

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

FILED

SEP 23 2024

NC OSH Review Commission

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

Complainant,

v.

**BARDI-DAVIS CONSTRUCTION, LLC
and its successors**

Respondent.

DOCKET NO: 2024 - 6614

INSPECTION NO: 318264934

CSHO ID: # K0085

DECISION AND ORDER

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 September 17, 2024, via LifeSize video platform pursuant to a Notice of Hearing.

Jonathan D. Jones, Assistant Attorney General, North Carolina Department of Justice, appeared on behalf of the Commissioner of Labor for the State of North Carolina ("Complainant"). Kenneth A. Davis, Managing Member of Bardi-Davis Construction, LLC, appeared on behalf of Bardi-Davis Construction, LLC ("Respondent").

At the time of the Hearing the parties agreed upon and consented to the Stipulations set forth in Court Exhibit 1 which was admitted into evidence and attached hereto. The exhibits admitted into evidence by Complainant and Respondent are listed on Schedule 1 attached hereto.

At the Hearing the witness called by Complainant was Compliance Safety and Health Officer Mr. Mark Rasdall ("CSHO Rasdall"), and the witnesses called by Respondent were Greg Hughes, Low Slope Division Field Manager for Respondent; Dennis Motowylak, Safety Consultant/Supervisor for Respondent, and Kenneth Davis, Managing Member of Respondent.

The Citation

Complainant issued to Respondent a 1-item citation alleging a serious violation of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter the "Act") as follows (herein referred to as the "Citation"):

Citation 01 -- Type of Violation: Serious

Item Number	Standard	Abatement Date	Penalty
001	29 CFR 1926.20(b)(2)	Corrected during inspection	\$4,687.50
		TOTAL	\$4,687.50

Summary Background

On April 21, 2023, CSHO Rasdall, from his vehicle in a public way, observed what he considered to be a serious fall hazard on a residential construction site located at 2770 Core Banks Street, Apex, North Carolina (the "Worksite").

CSHO Rasdall was accompanied by three other safety and health officers in his vehicle. From the public right of way, CSHO Rasdall and one of the other officers, Lanika Williams who was 'in training', took photographs of what was considered to be a serious fall hazard. Entry was made onto the construction site, and CSHO Rasdall determined that Samet Construction Associates, LLC was the general contractor and that Respondent was the roofing contractor at the Worksite. No employees/representatives of Respondent were at the Worksite; however, CSHO Rasdall conducted by telephone a preliminary opening conference with Mr. Ken Davis, co-owner of Respondent.

CSHO Rasdall made his determination that the Worksite was a multi-employer Worksite with the Respondent being the first tier roofing contractor and a "controlling employer" with respect to the second tier roofing installer 919 Roofing Service, Inc. CSHO Rasdall determined that the construction activity which he observed and considered to be a serious fall hazard was performed by the second tier sub-contractor.

FINAL DECISION

Based on careful consideration of the sworn testimony of the witnesses presented at the Hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact and Conclusions of Law.

In making the Findings of Fact, the Undersigned has (i) weighed all the evidence and assessed the credibility of the witnesses; (ii) taken into account the appropriate factors for judging credibility of witnesses, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have; and (iii) carefully considered the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, and whether the testimony of the witness was reasonable and consistent with all other believable evidence in the case.

