

FILED

OCT 8 2025

BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

NC OSH Review Commission

RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR FOR	)	DOCKET NO:2024-6644
THE STATE OF NORTH CAROLINA	)	
	)	INSPECTION
Complainant,	)	NO: 318280419
v.	)	
	)	CSHO ID: T8768
	)	
DBC CONSTRUCTION LLC	)	<u>CONSENT ORDER</u>
and its successors	)	
Respondent.	)	
	)	

THIS CAUSE came on for hearing and was heard before the undersigned Richard Koch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on October 8, 2025, 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. Michael D'Auria of Ogletree Deakins Nash Smoak & Stewart in Phoenix, Arizona, appeared as counsel 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 below.

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 was a North Carolina limited liability company duly organized and existing under the laws of the State of North Carolina. Respondent is classified as current-active in North Carolina by the North Carolina Secretary of State. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); the worker referenced in this matter is an “employee” within the meaning of N.C.G.S. Section 95-127(10).
4. On or about January 31, 2024, Compliance Safety and Health Officer Curt Hobson, employed by the North Carolina Department of Labor (“NC DOL”), conducted an inspection (the “Inspection”) of the work site at 170 Giant Oak Avenue in Statesville, North Carolina (“Worksite”).
5. As a result of the Inspection, on March 8, 2024, Complainant issued the following Citation and Notification of Penalty (herein referred to as the “Original Citation”):

CITATION NUMBER ONE (Repeat Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.501(b)(13)	Immediately Upon Receipt	\$ 15,000.00

CITATION NUMBER TWO (Nonserious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.503(b)(1)	Corrected During Inspection	\$750.00

6. Respondent submitted a timely Notice of Contest. On or about May 28, 2024, 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) Pay the new total penalty of **\$6,500.00 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. **318280419**) and mailed to North Carolina Department of Labor, Financial Services Division. ATTN: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.
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) Withdraw Citation 2, Item 1 and associated penalty;
- b) Reclassify Citation 1, Item 1 to Nonserious;
- c) Change the penalty associated with Citation 1, Item 1 to \$6,500.00

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 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 8th day of October, 2025.

SO ORDERED

Signature: Richard M. Koch

Richard M. Koch, Oct 8, 2025 10:46:55 EDT

Email: lawoffice@richardkochlaw.com

Richard Koch
Hearing Examiner

CONSENTED TO:

JEFF JACKSON, Attorney General

Signature: Rory Agan

Rory Agan, Oct 8, 2025 10:49:18 EDT

Email: ragan@ncdoj.gov

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

Signature: Michael D'Auria

Michael D'Auria, Oct 8, 2025 08:46:24 PDT

Email: michael.d'auria@ogletree.com

Michael D'Auria
Associate
Ogletree Deakins Nash Smoak & Stewart
2415 East Camelback Road, Suite 800
Phoenix, Arizona 85016
Tel. 480-719-6251
Email: Michael.d'auria@ogletree.com
Counsel for Respondent

CERTIFICATE OF SERVICE

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

MICHAEL D'AURIA
OGLETREE DEAKINS
ESPLANADE CENTER III, STE 800
2415 EAST CAMELBACK RD.
PHOENIX, AZ 85016
michael.d'auria@ogletree.com

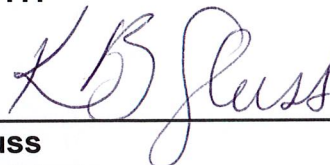
RORY AGAN
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602
ragan@ncdoj.gov

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

via email.

THIS THE 9 DAY OF October 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