

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

**COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA**

) **DOCKET NO: OSHANC 2023-6545**
) **INSPECTION NUMBER: 318259785**
) **CSHO ID: E7152**
)
)
)

COMPLAINANT,

v.

**H&H CONSTRUCTORS OF
FAYETTEVILLE, LLC
DBA DREAM FINDERS HOMES, LLC
and its successors**

) **CONSENT ORDER**
)
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)
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)
)

RESPONDENT.

FILED

MAY 7 2024

NC OSH Review Commission

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”) on May 7, 2024 at 10:00 a.m. via Lifesize teleconferencing platform. Madison L. Beveridge, Assistant Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant; Jonathan Crotty, attorney with Parker Poe, Charlotte, North Carolina, appeared as counsel for Respondent.

At the Hearing Complainant and Respondent (i) notified the Undersigned that the parties agree upon certain stipulations (“Stipulations”) and wish to make certain motions (“Motions”), and (ii) request that the Stipulations and Motions be made part of the Hearing record and that a Consent Order be issued. 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”). The Review Commission has jurisdiction over the parties and the subject matter to this action.

2. 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 Raleigh, North Carolina. Respondent is in the business of construction.

3. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); all of Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).

4. On February 13, 2023, Compliance Safety and Health Officer Horace Dozier, employed by the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 1145 Breadsell Lane, Wake Forest, North Carolina (the “Inspection”). The Inspection was conducted pursuant to Special Emphasis Program for Construction Activities under Operational Procedure Notice 123Y. CSHO Dozier presented credentials and initiated the Inspection; Charles Peacock, Respondent’s Construction Manager, was on site during the time of the Inspection.

5. As a result of the Inspection, on March 17, 2023, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the “Original Citation”):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.100(b)	Corrected During Inspection	\$5,200.00
2	29 CFR 1926.102(b)(1)	Corrected During Inspection	\$13,051.80
3	29 CFR 1926.501(b)(13)	Corrected During Inspection	\$13,051.80
4a	29 CFR 1926.502(b)(1)	Corrected During Inspection	\$13,051.80
4b	29 CFR 1926.502(b)(2)	Corrected During Inspection	GROUPED

CITATION 02 (Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.178(1)(6)	Immediately Upon Receipt	\$0.00

6. Respondent submitted a timely Notice of Contest dated April 24, 2023.

7. On or about May 15, 2023, Complainant received “Employer’s/Respondent’s Statement of Position” which requested that formal pleadings be served. The Complaint and The Answer of Respondent were timely served and filed.

8. 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”).

9. Complainant and Respondent waived the making of a transcript of this proceeding before the Undersigned, and neither objected, either procedurally or otherwise, to this Hearing and to entry of this Order.

10. 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 period.

11. 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 from Respondent.

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

13. Respondent agrees to:

(a) Ensure that job site inspections are performed on all job sites. The inspections shall ensure employees working at heights greater than 6 feet are protected from fall hazards in accordance with 1926.501. The job site inspections shall be documented and maintained for a period of three (3) years. These job site inspections shall be made available to the OSH Division upon request related to an OSHA inspection. In addition, the Respondent recognizes its continuing obligation to perform periodic and reasonable review of subcontractors' compliance with fall protection requirements.

(b) Ensure that forklift operators on jobsites have been certified to operate forklifts and the certification or training records are provided to the Respondent by the subcontractor for each jobsite.

(c) Develop procedures for evaluating subcontractors' safety and health programs to verify the subcontractors conduct jobsite safety and health inspections and that subcontractors comply with OSHA regulations.

14. Respondent agrees to pay the penalty assessed in this matter within ten (10) days of the date of this Order. In the event Respondent does not pay as agreed upon, Complainant retains the right to institute collection proceeding as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant has to institute 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. 318259785) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

15. 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 Order.

16. Complainant and Respondent agree that provided the respective Motions of each party are granted 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. The parties agree that 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. The parties further agree that (i) 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, and (ii) 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. 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 purpose 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. Delete Citation 1, Item 1 and the penalty associated therewith;
 - b. Delete Citation 1, Item 2 and the penalty associated therewith;
 - c. Keep Citation 1, Item 3 as issued;
 - d. Delete Citation 1, Item 4a and the penalty associated therewith;
 - e. Delete Citation 1, Item 4b and the penalty associated therewith;
 - f. Delete Citation 2, Item 1 and the penalty associated therewith;

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"):

- 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.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, 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.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.
6. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.


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**; and
2. That Respondent’s Motion is hereby **GRANTED**.

This the _____ day of May 7, 2024, _____.



 Laura Wetsch (May 7, 2024 10:51 EDT)


Laura J. Wetsch
 Hearing Examiner



 Jonathan Crotty (May 7, 2024 10:49 EDT)

Jonathan Crotty
 Parker Poe
 620 South Tryon St.
 Suite 800
 Charlotte, North Carolina 28202
 Telephone No. 704-335-9041
 jonathancrotty@parkerpoe.com

CONSENTED TO:



 Madison Beveridge (May 7, 2024 10:50 EDT)

Madison L. Beveridge
 Assistant Attorney General
 North Carolina Department of Justice
 Post Office Box 629/Labor Section
 Raleigh, North Carolina 27602-0629
 Telephone No. (919) 716-6680
 mbeveridge@ncdoj.gov

ATTORNEY FOR COMPLAINANT

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

JONATHAN CROTTY
PARKER POE
620 SOUTH TRYON ST.
SUITE 800
CHARLOTTE, NC 28202

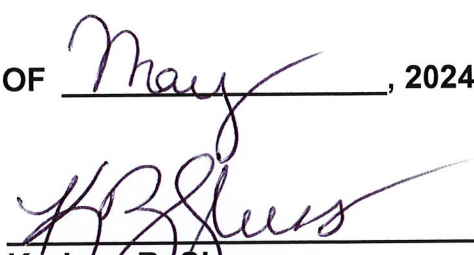
MADISON BEVERIDGE
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602

By depositing a copy of 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

By email.

THIS THE 8 DAY OF May, 2024.



Karissa B. Sluss
Docket Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
NCOSHRC@oshrc.labor.nc.gov
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