

FILED

OCT 8 2024

BEFORE THE NORTH CAROLINA

NC OSH Review Commission

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR FOR)	DOCKET NO: 2023 - 6523
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
)	NO: 318252376
Complainant,)	
)	CSHO ID: X9104
v.)	
GUARANTEED SUPPLY CO., INC.)	<u>CONSENT ORDER</u>
and its successors)	
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 October 8, 2024 at 10 a.m., via Lifesize teleconferencing platform, pursuant to a Notice of Hearing. 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. Wesley Ferree, Vice President of Guaranteed Supply Co., Inc., 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 Greensboro, North Carolina. Respondent is engaged in the business of providing construction products and materials. 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 September 15, 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 230 Roberson Street, Fayetteville, North Carolina (the “Inspection”).

5. As a result of the Inspection, on December 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 1910.212(a)(1)	Immediately Upon Receipt	\$ 4,000.00
002	29 CFR 1910.212(a)(2)	Immediately Upon Receipt	\$ 4,000.00
003	29 CFR 1910.147(c)(1)	Immediately Upon Receipt	\$ 4,000.00
004	29 CFR 1910.147(c)(5)(i)	Immediately Upon Receipt	\$ 4,000.00

CITATION 02 (NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.132(d)(2)	Immediately Upon Receipt	\$ 0.00
002	29 CFR 1910.147(c)(7)(iv)	Immediately Upon Receipt	\$ 0.00

6. Respondent submitted a timely Notice of Contest. "Employer's/Respondent's Statement of Position" was filed February 24, 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 to:

a) Develop and implement a machine guarding audit program to ensure all guards throughout the facility are in place and functional. The program shall be in writing and include all types of machinery guards, including, but not limited to, physical barriers and light curtains, as well as all machine interlocks. The audit checklist shall be developed, and the first audit conducted within 120 days of the date of the Consent Order filed in this matter. Periodic audits shall be conducted every six (6) months thereafter. Complete records of all audits shall be maintained for a period of three (3) years and made available to the OSH Division upon request during any future inspection.

b) pay the penalty of \$10,400.00 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. 318252376) 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 01, Item 001 to \$ 2,600.00;
- b) Reduce the penalty on Citation 01, Item 002 to \$ 2,600.00;
- c) Reduce the penalty on Citation 01, Item 003 to \$ 2,600.00; and,
- d) Reduce the penalty on Citation 01, Item 004 to \$ 2,600.00.

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 8th day of October, 2024.

SO ORDERED

R Joyce Garrett
R Joyce Garrett (Oct 8, 2024 15:03 EDT)

R. Joyce Garrett
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General

Rory Agan

Rory Agan (Oct 8, 2024 11:05 EDT)

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629/Labor Section
Raleigh, NC 27602-0629
Tel. 919-716-6681
Email: ragan@ncdoj.gov
Counsel for Complainant

Wesley Ferree

Wesley Ferree (Oct 8, 2024 10:45 EDT)

Wesley Ferree
Vice President
Guaranteed Supply Co., Inc.
1211 Rotherwood Road
Greensboro, NC 27406
Tel. 336-337-3492
Email: wesleyf@gscnc.com
Representative 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, Guaranteed Supply Co., Inc., 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 Greensboro, North Carolina.
11. Respondent is engaged in the business of providing construction products and materials.
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 September 15, 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 230 Roberson Street, Fayetteville, North Carolina (the "Work Site").

14. As a result of the Inspection, on December 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 1910.147(c)(1)	Immediately Upon Receipt	\$ 4,000.00
004	29 CFR 1910.147(c)(5)(i)	Immediately Upon Receipt	\$ 4,000.00

CITATION 02 (NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.132(d)(2)	Immediately Upon Receipt	\$ 0.00
002	29 CFR 1910.147(c)(7)(iv)	Immediately Upon Receipt	\$ 0.00

15. Respondent submitted a timely Notice of Contest.

16. 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").

17. 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.

18. 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:

WESLEY FERREE
GUARANTEED SUPPLY CO., INC.
1211 ROTHERWOOD RD.
GREENSBORO, NC 27406

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

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

via email.

THIS THE 9 DAY OF October 2024.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
1101 Mail Service Center
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