

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

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| COMMISSIONER OF LABOR OF THE |) | |
| STATE OF NORTH CAROLINA, |) | DOCKET NO: 2022-6483 |
| |) | |
| COMPLAINANT, |) | INSPECTION NO: 318243680 |
| |) | |
| |) | CSHO ID.: N6073 |
| |) | |
| v. |) | |
| |) | |
| |) | FINAL ORDER |
| IZA'S FRAMING, LLC |) | |
| |) | |
| <i>and its successors,</i> |) | |
| |) | |
| RESPONDENT. |) | |

This matter was presented to the undersigned on Complainant's Motion for Default or Default Judgment; or in the alternative, to Dismiss, pursuant to Commission Rule .0309 for Respondent's failure to file and serve an Answer to Complainant's Complaint. Having reviewed the file in its entirety, the undersigned finds as follows:

1. Via certified mail, the Complainant served Respondent with a Citation for serious violations of workplace safety rules, including specifically four items where Respondent permitted employees to work on the second story of a two-story residential building, at least thirteen feet above the ground, without fall protection and with improper ladders, thereby exposing employees to risk of serious injury or death.
2. The Citation was sent to Respondent at 3445 Kernstown Drive, Raleigh, NC 27610 and marked "Attention Izael Morales, Owner." The certified mail was received by Izael Morales on July 7, 2022, as evinced by Mr. Morales' signature on Postal Service Form 3811 (the green card).
3. Mr. Morales requested and participated in an informal conference which took place on July 15, 2022.
4. On or around August 5, 2022 Mr. Morales sent an email indicating that he wished to contest the Citation.
5. On August 15, 2022 Mr. Morales was served with a Notice of Docketing which instructed him to file a Statement of Position "within 20 days of the day you receive this

form." The Notice of Docketing was served upon Mr. Morales at the same address where the Citation was sent.

6. On or around August 31, 2022 Mr. Morales sent a Statement of Position to the Commission. The Statement of Position also listed the Respondent's address as the same address that was used for previous mailings.
7. The form used for the Statement of Position instructs the Respondent to provide separate responses for each Citation Item, indicating in separate columns for each item whether the violation, the proposed penalty, and/or, the abatement is contested. Mr. Morales completed the form by identifying the Inspection Number and the Docket Number in Columns 1 and 2 of the Statement of Position and then checking the boxes to indicate that the violation, the proposed penalty and the abatement were contested.
8. Mr. Morales also checked the box indicating that a formal statement of pleadings by the Department of Labor was requested. Where the request for formal pleadings appears on the form, a Respondent is advised that "If you request or receive a formal statement of pleadings, you must file a formal answer *within 20 days* of receipt of the complaint." (*Emphasis in original*).
9. Thereafter, on or around September 26, 2022, Complainant filed and served a formal Complaint upon the Respondent, via first-class U.S. mail, at the address previously used for mailings. A courtesy copy was also sent to the Respondent at the email address that Mr. Morales had previously used to communicate with Complainant and with the Commission.
10. The Complaint stated at the top, emphasized by bold-faced, underlined Uppercase type: "WITHIN 20 DAYS AFTER RECEIPT OF THE COMPLAINT, RESPONDENT MUST FILE AN ANSWER WITH THE REVIEW COMMISSION.
11. On February 6, 2023 Complainant filed the instant Motion for Default / Motion to Dismiss based upon Respondent's failure to have filed a responsive pleading to the September 26, 2022 Complaint. The Complaint was served upon Respondent by U.S. mail addressed to Respondent at 3445 Kernstown Drive, Raleigh, NC 27610, the address that Respondent had provided and where the Notice of Docketing had been served. Complainant also sent a courtesy copy of the Motion for Default / Motion to Dismiss to the email address from which Respondent had previously corresponded.
12. On February 15, 2023 Mr. Morales sent an email on behalf of the Respondent, from the email address where Complainant had provided a courtesy copy of the Complaint, and which stated in pertinent part: "the reason I didn't get my answers back to the department of osha . . . is because I didn't understand what exactly I have to do . . . im [sic] still looking for someone to help me to do a good letters to fix this matter" Mr. Morales noted that he had difficulty with the English language.

13. The undersigned will treat Mr. Morales' response to the Complainant's motion as a request for an extension of time. However, Mr. Morales did not provide a date by which he would provide an answer nor has he communicated with the Commission in the five weeks since sending his February 15, 2023 response. The undersigned notes that Mr. Morales has previously demonstrated understanding of Commission deadlines, has communicated via email with the Commission prior to the filing of the instant motion, and by his own admission, has been aware that he needed assistance since September 2022 but did not provide any evidence of his efforts to secure assistance during the past five months.
14. It is also significant that, based on the Commissioner's Complaint, there are serious safety violations that include a lack of training for Respondent's employees.
15. Commission Rule .0105 provides that "requests for extension of time for the filing of any pleading . . . must be received in the Review Board office three days in advance of the date on which the pleading . . . is due to be filed."
16. Commission Rule .0304(2) provides that "the party against whom a complaint was filed shall file an answer" within 20 days after service of the Complaint.
17. Notwithstanding the obstacles that Mr. Morales faces as a *pro se* litigant who has difficulty expressing his position via the English language, these are not proper grounds for the failure to meet deadlines, to communicate with the Commission in a timely manner, or otherwise follow the Commission's rules. A *pro se* litigant is not exempt from complying with relevant procedural rules. The rules "must be applied equally to all parties . . . without regard to whether they are represented by counsel." *Brown v. Kindred Nursing Ctrs.*, 346 N.C. 76, 84, 692 S.E.2d 87, 92 (2010).
18. Commission Rule .0309 provides, in pertinent part, that a failure of a party to serve a pleading "may result in a declaration of default and decision against the defaulting party." Given the circumstances of this case, including the amount of time that has passed without evidence of efforts on the part of the Respondent to comply with the Commission's rules or to prosecute its contest of the violations, and that the Respondent's conduct serves to impede the Commissioner's duties with respect to the N.C. Occupational Safety and Health Act, the undersigned rules as follows:
 - a) To the extent that Respondent's February 15, 2023 communication is a request for an extension of time to file an Answer that request is denied for failure to provide good cause to support the request;
 - b) The Complainant's Motion for Default and Default Judgment is hereby GRANTED. Respondent is ORDERED to pay the penalties as assessed within thirty days of the entry of this order.

IT IS THEREBY ORDERED, ADJUDGED AND DECREED that a Final Judgment is entered against Iza's Framing LLC and its successors and that Respondent shall pay total penalties in the amount of \$6,000.00 within 30 days of the entry of this order.

This the 23rd day of March 2023.

Mary-Ann Leon

Mary-Ann Leon
Hearing Examiner

CERTIFICATE OF SERVICE

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

IZAEL MORALES
IZA'S FRAMING LLC
3445 KERNSTOWN DR
RALEIGH NC 27610

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

JONATHAN JONES
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
carla.rose@labor.nc.gov

via email.

THIS THE 24 DAY OF March 2023.



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