

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

COMMISSIONER OF LABOR OF )  
THE STATE OF NORTH CAROLINA, )

Complainant, )

v. )

BLACK STONE NC )  
CONSTRUCTION, INC. )

and its successors, )

Respondent. )

Docket No.: OSHANC 2022-6501

Inspection No.: 318248697

CSHO ID: A0177

Order

THIS CAUSE came on for hearing and was heard before the undersigned Laura J. Wetsch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on March 18, 2024 at 10 a.m., via Lifesize teleconferencing platform, pursuant to a Notice of Hearing. The Notice of Hearing was posted as required by the Rules of the North Carolina Occupational Safety and Health Review Commission. The Notice of Hearing explicitly stated that the purpose of the hearing is to determine all matters relating to Respondent’s Notice of Contest in this matter.

Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, appeared remotely for Complainant. Michael C. Lord, Attorney with Williams Mullen, Raleigh, North Carolina, appeared remotely for Respondent. No other affected employee of Respondent 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 incorporated into the Findings of Fact below.

As a result of this Hearing, based upon the record and the consideration of the stipulations of the parties, the Undersigned makes the Findings of Fact as hereinafter set forth. During the Hearing, Complainant made the motion set forth in Complainant’s Motion. Complainant’s Motion being granted, Respondent made the Motion set forth in Respondent’s Motion.

**FINDINGS OF FACT**

Based on the stipulations of the parties at the time of Hearing and the record, the Undersigned makes the following Findings of Fact:

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 of this action.
3. Respondent is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in High Point, North Carolina. Respondent was a framing contractor engaged in the business of constructing buildings and other structures and managing or supervising subcontractors engaged in such construction work. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); 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 21, 2022, an Occupational Safety and Health Compliance Officer employed by the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 126 Jasper Court Lot #49 in King, North Carolina (the “Inspection”).
5. As a result of the Inspection, on August 19, 2022, Complainant issued the following Citation and Notification of Penalty (herein referred to as the “Original Citation”):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.20(b)(2)	Corrected	\$ 2,800.00
002	29 CFR 1926.501(b)(13)	Immediately Upon Receipt	\$ 2,800.00

6. Respondent submitted a timely Notice of Contest dated September 30, 2022. On or about October 27, 2022, Complainant received “Employer’s/Respondent’s Statement of Position.”
7. The Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the “Rules”).
8. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing; both parties consent to the conduct of this Hearing by the Undersigned, and to entry of this Final Order. Complainant and Respondent confirm that there has been no employee objection in this matter to the reasonableness of any abatement period.

9. Respondent posted the Original Citation and the Hearing Notice as required by the Rules. 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 time.

10. 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 by Complainant.

11. The parties agree that upon granting of Complainant's Motion that the proposed penalty for each Item designated in the Original Citation has been calculated in accordance with the standard Field Operations Manual procedure; and the new proposed penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been derived in consideration of the standard mitigating factors and specific factors applicable to Respondent.

12. Respondent agrees:

1. To undertake the following safety program enhancements for a period of one-year from the date of the entry of this Order:
  - a. A highly qualified independent contractor, Exceed Safety, will continue to offer support, including review of subcontractors' safety programs and inspection reports;
  - b. Exceed Safety will also be provided a list of jobsites by Respondent to visit and do spot checks of compliance and document the findings;
  - c. Respondent will set up an electronic safety inspection reporting/tracking system (most likely SafetyReports) and have all subcontractors complete documented weekly jobsite inspections;
  - d. Forward results of documented inspections performed by Exceed Safety and subcontractors to the General Contractor on jobsites within a reasonable period following the completion of the inspections;
  - e. Complete a documented inspection of all leased ride-on equipment (forklifts, cranes, scissor lifts, boom lifts) at the jobsite prior to use (or otherwise upon delivery)
    - i. Specifically, as to slings: Because Black Stone will not know exactly the type of work to be performed with the leased equipment, the independent operator/lessee must either (a) provide the slings, or (b) order the slings from Black Stone. If the latter, Black Stone will provide slings in good working order and with a permanent affixed and legible marking indicating the recommended safe working load. It will then be the responsibility of the operator/lessee to retire from service any sling that is defective (or not use the sling if it is underrated for the actual work).
  - f. Retrain on fall protection and document the same all subcontractors whose employees are reasonably expected to work at heights. Black Stone will make the

resulting records available to the Commissioner upon reasonable request during inspections of NCDOL.

2. Select an employee or management official to attend a 10/30-hour OSHA course within 120 days of the execution of this Order.
3. Pay the penalty of \$4,760.00 assessed in this matter within 30 days of the date of this Final Order.

In the event Respondent does not pay the penalty as stated above, all unpaid amounts shall become immediately due and payable, and the Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant institutes 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. **318248697**) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. Credit card payment may also be arranged.

13. 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.

14. Complainant and Respondent agree that provided the respective Motion of each party is 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 an 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 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 a waiver of any defense, 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;

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 further 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”):

1. Delete Citation 1, Item 1 and associated penalty;
2. Amend Citation 1 Item 2 by changing the penalty to \$4760.00 and amending the AVD of the citation item to “a) jobsite – where subcontractor employees were not utilizing fall protection working at heights greater than 6 feet while conducting roofing operations. Subcontractor employees were engaged in installing roofing components at a height measured from the drip edge of 10 feet 4 inches to the hard compacted ground below.”
3. Upon entry of this Order, Complainant shall withdraw the citation from docket 2023-6567.

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”):

1. 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.

**CONCLUSIONS OF LAW**

1. 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.
2. Respondent is an “employer” within the meaning of N.C.G.S. §95-127(11); Respondent’s employees referred to in the Complaint are “employees” within the meaning of N.C.G.S. §95-127(10).
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
4. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.

Based on the foregoing Findings of Fact and Conclusions of law, **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

1. That Complainant's Motion is hereby **GRANTED**;
2. That Respondent's Motion is hereby **GRANTED**; and
3. That the parties shall comply with the terms and conditions set forth in this Order.

Effective the 18th day of March, 2024.

**SO ORDERED**

  
\_\_\_\_\_  
Laura J Wetsch (Mar 19, 2024 16:24 EDT)

\_\_\_\_\_  
Laura J. Wetsch  
Hearing Examiner

CERTIFICATE OF SERVICE

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

MICHAEL C. LORD  
WILLIAMS MULLEN  
PO BOX 1000  
RALEIGH, NC 27602

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:

RORY AGAN  
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 20 DAY OF March 2024.

PAUL E. SMITH  
CHAIRMAN



---

Karissa B. Sluss  
Docket Administrator  
NC Occupational Safety &  
Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
NCOSHRC@oshrc.labor.nc.gov