

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

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

COMPLAINANT,

v.

**GUNNER/HOUSTON LTD.
*and its successors,***

RESPONDENT.

) **DOCKET NO.: OSHANC 2024-6642**
) **INSPECTION NUMBER: 318278645**
) **CSHO ID: H2106**

CONSENT ORDER

FILED

JUL 25 2025

NC OSH Review Commission

THIS CAUSE came on pursuant to the Notice of Pre-Hearing Conference ("Hearing Notice") on July 23, 2025 at 10:00 a.m., via Lifesize teleconferencing platform before the undersigned, Richard Koch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission. Sage A. Boyd, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant. Michael D. McKnight, Attorney with Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Raleigh, North Carolina, appeared for Respondent.

Pursuant to the Hearing Notice, a pre-hearing conference ("the Hearing") was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case including considering such matters that may be necessary or advisable for the completion of the case, and if possible, to reach a resolution without the necessity of further hearing. This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. During the Hearing, the Hearing was continued to July 25, 2025 at 10:00 a.m., via the same Lifesize teleconferencing platform.

On July 25, 2025 at 10:00 a.m., the Hearing reconvened. At the Hearing, Complainant and Respondent requested that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Consent Order. 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").

2. The Review Commission has jurisdiction over the parties and the subject matter to this action.
3. On December 20, 2023, Compliance Safety and Health Officer (CSHO) Jeff Johnson, employed by the North Carolina Department of Labor (NCDOL), accompanied by CSHO-in-training Lauren Kilby inspected Respondent's worksite located at 700 Avett Lane in Charlotte, North Carolina ("the Inspection").
4. Respondent, Gunner/Houston, LTD, is a Georgia corporation, formed on October 7, 2009 with a principal office located at 3020 Camp Road in Jasper, Georgia.
5. As a result of the Inspection, on February 2, 2024, Complainant issued one citation with three items carrying the following proposed abatement dates and penalties in the Citation and Notification of Penalty (hereafter referred to as the "Original Citation"):

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.20(b)(2)	Immediately upon receipt	\$3,125.00
2	29 CFR 1926.102(a)(1)	Corrected during inspection	\$750.00
3	29 CFR 1926.501(b)(13)	Corrected during inspection	<u>\$3,125.00</u>
TOTAL:			\$7,000.00

6. Respondent submitted a timely Notice of Contest dated April 5, 2024.
7. The Hearing in this matter was scheduled pursuant to 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; waive the making of a transcript; and consent to the conduct of this Hearing by the Undersigned and consent to entry of this Order.
9. Respondent confirms that the Original Citation and the Hearing Notice have been posted as required by the Rules.
10. 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.
12. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act and further agrees to:
 - a. Develop and implement safety and health rules for North Carolina jobsites where Respondent is involved;
 - b. Ensure that safety and health rules are being followed by the subcontractors through regular, scheduled and unscheduled, worksite inspections and established documentation issued to subcontractors in the event that the rules are not followed; and
 - c. For a period of one year following the day of this Order, Respondent will maintain records of all worksite inspections, audit, evaluations associated with safety and health issues. These records will be provided to NCDOL-OSH upon request.
13. Respondent agrees to pay the total penalty of **\$3,500.00 within thirty (30) days of the date of this Order**. In the event Respondent does not pay the penalty as agreed upon, Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to 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. **318278645**) and mailed to North Carolina Department of Labor, Financial Services Division. ATTN: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.
14. 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.
15. Complainant and Respondent agree that provided the respective Motions of each party are 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 additional 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 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; and
- (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 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"):

- 1. Amend the penalty in Citation One, Item 1 from \$3,125.00 to \$3,500.00 and amend the Alleged Violation Description to state the following:**
 - a) job site – where frequent and regular inspections did not identify safety hazards involving employees of a subcontractor working at the site, such as fall protection.**
- 2. Delete Citation One, Item 2 and the penalty associated with it; and**
- 3. Delete Citation One, Item 3 and the penalty associated with it.**

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"):

- 1. 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 record and the Stipulations at the time of the Hearing as memorialized herein, 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. No affected employee elected party status and no employee raised an objection to the reasonableness of the abatement time.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

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**;
2. That Respondent's Motion is hereby **GRANTED**;
3. That Respondent shall pay the penalty of **\$3,500.00 within thirty (30) days of this Order**; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations.

This the 07/25/2025.

Signature: Richard M. Koch

Richard M. Koch Filed 05/20/25 10:10:02 EDT

Email: lawoffice@richardkochlaw.com

Richard Koch
Hearing Examiner

CONSENTED TO:

Signature: Sage A. Boyd
Sage A. Boyd (Jul 25, 2025 10:54:12 EDT)

Email: sboyd@ncdoj.gov

Sage A. Boyd
Special Deputy Attorney General
North Carolina Department of Justice

sboyd@ncdoj.gov

ATTORNEY FOR COMPLAINANT

Signature: Michael D. McKnight
Michael D. McKnight (Jul 25, 2025 10:52:07 EDT)

Email: michael.mcknight@ogletree.com

Michael D. McKnight
Attorney at Law
Ogletree, Deakins, Nash, Smoak
& Stewart, P.C.

michael.mcknight@ogletree.com

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

**MICHAEL D. MCKNIGHT
OGLETREE DEAKINS
FORUM IV
8529 SIX FORKS RDSTE 600
RALEIGH, NC 27615**

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:

**SAGE A. BOYD
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602**

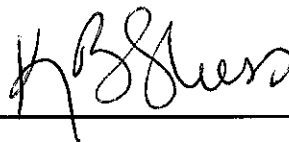
By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

**NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101**

via email.

THIS THE 29 **DAY OF** July **2025.**

**PAUL E. SMITH
CHAIRMAN**



**Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
422 N. Blount St., Raleigh, NC 27601
TEL.: (984) 389-4132
NCOSHRC@oshrc.labor.nc.gov**