

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

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA

) DOCKET NO: 2022 - 6516
) INSPECTION NO: 318247863
) CSHO ID: E1150

Complainant,

v.

KEYSTONE GROUP, INC.
and its successors

) CONSENT ORDER

Respondent.

THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on March 19, 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. Ben J. Rafte, Attorney with Isaacson Sheridan, Greensboro, 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 as set forth in Court’s Exhibit 1 admitted into evidence.

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, which does business in the State of North Carolina and maintains a place of business in Burlington, North Carolina. Respondent is a general 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 6, 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 372 Macallan Drive, Burlington, North Carolina (the “Inspection”).

5. As a result of the Inspection, on October 21, 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 1926.451(c)(2)(ii)	Immediately Upon Receipt	\$ 5,800.00
002	29 CFR 1926.451(c)(2)	Immediately Upon Receipt	\$ 5,800.00
003	29 CFR 1926.451(e)(1)	Immediately Upon Receipt	\$ 5,800.00

6. Respondent submitted a timely Notice of Contest dated December 13, 2022. On or about January 12, 2023, Complainant received “Employer’s/Respondent’s Statement of Position” which requested that formal pleadings be served. The Complaint was filed February 1, 2023 and Respondent’s Answer was filed March 23, 2023.

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

- a) To document site scaffold inspections on sites Respondent oversees;
- b) To ensure site scaffolding inspections are completed by trained subcontractors or Respondent's superintendents on Respondent's jobsites for a period of 18 months following entry of this Order. Nothing shall require Respondent to stop conducting inspections following the eighteen months;
- c) To retain records of the inspections for a period of eighteen months from the time of inspection and produce to NCDOL-OSH during an inspection; and,
- d) To pay the penalty of \$11,400.00 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 amount 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. 318247863) 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"):

- a) Reduce the penalty on Citation 1, Item 1 to \$3,800.00;
- b) Reduce the penalty on Citation 1, Item 2 to \$3,800.00; and,
- c) Reduce the penalty on Citation 1, Item 3 to \$3,800.00.

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

Respondent did not object to Complainant's Motion.

Respondent requested that upon the granting of Complainant's Motion that the Undersigned consider the following motion by the Respondent ("Respondent's Motion"):

- a) 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 the Stipulations contained in Court Exhibit 1 and this Order.

Effective the 19th day of March, 2024.

SO ORDERED

R. Joyce Garrett

R. Joyce Garrett (Mar 19, 2024 12:33 EDT)

R. Joyce Garrett
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General

Rory Agan

Rory Agan (Mar 19, 2024 11:02 EDT)

Rory Agan
Special Deputy Attorney General
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Counsel for Respondent

Court Exhibit 1

Stipulations

1. The Hearing in this matter shall be conducted via the video conferencing platform known as “Lifesize”.
2. The presence of a court reporter during the Hearing is waived.
3. The Hearing’s audio and video will be recorded through Lifesize (the “Recording”).
4. The Recording will be the official record of the Hearing.
5. The Recording will be made available to all counsel after the Hearing concludes (the Host will send a link to the Recording as soon as is practicable after the Hearing concludes).
6. The Hearing Examiner shall control when the Hearing is on and off the record.
7. The Hearing will be deemed to have taken place in Raleigh, North Carolina.
8. 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.
9. Pursuant to N.C.G.S. §95-135, the Review Commission has jurisdiction over the parties and the subject matter to this action. The Complainant filed Complainant’s Complaint in accordance with Rules .0303 and .0304 of the Rules of Procedure adopted by the Review Commission.
10. Respondent, Keystone Group, Inc., is a North Carolina corporation, duly organized and existing under the laws of the State of North, which does business in the State of North Carolina and maintains a place of business in Burlington, North Carolina.
11. Respondent is a general contractor engaged in the business of constructing buildings and other structures and managing or supervising subcontractors engaged in such construction work.
12. 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).
13. On July 6, 2022, an Occupational Safety and Health Compliance Officer employed by the North Carolina Department of Labor, conducted an inspection (the “Inspection”) of

Respondent's worksite located at 372 Macallan Drive, Burlington, North Carolina (the "Work Site").

14. At the time of the Inspection the Work Site was a multi-employer site and the Respondent was the general contractor at the Work Site.

15. As a result of the Inspection, on October 21, 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>
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003	29 CFR 1926.451(e)(1)	Immediately Upon Receipt	\$ 5,800.00

16. Respondent submitted a timely Notice of Contest dated December 13, 2022.

17. On or about January 12, 2023, Complainant received "Employer's /Respondent's Statement of Position" which requested that formal pleadings be served.

18. Complainant's Complaint was filed February 1, 2023 and Respondent's Answer was filed March 23, 2023.

19. 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").

20. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned.

21. Respondent posted the Original Citation and the Notice of Hearing as required by the Rules of the Review Commission. 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.

CERTIFICATE OF SERVICE

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

BENJAMIN J. RAFTE
ISAACSON SHERIDAN
804 GREEN VALLEY RD
STE 200
GREENSBORO, NC 27408

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
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