

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

<b>COMMISSIONER OF LABOR FOR</b>	)	<b>DOCKET NO: 2023 - 6606</b>
<b>THE STATE OF NORTH CAROLINA</b>	)	
	)	<b>INSPECTION</b>
<b>Complainant,</b>	)	<b>NO: 318264835</b>
<b>v.</b>	)	
	)	<b>CSHO ID: H2106</b>
	)	
<b>HATHAWAY CONSTRUCTION SERVICES, INC</b>	)	<b><u>CONSENT ORDER</u></b>
<b>and its successors</b>	)	
<b>Respondent.</b>	)	
	)	

**FILED**  
**JUL 11 2025**  
NC OSH Review Commission

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 July 9 and July 10<sup>th</sup>, 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 as counsel for Complainant. Andrew N. Gross of Andrew N. Gross, LLC in Atlanta, Georgia, appeared Pro Hac Vice as counsel for Respondent, being sponsored by Matthew R. Gambale, Attorney with Osborn Gambale Beckly & Budd, Raleigh, North Carolina. 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, at the time of the Inspection, (a) was a Georgia corporation duly organized and existing under the laws of the State of Georgia, and (b) was registered with the North Carolina Secretary of State. Respondent is classified as current-active in North Carolina by the North Carolina Secretary of State. It maintains a place of business at 3300 Northeast Expressway Bldg 6, Atlanta, Georgia. Respondent did business in North Carolina, and on April 27 and 28, 2023 it had a place of business at 100 Plyler Road in Indian Trail, North Carolina. Respondent is engaged in the business of providing construction services. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); the worker injured in this matter is an “employee” within the meaning of N.C.G.S. Section 95-127(10).

4. On or about April 27 and 28, 2023, Compliance Safety and Health Officer Jeffrey Johnson, employed by the North Carolina Department of Labor (“NC DOL”), conducted an inspection (the “Inspection”) of the work site at 100 Plyler Road in Indian Trail, North Carolina (“Worksite”).

5. As a result of the Inspection, on October 25, 2023, 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>
001a	29 CFR 1926.451(c)(2)(iv)	Immediately Upon Receipt	\$ 6,250.00
001b	29 CFR 1926.451(a)(6)	Immediately Upon Receipt	GROUPED
002	29 CFR 1926.451(c)(2)(v)	Immediately Upon Receipt	\$ 6,250.00

6. Respondent submitted a timely Notice of Contest. On or about January 12, 2023, NC DOL 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.

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 the following:

- a) Provide Complainant with completed verification of abatement forms within 30 days of the signing of this Final Order.
- b) Conduct retraining of employees on hazard recognition with powered industrial trucks and forklift attachments for any North Carolina site superintendents or employees who are directly employed and conduct inspections of jobsites where Respondent acts as the General Contractor.
- c) Pay the penalty of \$7,000.00 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. 318264835) 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 Consent 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 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 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 Consent Order brought directly under the Act by Complainant, this Consent 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) Reclassify Citation 1, Item 1a to Nonserious;
- b) Modify the penalty of Citation 1, Item 1a to \$7,000.00;
- c) Delete Citation 1, 1b and Citation 1, Item 2 and associated penalties.

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 Original Citation as Amended 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 this Order including Stipulation 12.

Effective the 10th day of July, 2025.

**SO ORDERED**

**Signature:** R. Joyce Garrett

R. Joyce Garrett Jul 11, 2025 11:33 EDT

**Email:** rjg.rjg@aol.com

R. Joyce Garrett  
Hearing Examiner

CONSENTED TO:

JEFF JACKSON, Attorney General

**Signature:** Rory Agan

Rory Agan Jul 11, 2025 10:36 EDT

**Email:** ragan@ncdoj.gov

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North Carolina Department of Justice  
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Counsel for Complainant

**Signature:** Andrew N. Gross

Andrew N. Gross Jul 11, 2025 11:35 EDT

**Email:** agross@skglaw.com

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Counsel Pro Hac Vice for Respondent

**CERTIFICATE OF SERVICE**

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

ANDREW N. GROSS  
LAW OFFICES OF ANDREW N. GROSS  
1201 PEACHTREE ST., NE  
SUITE 100  
ATLANTA, GA 30361

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 16 DAY OF July 2025.

PAUL E. SMITH  
CHAIRMAN



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Karissa B. Sluss  
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Health Review Commission  
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