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"). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a North Carolina limited liability company, duly organized and existing under the laws of the State of North Carolina. It is active and current and maintains a place of business in Garner, North Carolina.
3. Respondent was engaged in construction, a class of activity which as a whole affects interstate commerce. Respondent is, therefore, an "employer" as defined by N.C.G.S. Section 95-127(11). Respondent maintains employees as defined by N.C.G.S. Section 95-127(10).
4. On April 21, 2023, CSHO Rasdall, employed by the North Carolina Department of Labor, initiated an inspection (the "Inspection") of the residential construction site located at 2770 Core Banks Street, Apex, North Carolina (the "Worksite").
5. CSHO Rasdall was driving down a public street and saw two persons on a roof top of a multi-story building, at least one of who was standing/bent over near the leading edge of the roof. Since Wake County was subject to Operational Procedure Notice 123X (Special Emphasis Program for Construction Activities) CSHO Rasdall took the necessary steps to initiate an inspection.
6. CSHO Rasdall made his determination that the Worksite was a multi-employer worksite with Samet Construction Associates, LLC ("Samet") being the top-tier general contractor who subcontracted with Respondent as the first tier subcontractor to provide roofing services, who, in turn, contracted with 919 Roofing Service, Inc. ("919 Roofing"), the second tier sub-contractor, to provide the actual installation of the roofing material.
7. CSHO Rasdall's inspection of the Worksite with respect to the General Contractor Samet Construction Associates, LLC was conducted as a Focused Construction SEP inspection (i.e. focused inspection, pursuant to Operational Procedure Notice 96F, under the Special Emphasis Program for Construction Activity, OPN 123X). However, the inspection with respect to Respondent was conducted as a comprehensive inspection and not a focused inspection.
8. There were subcontractors other than Respondent and 919 Roofing involved with the Worksite; however CSHO Rasdall testified that none of their employees were present at the Worksite when he commenced his walk around inspection after he had completed his discussions with the general contractor (approximately 2 hours after his entry onto the Worksite).
9. At the time CSHO Rasdall observed the construction site from the public right of way employees of 919 Roofing were working on installing a low slope membrane roof.

10. Respondent's supervisor for the Worksite was Mr. Ken Davis ("Davis"). Davis was a managing member of Respondent and had worked for Respondent since it was formed. CSHO Rasdall determined that Davis had the ability to be able to identify the safety hazards with roofing projects and provide information on how to correct the hazardous conditions, and that Davis was a trained competent person.

11. Mr. Greg Hughes ("Hughes") was Respondent's Low Slope Superintendent/Field Manager. He had received OSHA training and was considered a competent person in the absence of Dennis Motowylak, Safety Consultant/Supervisor. At the Worksite he conducted inspections for work quality and safety, and was knowledgeable of the safety requirements regarding fall safety. No evidence was presented that he was not a competent person.

12. Davis and Hughes had the authority to control and direct the work of 919 Roofing at the Worksite.

13. Based on North Carolina Department of Labor Occupational Safety and Health Section Field Information System CPL 2-0.124 (Multi-Employer Worksite Policy) CSHO Rasdall classified Respondent as a controlling employer but not as a creating or exposing employer.

14. CSHO conducted a walk-around inspection of the portion of the Worksite where roofing activity was being conducted.

15. CSHO Rasdall and CSHO Williams took numerous photographs before entry onto and during the walk around at the Worksite; seven of the photographs were introduced at the Hearing and admitted into evidence.

16. CSHO Rasdall testified that he interviewed employees of 919 Roofing in connection with his Inspection but no written witness statements were included in the Investigation Report (Exhibit C-1).

17. No employee or representative of Respondent was at the Worksite on April 21, 2023 either at the time of the Inspection or at any time on that date.

(A) Davis' absence from the Worksite on April 21, 2023, was due to him having to care for his minor child, and he could not take the child onto the Worksite.

(B) Dennis Motowylak's (Safety Consultant/Supervisor for Respondent) absence from the Worksite on April 21, 2023, was due to health issues.

(C) Huges absence from the Worksite on April 21, 2023 was due being sick.

18. CSHO Rasdall testified that on April 21, 2023, he interviewed (a) at the Worksite in person Mr. Tyler Ceparano, the safety officer of the General Contractor, and Mr. Victor Hernandez ("Hernandez"), an employee of 919 Roofing; and (b) Davis by telephone. Based on his interviews CSHO Rasdall concluded that no representative of Respondent had been at the Worksite during the period of April 13 through April 21, 2023, and that Respondent had not conducted any inspections of the work being done by 919 Roofing during that period of time.

