of Labor (NCDOL) Occupational Safety and Health (OSH) Division, conducted an inspection of Respondent’s worksite located at homesite #152 at 2202 Delaney Hills Lane in Fuquay Varina, North Carolina (the “Inspection”).
5. At the time of the Inspection, the worksite was a multi-employer worksite and the Respondent was the general contractor at the site.
6. As a result of the Inspection, on January 7, 2022, Complainant issued one citation with five items carrying the following proposed abatement dates and penalties in the Citation and Notification of Penalty (hereafter referred to as the “Original Citation”):

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.451(b)(5)(ii)	Corrected during insp.	\$6,300.00
2	29 CFR 1926.451(c)(2)(i)	Corrected during insp.	\$6,300.00
3a	29 CFR 1926.451(g)(1)	Corrected during insp.	\$6,300.00
3b	29 CFR 1926.451(g)(4)(i)	Immediately Upon Receipt	Grouped with 3a
4	29 CFR 1926.454(j)(2)	Corrected during insp.	<u>\$4,000.00</u>
TOTAL:			\$22,900.00

7. Respondent submitted a timely notice of Contest dated February 1, 2022.
8. The Hearing in this matter was scheduled pursuant to Rules of Procedure of the Safety and Health Review Commission of North Carolina (the “Rules”).

9. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing; waive the making of a transcript; and consent to the conduct of this Hearing by the Undersigned and consent to entry of this Order.
10. Respondent confirms that the Original Citation and the Hearing Notice have been posted as required by the Rules.
11. 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.
12. 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 from Respondent.
13. Respondent agrees to the following safety enhancement that affect all of Respondent's developments, work sites, subcontractors, and employees in the State of North Carolina: to request that all trade partners who work utilizing scaffolding including pump jack scaffolds conduct retraining within ninety (90) days following the date of this Order.
14. Respondent agrees to pay the total penalty assessed in the Original Citation of **\$22,900.00 within thirty (30) days of the date of this 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. Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. **318224458**) and mailed to North Carolina Department of Labor, Financial Services Division. ATTN: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.
15. 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 Consent Order.
16. Complainant and Respondent agree that provided the respective Motions of each party are granted:
 - (a) 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;
 - (b) 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;
 - (c) 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;

- (d) 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; and
- (e) 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 purposes except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.

MOTIONS

1. Complainant moved to do the following (“Complainant’s Motion”):
 - a) **Amend the penalty in Citation One, Item 3a from \$6,300.00 to \$22,900.00;**
 - b) **Delete Citation One, Item 1 and delete the penalty associated with it;**
 - c) **Delete Citation One, Item 2 and delete the penalty associated with it; and**
 - d) **Delete Citation One, Item 4 and delete the penalty associated with it;**

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

Respondent did not object to Complainant’s Motion.

2. Respondent requested that upon the granting of Complainant’s Motion, that the Undersigned consider the following motion by the Respondent (“Respondent’s Motion”):

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 record and the Stipulations at the time of the Hearing as memorialized herein, 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. No affected employee elected party status and no employee raised an objection to the reasonableness of the abatement time.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

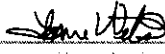
CONCLUSIONS OF LAW

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 Respondent shall pay the penalty of **\$22,9000.00 within thirty (30) days of this Order**; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations.

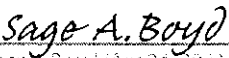
This the Apr 24, 2024.



 Laura Wetsch (Apr 24, 2024 16:43 EDT)

Laura J. Wetsch
 Hearing Examiner

CONSENTED TO:



 Sage A. Boyd (Apr 24, 2024 14:49 EDT)

Sage A. Boyd
 Assistant Attorney General
 North Carolina Department of Justice
 sboyd@ncdoj.gov
 ATTORNEY FOR COMPLAINANT



 David A. Selden (Apr 24, 2024 11:44 PDT)

David A. Selden
 Attorney at Law
 PSGM Law
 dselden@psgmlaw.com
 ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

DAVID SELDEN
PSGM LAW
7901 N 16TH ST #200
PHOENIX, AZ 85020

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:

SAGE BOYD
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 26 DAY OF April 2024.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
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