

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

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| COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA |) | DOCKET NO: 2012-5292 |
| |) | |
| |) | INSPECTION |
| Complainant, |) | NO: 315962928 |
| |) | |
| |) | CSHO ID: K4809 |
| v. |) | |
| JOSE PALOMO dba JOSE PALOMO |) | <u>ORDER</u> |
| and its successors |) | |
| Respondent. |) | |

THIS CAUSE coming on pursuant to the Notice of Hearing (“Hearing Order”) on June 27, 2013 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Daniel Addison, Special Deputy Attorney General, appeared as counsel for the Complainant. Jose Palomo, appeared by teleconference for the Respondent.

Prior to the Hearing an informal a pre-hearing conference (the “Hearing”) was held. Based on that conference Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”). Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final 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 (the “Act”). The Review Commission has jurisdiction over the parties and subject matter to this action.
2. Respondent is a North Carolina does business in the State of North Carolina and is subject to the Act.
3. Respondent submitted a timely Notice of Contest.

DATABASE
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4. Neither party has any objection, procedural or otherwise, to this Hearing.

MOTIONS

Complainant moved as follows: to amend Citation 1 by reducing the penalty from \$8,400 to \$5,460 and to amend Citation 2 by reducing the penalty from \$3,000 to \$1,950, for a total adjusted penalty of \$7,410.00 (the "Penalty"). The Penalty shall be paid in full no later than July 15, 2014 (the "Payment Period"). Respondent shall use good faith efforts to make monthly payments on the Penalty in the minimum amount of \$200.00 per month commencing July 15, 2013. Provided Respondent had made a monthly payment on the Penalty for each month commencing July 15, 2013 and extending through May 15, 2014 then Respondent may contact Complainant by phone and discuss with Complainant the possibility of extending the Payment Period from July 15, 2014 to a later date.

Respondent had no objection to Complainant's Motion.

Respondent moved as follows: to withdraw its Notice of Contest to Citation 1 and Citation 2 as amended by Complainant's Motion.

Complainant had no objection to Respondent's Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any procedural objection to this Hearing.
4. 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 Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act").
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

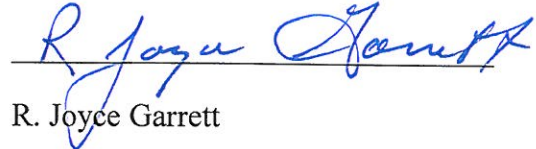
CONCLUSIONS OF LAW

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 as set forth above is hereby **GRANTED**; and
2. That Respondent's Motion as set forth above is hereby **GRANTED**.

This the 27th day of June, 2013.



R. Joyce Garrett

Administrative Law Judge

CERTIFICATE OF SERVICE

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

**JOSE PALOMO
266 ACORN COURT
ROUGEMONT NC 27572**

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

**DANIEL ADDISON
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 28th DAY OF June 2013.

**OSCAR A. KELLER, JR.
CHAIRMAN**


**Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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