19. CSHO Rasdall testified that he did not receive from Davis any documentation showing that Respondent had been at the Worksite during the period the roofing installation by 919 Roofing was taking place.
20. CSHO Rasdall testified that Hernandez told him that 919 Roofing had fall protection at the Worksite but Hernandez did not show it to him.
21. Relative to Respondent, CSHO Rasdall determined that :
“The employer has a developmental written safety and health program in place. All required standard specific safety and health programs are in existence such as, but not limited to, Excavations, Control of Hazardous Energy (LOTO), Hazard Communication, Motor Vehicles & Mechanized Equipment, Personal Protective Equipment (PPE), Ladder Training, Fall Protection Training, and Fire Extinguisher Training. During the course of the inspection, the CSHO learned that management conducts frequent & regular inspections of their job sites that is documented in writing, conducts daily Job Safety Analysis (JSA) for their employees that are maintained on the onsite computer system for each job site, has weekly safety meetings with their sub-contractors, and has an employee safety training program.”
“All required recordkeeping is maintained (e.g. injury and illness logs OSHA 300/300A) and no trends were observed during the review of the records for calendar years of 2020, 2021, & 2022. There is a full-time environmental, safety, and health director.”
(Investigate Report Exhibit C-1, page 0040)
22. A preponderance of the evidence shows (a) that Respondent had previously worked with 919 Roofing, on 3 to 5 projects over a period of 8 to 9 months; (b) that Davis personally knew the principles of 919 Roofing and was not aware of 919 Roofing having had any issues raised by OSHA; (c) that Respondent had Respondent’s Safety Consultant/Supervisor provide safety training to employees of 919 Roofing prior to 919 Roofing performing work for Respondent; (d) that Hughes made regular, unannounced, site visit inspections for quality and safety; and (e) that April 18, 2023, was the first day 919 Roofing had been at the Worksite.
23. A preponderance of the evidence shows that (a) Respondent had conducted a pre-construction safety and scope of work meeting with 919 Roofing prior to the start of its roofing work; (b) Respondent conducted regular inspections; (c) Respondent conducted an inspection on April 13, 2023 relative to the roofing area; (c) Respondent conducted an inspection of the roofing work site on April 18, 2023; and (d) Respondent’s representative was at the Worksite during the week before April 21, 2023, but was not on site on April 21, 2023, the date of the Inspection by CSHO Rasdall.
24. Respondent introduced into evidence Respondent Exhibit 3 which consisted of the photograph taken by Hughes during the inspection at the Worksite on April 13, 2023 (the “April 13 Photograph”) and the photograph taken by Hughes during the inspection at the Worksite on April 18, 2023 (the “April 18 Photograph”).
25. Hughes testified (a) that the April 18 Photograph shows fall protection safety items (including but not limited to flag stands and folded tripods to setup exclusion zone) provided by

Respondent on the ground at the staging site; (b) that the fall protection safety items were lifted by crane to the roof on April 18; and (c) that, after the fall protection safety items had been craned to the roof, he inspected the roof to confirm that such items were staged properly on the roof.

26. On recall by Complainant, CSHO Rasdall testified regarding the April 18 Photograph: that he did not want to say that Hughes was wrong in stating that safety line tape and tripods and other safety items were included in the materials craned to the roof; he also testified that such materials would be sufficient for safety if set up properly (see LifeSize Video Recording approximately 4:44).

27. The preponderance of the evidence shows that Respondent provided fall protection safety items at the Worksite to 919 Roofing, that the items were taken to the roof area where 919 Roofing's work was to be performed, and that the items were set up properly on April 18, 2023.

28. On recall by Complainant, CSHO Rasdall further testified regarding the photographs contained in Respondent Exhibit 3: (a) that he did not receive or see the photographs prior to recommending that a citation be issued to Respondent; (b) that if he had seen them it probably would have been enough evidence to show that there was a possibility that Respondent had been on site and that some form of inspection was completed and probably not lead to a citation (see LifeSize Video Recording approximately 4:47).

29. As a result of the Inspection, on October 17, 2023, Complainant issued to Respondent the Citation.

30. Respondent submitted a timely Notice of Contest.

31. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").

32. Citation 01, Item 001, alleged violation of 29 CFR 1926.20(b)(2) as follows:

"29 CFR 1926.20(b)(2): The employer did not initiate and maintain programs which provided for frequent and regular inspections of the job site, materials and equipment to be made by competent persons designated by the employer:

a) jobsite (2270 Core Banks St., Apex, NC) – where the controlling contractor did not conduct frequent and regular jobsite inspections, exposing subcontracted employees to a fall from elevation hazard while installing Thermoplastic Polyolefin (TPO) roofing to a 5-story mixed use structure, approximately 60 feet above ground level."

Paragraph a) above is herein referred to as the 'alleged violative condition' paragraph.

