

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

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA

COMPLAINANT,

v.

BAKER ROOFING COMPANY
and its successors,

RESPONDENT.

) DOCKET NO.: OSHANC 2022-6494
) INSPECTION NUMBER: 318244258
) CSHO ID: W2054

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 June 26, 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. Stephen T. Parascandola, Attorney with Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, Raleigh, North Carolina, appeared as counsel 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 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. On May 18, 2022, Compliance Safety and Health Officer (CSHO) Jennifer Busick (now, Boone), accompanied by CSHO Ushang Desai, both employed by the North Carolina Department of Labor (NCDOL), inspected Respondent's worksite located at 198 Kapp Street in Winston-Salem, North Carolina, pursuant to an accident referral ("the Inspection").
4. At all times relevant to the inspection in this matter, Respondent, Baker Roofing Company, was a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which did business in the State of North Carolina and maintained a place of business in Raleigh, North Carolina. Respondent was in the business of construction. Specifically, Respondent was a commercial roof contractor. Respondent was an "employer" within the meaning of N.C.G.S. §95-127(11); and Respondent's employees referred to in this matter were "employees" within the meaning of N.C.G.S. §95-127(10).
5. As a result of the Inspection, on August 18, 2022, Complainant issued one citation with three 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 1926.501(b)(4)(i)	Corrected during insp.	\$7,000.00
2	29 CFR 1926.501(b)(1)	Immediately upon receipt	\$4,000.00
3	29 CFR 1926.21(b)(2)	9/16/2022	<u>\$7,000.00</u>
TOTAL:			\$18,000.00

6. Respondent submitted a timely notice of Contest dated September 22, 2022.
7. On March 31, 2023, Respondent's Articles of Organization including Articles of Conversion (Conversion to Limited Liability Company) filed at the Office of the North Carolina Secretary of State became effective. The limited liability company formed pursuant to the conversion of "Baker Roofing Company" is named "Baker Roofing Company, LLC".

8. At the time of the Hearing, Baker Roofing Company, LLC is the successor entity for the purpose of this matter before the Review Commission. Baker Roofing Company, LLC is an active and current North Carolina limited liability company, 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 construction. Specifically, Respondent is a commercial roof contractor. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11); and Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. §95-127(10).
9. The Hearing in this matter was scheduled pursuant to Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
10. 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.
11. Respondent confirms that the Original Citation and the Hearing Notice have been posted as required by the Rules.
12. 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.
13. Respondent confirms that all violations alleged in the Original Citation have been abated. Complainant confirms that no additional documentation of abatement is required from Respondent.
14. Respondent agrees to the following safety enhancements that affect all of Respondent's developments, worksites, subcontractors, and employees in the State of North Carolina:
 - a. Develop and (or) revise and implement protective measures related to employees working around skylights including the development of and (or) revisions to Respondent's company safety policy as well as revisions to Respondent's job-specific tool box training, and skylight specific training upon hiring;
 - b. Develop and (or) revise and implement policies involving skylights to include requiring employees who work on roofs with skylights to complete Respondent's skylight fall protection training and only permit and (or) assign employees who have completed the skylight fall protection training to work on roofs with skylights;
 - c. Develop and (or) revise Respondent's company policy to require that all holes, including skylights, are to be guarded or covered, secured, and marked prior to the commencement of any work on a roof at a jobsite, or require that employees exposed to holes, including skylights, be protected by personal fall arrest systems;

- d. Conduct and document jobsite pre-work safety inspections for all work where skylights are present, such documentation shall be maintained on site by Respondent for the duration of the project and made available to the NCDOL-OSH Division upon reasonable request; and
 - e. Conduct training and (or) re-training for employees, including job site foremen or team leads, on fall protection, specifically involving skylights, within thirty (30) days of the date of this Order, and such documentation shall be made available to the NCDOL-OSH Division upon reasonable request.
15. Respondent agrees to pay the new total penalty of **\$12,600.00 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. **318244258**) 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 Consent 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 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) **Reclassify Citation One, Item 2 to Non-Serious and amend the associated penalty to \$2,800.00; and**
 - b) **Reclassify Citation One, Item 3 to Non-Serious and amend the associated penalty to \$2,800.00.**

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.

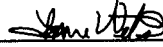
CONCLUSIONS OF LAW

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 **\$12,600.00 within thirty (30) days of this Order**; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations.

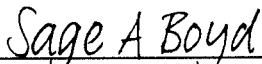
This the _____.



Laura J Wetsch (Jun 26, 2024 11:26 EDT)


Laura J. Wetsch
Hearing Examiner

CONSENTED TO:



Sage A Boyd (Jun 26, 2024 11:25 EDT)

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



Stephen T. Parascandola
Smith, Anderson, Blount, Dorsett, Mitchell
& Jernigan, LLP
sparascandola@smithlaw.com
ATTORNEY FOR RESPONDENT

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:

SAGE 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 28 DAY OF June 2024.

PAUL E. SMITH
CHAIRMAN



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