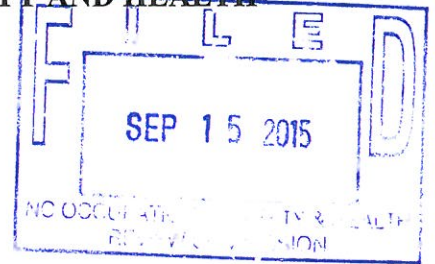


BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR )  
THE STATE OF NORTH CAROLINA )  
 )  
COMPLAINANT, )  
 )  
v. )  
 )  
AMERICAN PRECAST STONE, INC., )  
 )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

**ORDER**

OSHANC NO. 2015-5672  
INSPECTION NO. 317843431  
CSHO ID NO. K1530

THIS MATTER was called for hearing and was heard by the undersigned on September 9, 2015, in Charlotte, North Carolina.

The complainant was represented by Cara Byrne, Associate Attorney General; the respondent appeared through its president, Beverly R. Craig.

The official file in this matter contains "Stipulations" signed by the above representatives of the parties and filed on April 22, 2015. These stipulations taken together indicate that the respondent does not further contest any of the proposed citation items and penalties and that the only issue to be heard is the respondent's inability to pay the aggregate penalty amount, which is \$4,300.00.

After hearing and receiving the evidence and hearing the arguments and contentions of the parties, the undersigned makes the following

**FINDINGS OF FACT**

1. The complainant as Commissioner of Labor is charged by law with responsibility for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").
2. The respondent is a North Carolina corporation which was located in Mooresville, North Carolina.

3. The respondent designed and built precast stone and cement products for buildings.
4. This business was based on special orders, such that no separate inventory was maintained for sale.
5. The business was started in 2011 and was initially profitable but more recently has lost increasing amounts of money such that it ceased operations on August 26, 2015.
6. The respondent offered into evidence without objection its tax returns for 2013 and 2014, as well as financial statements dated as of September 8, 2015, all of which were prepared by the respondent's CPA. The respondent also offered into evidence without objection the tax returns for its president and owner, Beverly R. Craig.
7. The respondent's corporate financial records show current assets of \$2,257.94 and total liabilities of \$28,423.65 as of September 8, 2015. Of these liabilities, \$10,851.00 is an officer loan and \$113.61 is payroll tax liability. There are no other assets shown in such records.
8. There also is shown a credit card liability of \$3,581.33, which Ms. Craig testified may be a debt for which she has personal liability.
9. The debt for these penalties is not listed on the financial statements.
10. Ms. Craig's personal tax returns indicate that W-2 income from the respondent of \$18,263.19 in 2013 and \$21,603.00 in 2014.
11. The respondent was a small business with relatively few employees.
12. The citation items are a mixture of serious and non-serious violations, none of which resulted in an injury or death to an employee.
13. The respondent has already liquidated some assets and paid some debts, essentially arbitrarily giving these debts a priority of payment over the remaining debts.
14. The respondent contends that it is insolvent and the records provided by the respondent support that contention, although it has some assets, which can be applied to its debts.
18. The respondent seeks a total elimination of the penalties asserted against it based on financial incapacity.

Based on the foregoing Findings of Fact, the undersigned makes the following

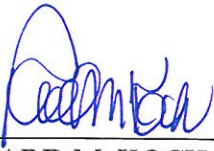
## CONCLUSIONS OF LAW

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. The respondent is subject to the provisions of the Act.
3. The proposed penalties were properly calculated, but the undersigned has presented persuasive evidence of financial incapacity. *See, Brooks v Triple I Industries, 2 NCOSHD 793 (1986)*, allowing adjustment of the penalties by the undersigned.
4. Based on this financial incapacity, the penalties should be reduced, but not entirely eliminated, as a debt for such penalties based on admitted safety violations which created a risk of accident for respondent's employees is a debt at least as worthy of payment as respondent's other listed remaining debts, if not more so.
5. Total elimination of the penalties in this case would render meaningless the regulation and enforcement of the provisions of the Act.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED as follows:

1. All citation items are affirmed as violations of the Act as indicated in the citations and the Stipulations.
2. The aggregate penalty for all citation items is reduced from \$4,300.00 to \$1,000.00.
3. This adjusted total penalty shall be paid within twenty (20) days of the filing date of this Order.
4. All violations not previously abated shall be immediately abated.

This 11<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
RICHARD M. KOCH  
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

BEVERLY CRAIG  
118 TIMBER RD  
MOORESVILLE, NC 28115

by depositing same the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

CARA BYRNE  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
P O BOX 629  
RALEIGH, NC 27602-0629

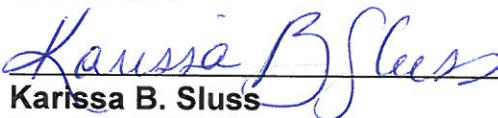
by depositing a copy of the same in the United States Mail, First Class;

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

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 15 DAY OF September 2015.

OSCAR A. KELLER, JR.  
CHAIRMAN

  
Karissa B. Sluss

Docket and Office Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
FAX: (919) 733-3020