33. Regarding the 'alleged violative condition' paragraph, the preponderance of evidence was that one or two of the employees of Respondent's subcontractor 919 Roofing was working at the leading edge of a roof, approximately 60 feet above ground level without the use of any fall protection system; the hazard existed that one or more of 919 Roofing's employees "could

lose their balance and fall, approximately 60 feet, to the ground, resulting in injuries such as but not limited to, head trauma, broken bones, and internal injuries, causing permanent disability or death” (Investigation Report, page 0045); a Gravity Based Penalty of \$15,625.00 (based on high severity and greater probability) was assessed and Complainant applied the following Adjustment Factors to the Gravity Based Penalty to calculate the Proposed Adjusted Penalty of \$4,687.50: 60% credit for size; 0% credit for good faith, and 10% credit for history (total 70% credit). Respondent was eligible for a 10% credit for good faith but such credit is not allowed with a ‘high severity and greater probability’ designation.

34. There was no allegation by Complainant or evidence to indicate that any employee of Respondent was exposed to the hazard described in the ‘alleged violative condition’ paragraph.

35. CSHO Rasdall recommended the issuance of Citation 01 Item 001 based on Respondent having constructive knowledge of the fall conditions stated in the ‘alleged violative condition’ paragraph.

a) CSHO Rasdall believed that Respondent had constructive knowledge because with reasonable diligence Respondent could have been aware of the fall hazard conditions described in the ‘alleged violative condition’ paragraph of Citation 01 Item 001 if Respondent would have had a competent person on site. However, no evidence supporting that belief was provided.

b) Mr. Hinkle was Samet’s competent person. A preponderance of evidence shows that Samet, the general contractor, (i) was on site at the time of CSHO Rasdall’s observation from the public right of way and at the time of the Inspection, (ii) was also considered a ‘controlling employer’ at the Worksite, and (iii) was not alleged to have violated 29 CFR 1926.20(b)(2) because Samet had conducted inspections of the Worksite. According to CSHO Rasdall’s Investigation Report (Exhibit C-1, page 0037) “Mr. Richard Hinkle, superintendent, was the designated competent person onsite and was recognized by both Samet Corporation employees and the subcontractors onsite as being responsible for the safety and health of employees on the jobsite”.

c) No evidence was presented that Samet was aware of the conditions described in the ‘alleged violative condition’ paragraph of Citation 01 Item 001 even though it Samet was at the Worksite during the period when CSHO Rasdall made his observations from the public right of way.

36. CSHO Rasdall recommended the issuance of Citation 01 Item 001 relative to inspections based on Respondent having actual knowledge of its inspections. A preponderance of the evidence shows that CSHO Rasdall’s evidence of actual knowledge was based on his good faith belief that neither Davis nor any representative of Respondent had conducted any inspection of the job site during the period roofing activity was being performed.

37. The preponderance of the evidence shows that Respondent did in fact make inspections of the Worksite during the period when roofing services were being performed by 919 Roofing.

38. The preponderance of the evidence is insufficient to show that Respondent did not institute and maintain programs which provided for frequent and regular inspections of the job site, materials and equipment to be made by a competent person designated by Respondent.

39. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

DISCUSSION

To establish a violation of a specific OSHA standard, Complainant must establish the following elements: (1) the standard applies; (2) the terms of the standard were violated; (3) employees were exposed to the hazard covered by the standard; and (4) the employer had actual or constructive knowledge of the violation. To establish that the violation was serious the Complainant must also establish that the hazard created the possibility of an accident and that the substantially probable result of an accident could be death or serious bodily injury. See *Commissioner of Labor v Liggett Group, Inc.*, OSHANC 94-3175 (1996); *Commissioner of Labor v Yates Construction Company, Inc.*, OSHANC 93-2967 (1995); *JPC Grp., Inc.*, 22 BNA OSHC 1859, 1861 (No. 05-1907, 2009); *Commissioner of Labor v. Young Construction Co.*, OSHANC 02-4130 (2004).

Complainant has the burden of establishing each element by a preponderance of the evidence. *Commission Rule .0514(a)*; See *Hartford Roofing Co.*, 17 BNA OSCH 1361 (No. 92-3855, 1995). A preponderance of the evidence is “that quantum of evidence which is sufficient to convince the trier of fact that the facts asserted by a proponent are more probably true than false.” *Astra Pharma. Prods.*, 9 BNA OSHC 2126, 2131, n. 17 (No. 78-6247, 1981) *aff’d in relevant part*, 681 F.2d 69 (1st Cir. 1982).

