

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD
OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

BOB DEGABRIELLE & ASSOCIATES
and its successors,

RESPONDENT.

DOCKET NO. OSHANC 98-3728
OSHA INSPECTION NO. 301969499
CSHO ID NO. W4297

ORDER

This matter is before the Review Board on the Respondent's Petition for Review. The parties have now filed a Stipulation and Notice of Settlement Agreement.

Having reviewed the record, the Safety and Health Review Board of North Carolina hereby makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. This Stipulation and Notice of Settlement Agreement is reasonable and supported by the underlying facts.
2. No outstanding issues remain to be resolved by a hearing of this matter.
3. The Stipulation and Notice of Settlement Agreement has been posted for at least 15 working days in accordance with Rules .0701(c), .0107(e), .0107(f) and .0107(h) of the Rules of Procedure of the Safety and Health Review Board of North Carolina and there has been no employee objection to the reasonableness of any abatement period.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties to this action and over the subject matter.
2. This Stipulation and Notice of Settlement Agreement is consistent with the purposes of the Occupational Safety and Health Act of North Carolina and complies with Rule .0701 and .0107 of the Rules of Procedure of the Safety and Health Review Board of North Carolina.

ORDER

For the reason stated herein, the Review Board hereby **ORDERS** that the Stipulation and Notice of Settlement Agreement dated and signed by the parties on June 26, 2002 is approved and is incorporated by reference into this order, attached hereto and made a part of this order as if fully set out herein. The decision of the Hearing Examiner in this case is set aside to the extent that it is inconsistent with this Stipulation and Notice of Settlement Agreement. This is the final order of the Review Board.

This the 23rd day of July, 2002.

OSCAR A. KELLER, CHAIRMAN

RICHARD G. PEARSON, MEMBER

JANICE SMITH GERALD, MEMBER

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**STIPULATION AND
NOTICE OF SETTLEMENT**

NOW COME the parties in the above-captioned action, pursuant to Rule .0701 of the Rules of Procedure adopted by the Safety and Health Review Board of North Carolina, and respectfully show unto the Hearing Examiner as follows:

FACTS

1. Respondent is a corporation duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Corolla, North Carolina.
2. On February 26, 1998, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 762 Voyager Lane, Corolla, North Carolina.
3. As a result of the inspection, on July 29, 1998, Complainant issued the following Citations:

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1a	29 CFR 1926.501(b)(11)	4/26/98	\$700.00
1b	29 CFR 1926.503(a)(1)	4/26/98	Grouped

4. **The Respondent submitted a timely Notice of Contest, dated October 14, 1998.**

5. This case was heard by the Honorable Carroll D. Tuttle on may 14, 1999.

6. On April 14, 2000, Judge Tuttle issued an Order in which he affirmed a violation of Citation Number One, Item 1a and dismissed Citation Number One, Item 1b. The \$700.00 proposed penalty was affirmed.

7. Respondent appealed the Order on May 11, 2000.

8. The Respondent's appeal was scheduled for argument on February 13, 2002. The parties reached a settlement of the matter before that date and seek approval of said settlement by the Chairman of the Review Board.

The parties having reached a Settlement Agreement now seek approval of said Agreement by the Hearing Examiner.

STIPULATIONS

Effective upon approval of this Stipulation and Notice of Settlement, the parties to this action hereby agree and stipulate to the following settlement of the matters at issue herein:

1. Respondent agrees that the violations alleged in the Citation and Notification of Penalty have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act").

2. Complainant agrees to make the following amendments to the Citations:

a) Reduce the penalty for Citation Number One, Item 1a to \$350.00

3. Respondent agrees to continue with its present safety program, including conducting periodic meetings with employees. During such meetings, employees will be able to communicate safety suggestions or complaints to their supervisor who will forward the information to the Safety Committee. Respondent agrees to continue its Safety Committee, which will include employee representation. The Safety Committee will meet regularly to discuss safety issues and receive safety suggestions or complaints from employees. The Safety Committee shall also make recommendations regarding safety to supervisors who will then present such information to employees at the periodic meetings. Respondent agrees that all members of the Safety Committee, or employees who make suggestions or complaints to the Committee, shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes.

4. The parties agree to bear their own attorney's fees, costs, and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Stipulation and Notice of Settlement.

5. The parties agree that Citation Number One, Item 1a will serve as the basis for a Repeat Citation only against the named entity Bob DeGabrielle & Associates, Inc., and will not apply to any successor in interest, including BD&A Realty and Construction, Inc.

6. Upon approval of this Stipulation and Notice of Settlement by the Hearing Examiner, the Respondent agrees to pay the penalty of \$350.00 within ten (10) days following the receipt of the Order approving the Stipulation and Notice of Settlement.

7. Respondent agrees that by signing this Stipulation and Notice of Settlement and upon approval of said Stipulation and Notice of Settlement by the Chairman of the Review Board, its Notice of Appeal is withdrawn as a matter of law.

8. The parties agree that there are no other matters that remain to be decided, and there has been no employee objection to the reasonableness of any abatement period.

9. Respondent shall post this Stipulation and Notice of Settlement in accordance with Rules .0107(e), .0107(f), .0107(h), and .0701(c) of the Rules of Procedure of the Safety and Health Review Board of North Carolina.

WHEREFORE, the parties to this action hereby respectfully request approval of this Stipulation and Notice of Settlement.

This the 26th day of June, 2002.

APPROVED BY:

**Tim Childers
Occupational Safety and Health Division
Western Bureau Chief**

**ROY COOPER
Attorney General**

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Assistant Attorney General
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