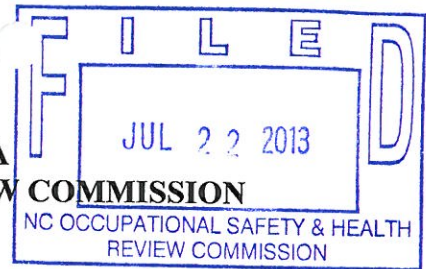


BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW
RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA

Complainant,

v.

CELEBRATION STATION
PROPERTIES INC and its successors
Respondent.

) DOCKET NO: 2012 - 5400
)
) INSPECTION
) NO: 316604727
)
) CSHO ID: Q7333
)
)
)
)
) ORDER
)

THIS MATTER came on for Hearing by the Undersigned on July 16, 2013 at the Guilford County New Courthouse, Grand Jury Room 468, Greensboro, North Carolina. Complainant was represented by Attorney Jason Rosser, Assistant Attorney General. Respondent was represented by Attorney William E. Burton III of Smith Moore Leatherwood LLP.

Following an informal pre-hearing conference the parties advised that each party wished to make certain motions. The parties also confirmed that each agreed to the following 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 corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and operates a family amusement park at 4315 Big Tree Way in Greensboro, North Carolina (the "Park"). The Park is open year round (weather permitting). Attractions at the Park include an arcade, batting cages, bumper boats, miniature golf, a "road course" go-kart track, a "kiddie kart" go-kart track and dining/concession facilities. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(10); all of Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(9).
3. On August 30, 2012, Compliance Safety and Health Officer Dean Lassiter (the "CSHO") with the North Carolina Department of Labor's Division of Occupational Safety and Health ("OSHA"), conducted an inspection of the Park (the "Inspection"). Respondent consented to the Inspection and cooperated fully with the CSHO's Inspection.

4. As a result of the Inspection, on September 19, 2012 Complainant issued a Citation and Notification of Penalty to Respondent alleging five serious violations (with a proposed penalty of \$4,800.00) and two non-serious violations bearing no proposed penalty.
5. Following an Informal Conference on October 17, 2012, OSHA issued a 'no change' letter. Respondent submitted a timely Notice of Contest on November 13, 2012. Subsequently OSHA withdrew three of the alleged serious violations (Citation 1, Items 2(a), 2(b) and 2(c)) reducing the proposed penalty for the remaining two alleged serious violations to \$1,800.00.
6. At the Hearing, Respondent withdrew its Notice of Contest to the two non-serious violations bearing no proposed penalty. The only remaining alleged violations to be considered at the Hearing is Citation 1 Item 1a and Citation 1 Item 1b, grouped and classified as 'Serious' bearing a penalty of \$1,800.00.
7. Neither party has any objection, procedural or otherwise, to this Hearing.
8. 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.
9. The parties agree the penalty assessed for Citation 1 Item 1a and Citation 1 Item 1b has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent, and that Complainant is not required to establish proof of the calculation of such penalty at this Hearing.

The parties further stipulated that Respondent agreed with Complainant that Respondent will (i) provide refresher training on road course policy and procedures; (ii) install warning sign(s) for track attendants/employees; (iii) continue to utilize administrative and engineering controls to prevent employee exposure to carts; and (iv) review (and revise if appropriate) its disciplinary procedures.

The parties further stipulated that the agreements, statements, and actions herein by Complainant and Respondent are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act.

MOTIONS

Complainant made the following Motion To Amend: to reclassify Citation 1 Item 1a and Item 1b as 'non-serious' and to reduce the penalty to \$ 900.00. Respondent did not object to Complainant's Motion to Amend.

Respondent made the following Motions To Withdraw Notice of Contest: (i) to withdraw Respondent's Notice of Contest to the violations classified as non-serious bearing no penalty set forth in Citation 2 Item 1 and in Citation 2 Item 2 (Respondent stated that such violations have

been abated); and (ii) provided Complainant's Motion To Amend is granted, to withdraw its Notice of Contest to the Citation 1 Item 1a and Item 1b as amended by Complainant's Motion To Amend (Respondent stated that such violations have been abated). Complainant did not object to either of Respondent's Motions To Withdraw Notice of Contest.

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 To Amend as set forth above is hereby **GRANTED**; and
2. That Respondent's Motions To Withdraw Notice of Contest as set forth above is hereby **GRANTED**. Respondent shall pay the Penalty of \$900.00 within 30 days from the date of this Order.

This the 17th day of July, 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:

WILLIAM E BURTON III
SMITH MOORE LEATHERWOOD LLP
PO BOX 21927
GREENSBORO NC 27420

JASON ROSSER
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

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

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 22nd DAY OF July 2013.

OSCAR A. KELLER, JR.
CHAIRMAN



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