If Complainant fails to meet its burden of proof on any one of the required elements, then the violation cannot be sustained. An employer who has been issued a citation can present evidence which negates or reduces the validity or strength of Complainant’s evidence on an element; however, the employer does not have the burden to prove that it is not liable for an alleged violation. The burden of proof of the alleged violation rests entirely on the Complainant.

The Multi-employer Worksite Doctrine

The multi-employer worksite doctrine was first enumerated by the North Carolina Review Commission in *Commissioner of Labor v. Romeo Guest Associates, Inc.*, OSHANC 96-3513, Slip Op., (RB 1998) and was later confirmed in *Commissioner of Labor v. Weekley Homes, L.P.*, 169 N.C. App. 17, 28 (2005) (review denied 359 N.C. 629 (2005)).

MEWP X(E)(2) specifically provides: “A controlling employer must exercise reasonable care to prevent and detect violations on the site. The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees.”

It is improper to rely “on exposing employer precedent as the benchmark for how reasonable diligence or care is assessed for a controlling employer whose own employees are not

exposed.” Suncor Energy (U.S.A.) Inc., No. 13-0900, 2019 WL 654129, at *6 (OSHRC Feb. 1, 2019)

Factors used in evaluating reasonable care under the multi-employer worksite policy generally require periodic inspections of the worksite, implementation of an effective system for correcting hazards and effective enforcement of a safety and health compliance program, although the standard is lower than what is required of an employer protecting its own employees. Controlling employers are not required to inspect for hazards as frequently as is required of its subcontractors.

In this case, the Worksite was a multi-employer worksite and Respondent, the first tier subcontractor, was a controlling employer with respect to its second tier subcontractor, 919 Roofing; none of Respondent’s own employees were exposed to any alleged violative condition.

Complainant’s Basis for Knowledge Actual Knowledge

In issuing the Citation CSHO Rasdall concluded that Respondent had actual knowledge that no inspections had been conducted based on his good faith belief that no representative of Respondent had been at the Worksite during the period of April 13 through April 21 and that there had been no inspections by Respondent of the work being done by 9191 Roofing during that period. At the Hearing a preponderance of evidence was presented that representatives of Respondent had been at the Worksite on April 13 and on April 18, 2023 and that inspections had been conducted for quality and safety.

Constructive Knowledge

In issuing the Citation CSHO Rasdall concluded that Respondent had constructive knowledge of the conditions stated in the ‘alleged violative conditions’ paragraph. CSHO Rasdall testified that he believed that Respondent with reasonable diligence could have been aware of the fall hazard conditions if Respondent would have had a competent person on site. However the evidence showed the Samet had a competent person at the Worksite but there was no evidence that Samet was aware of the fall hazard conditions.

The preponderance of the evidence is insufficient to show that Respondent did not institute and maintain programs which provided for frequent and regular inspections of the job site, materials and equipment to be made by a competent person designated by Respondent.

Furthermore, the preponderance of the evidence is insufficient to show (i) that Respondent had the knowledge that its inspection procedures were insufficient to satisfy the referenced standard when it was a controlling employer and the employees of another contractor were exposed to a hazard, or (ii) that Respondent had knowledge of the hazardous conditions cited in the ‘alleged violative condition’ paragraph of the Citation.

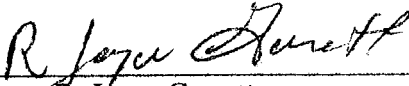
CONCLUSIONS OF LAW

1. To the extent that the foregoing Findings of Fact contain conclusions of law, or that these Conclusions of Law are findings of fact, they are intended to be considered without regard to their given labels. 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, at all times material to this proceeding, was engaged in a business affecting commerce within the meaning of the Occupational Safety and Health Act of North Carolina, N.C.G.S. 95-126 et seq (the "Act").
3. Respondent, at all times material to this proceeding, was subject to the requirements of the Act and the standards promulgated thereunder. The Review Commission has jurisdiction of the parties and of the subject matter.
4. The burden of proof is on the Complainant to prove by a preponderance of the evidence that Respondent violated the terms of the standard cited in the Citation.
5. The Worksite was a multi-employer Worksite subject to the Multi-employer Worksite Policy (CP 2-0.124).
6. Respondent was a "controlling employer" under the terms of the Multi-employer Worksite Policy but it was neither a "creating employer" nor an "exposing employer".
7. With respect to Citation 01 Item 001 Complainant did not establish by a preponderance of the evidence (a) that the terms of the standard were violated, or (b) that if the terms of the standard were violated that Respondent had knowledge of the violation or knowledge of the alleged violative fall hazard conditions.
8. A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision. Specific findings are not required on each piece of evidence presented.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED that:
Citation 01 Item 001 in violation of 29 CFR 1926.20(b)(2) is VACATED.

