

JAN 12 2024

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.

STANLEY MARTIN HOMES, LLC and its successors,

RESPONDENT.

) DOCKET NO.: OSHANC 2022-6444
) INSPECTION NUMBER: 318225844
) CSHO ID: K0085

FINAL ORDER
(with consent)

THIS CAUSE came on for a pre-hearing conference before the undersigned Hearing Examiner R. Joyce Garrett, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission pursuant to the Notice of Pre-Hearing Conference ("Hearing Notice") at 10:00 a.m. on January 12, 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. Jonathan M. Crotty, Attorney with Parker Poe Adams & Bernstein, LLP, in Charlotte, North Carolina, appeared as counsel for Respondent.

Pursuant to the Hearing Notice, 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, including reaching a resolution without the necessity for further hearing. 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 notified the Undersigned that the parties agree upon certain stipulations ("Stipulations") and 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 Final 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”), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§ 95-133 et seq.
2. Pursuant to N.C.G.S. § 95-135, the Review Commission has jurisdiction over the parties and the subject matter to this action.
3. Respondent is a Delaware limited liability company, authorized to do business in North Carolina on September 9, 2013; it is active in North Carolina, which does business in the State of North Carolina and maintains a place of business in Raleigh, 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 August 2, 2021, Occupational Safety and Health Compliance Officers employed by the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 1982 Custom Lane, Lot #203, Apex, North Carolina (the “Inspection”).
5. At the time of the Inspection, the site was a multi-employer site and the Respondent was the general contractor at the site.
6. As a result of the Inspection, on January 18, 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)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
1	29 CFR 1926.300(c)	Corrected during insp.	\$6,300.00
2a	29 CFR 1926.501(b)(13)	Corrected during insp.	\$6,300.00
2b	29 CFR 1926.502(d)(17)	Corrected during insp.	Grouped with 2a
3	29 CFR 1926.1053(b)(1)	Corrected during insp.	\$6,300.00
4	29 CFR 1926.1053(b)(9)	Corrected during insp.	<u>\$6,300.00</u>
<b>TOTAL:</b>			<b>\$25,200.00</b>

7. Respondent submitted a timely notice of Contest dated March 28, 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 Final 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 agrees that the violations alleged in the Original Citation 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.
13. Respondent agrees to the following safety enhancements that affect all of Respondent's developments, work sites, subcontractors, and employees in the State of North Carolina, for a duration of one-year from the date of this Final Order ("the one-year enhancement period"):
  - (a) Use of a third party consultant to conduct unannounced safety inspections of Respondent's developments or work sites, and to correct safety issues noted during such inspections;
  - (b) Conduct comprehensive tracking of subcontractor safety violations, including making this information available to all of Respondent's project managers;
  - (c) Mandate the issuance of progressively higher disciplinary action(s) to include financial penalties against subcontractors found to have violated safety requirements, including eventual removal from jobsites and disqualification from future work with Respondent;
  - (d) Use of monthly "toolbox" safety meeting with subcontractors, and regular divisional and corporate safety meeting and training within Respondent's organization;
  - (e) Develop an improved safety checklist for use by construction managers during frequent and regular worksite inspections;
  - (f) Improve the orientation process for new subcontractors, including proof of the subcontractor's safety program and explanation of Respondent's safety requirements;
  - (g) Participate in the annual OSHA National Safety Standdown;

- (h) Improve safety signage to include language surrounding potential safety risks, required safety protocols/program;
  - (i) Require 10 hour OSHA training for all field employees, and within 60 days of on-boarding for new employees; and
  - (j) Require First-Aid and CPR certification for all field employees.
14. Respondent agrees to provide a report regarding the completion of the aforementioned safety enhancements to the NCDOL-OSH Compliance Division no later than thirty (30) days following the end of the one-year enhancement period, mailed to the following address:
- NC Department of Labor  
Occupational Safety & Health Division  
ATTN: District 7 Compliance Supervisor  
1101 Mail Service Center  
Raleigh, NC 27699-1101
15. Respondent agrees to pay the total penalty assessed in the Original Citation of **\$25,200.00 within thirty (30) days of the date of this Final 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. 318225844) and mailed to North Carolina Department of Labor, Financial Services Division. ATTN: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.
16. 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 Final Order.
17. 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 Final 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 Final Order brought directly under the Act by Complainant, this Final 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

Complainant moved to do the following (“Complainant’s Motion”):

**Reclassify all Items in Citation Number One to Non-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”):

**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.



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OSHANC 2022-6444

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 **\$25,200.00 within thirty (30) days of this Order**; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations.

Effective the 12th day of January, 2024.

  
\_\_\_\_\_  
R. Joyce Garrett  
Hearing Examiner

**CONSENTED TO:**

**Sage A.  
Boyd**

Digitally signed by Sage  
A. Boyd  
Date: 2024.01.16  
08:27:20 -05'00'

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

**Jonathan M.  
Crotty**

Digitally signed by  
Jonathan M. Crotty  
Date: 2024.01.15 09:11:40  
-05'00'

Jonathan M. Crotty  
Partner, Attorney at Law  
Parker Poe Adams & Bernstein, LLP  
jonathancrotty@parkerpoe.com  
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

JONATHAN M CROTTY  
PARKER POE ADAMS & BERNSTEIN LLP  
620 S TRYON ST STE 800  
CHARLOTTE NC 28202

SAGE A BOYD  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH NC 27602

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  
carla.rose@labor.nc.gov

via email.

THIS THE 22 DAY OF January 2024.

  
\_\_\_\_\_  
Karissa B. Sluss  
Docket Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
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