This 23rd day of September, 2024.



R. Joyce Garrett
Hearing Examiner

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 both parties 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.
10. Respondent is a North Carolina Limited Liability Company, duly organized and existing under the laws of the State of North Carolina and maintains a place of business in Garner, North Carolina.
11. Respondent is in the business of providing construction services.
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 April 21, 2023, Compliance Safety and Health Officer Mark Rasdall ("CSHO Rasdall") and Compliance Safety and Health Officer (in training) Lanika Williams ("CSHO Williams") employed by the North Carolina Department of Labor, initiated an inspection of the residential construction worksite located at 2270 Core Banks St., Apex, in Wake County North Carolina (the "Inspection").
14. The construction worksite located at 2270 Core Banks St., Apex, North Carolina, was generally referred to as the "Sweetwater" job site.
15. The Sweetwater job site was a multi-story residential construction project.
16. The general contractor for the project at the Sweetwater job site was Samet Corporation ("Samet"); Samet subcontracted with Respondent Bardi-Davis Construction, LLC ("Respondent" or "Bardi-Davis") to provide roofing services; Respondent subcontracted with 919 Roofing Service, Inc ("919 Roofing") to actually install the roofing.
17. The Sweetwater job site was a multi-employer worksite subject to the provisions of OPN 123X and OPN 96F.

18. Wake County is included in the Construction Special Emphasis Program provided for in OPN 123X.

19. No representative of Respondent was on the Sweetwater job site at the time of the Inspection. However, CSHO Rasdall spoke to Ken Davis, a managing member of Bardi-Davis, via telephone, and Mr. Davis consented to the Inspection.

20. As a result of the Inspection, on October 17, 2023, Complainant issued to Respondent 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>
001	29 CFR 1926.20(b)(2)	Corrected During Inspection	\$ 4,687.50

21. The total proposed penalty on Citation 01 was \$4,687.50. Complainant calculated the proposed penalty according to the procedures set forth in the Complainant's North Carolina Operations Manual. Pursuant to Chapter VI, section B of the North Carolina Operations Manual Complainant determined the following Adjustment Factors which may be applicable to the Gravity Based Penalty in order to calculate the Proposed Adjusted Penalty: 60% for size, 10% for good faith, and 10% for history (total 80% credit). However, since the alleged violation had been classified as 'high severity' and 'greater probability' only adjustments for size and history are applicable to this violation; accordingly Respondent was given a total credit reduction of 70%, and the resulting total proposed penalty was \$4,687.50.

22. Respondent submitted a timely Notice of Contest dated January 9, 2024 and a Statement of Position dated February 1, 2024. Respondent denied the alleged violation, objected to the penalty and requested a hearing.

23. 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").

24. 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.

25. 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.

Schedule 1
Exhibits Introduced Into Evidence by Complainant and Respondent

Exhibits Introduced Into Evidence By Complainant

C1	Investigation Report – Unredacted PSIM File for Insp. 318264934
C2	Photo file C2-IMG 5044
C3	Photo file C3-IMG 5045
C4	Photo file C4-IMG 5046
C5	Photo file C5-IMG 5055
C6	Photo file C6-IMG 5056
C7	Photo file C7-IMG 5245
C8	Photo file C8-IMG 5244
C9	OPN 123X
C10	OPN 96F
C11	Multi-Employer Worksite Policy
C12	April 25, 2023 Email from CSHO to Ken Davis

Exhibits Introduced Into Evidence By Respondent

R3	Site Visit Documentation April 13 April 18

CERTIFICATE OF SERVICE

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

KEN DAVIS
BARDI- DAVIS CONSTRUCTION, LLC
284 HEIN DR.
GARNER, NC 27529

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:

JONATHAN JONES
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 25 DAY OF September 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.: (984) 389-4132
NCOSHRC@oshrc.labor.nc.gov