



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

**COMMISSIONER OF LABOR FOR  
THE STATE OF NORTH CAROLINA**

**Complainant,**

v.

**OUTER BANKS OUTDOOR  
FURNITURE COMPANY LLC  
and its successors**

**Respondent.**

) **DOCKET NO: 2013 - 5418**  
)  
) **INSPECTION**  
) **NO: 316596329**  
) **CSHO ID: A2210**  
)  
) **FINAL ORDER**  
)  
)

**THIS CAUSE** coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on October 1, 2013 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Melissa Taylor, Assistant Attorney General appeared as counsel for the Complainant, and Ray DeBruhl, Manager Member of Respondent, appeared for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, 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 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 the subject matter to this action.

2. Respondent is a North Carolina limited liability company, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Kinston, North Carolina. Respondent is a start-up company in the business of design and manufacture of outdoor furniture. 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 6, 2012, Scott Justice, an Occupational Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted a complaint inspection of Respondent’s worksite located at 3038 Elm Grove Road in Kinston, North Carolina (the “Inspection”).

4. As a result of the Inspection, on August 29, 2012, Complainant issued a citation alleging one grouped-item classified as ‘serious’ (“Citation 1”) and a citation alleging one grouped-item as ‘nonserious’ (“Citation 2”), as more specifically described on **Exhibit “A”** (collectively the “Original Citation”).

5. Respondent submitted a timely Notice of Contest.

6. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the “Rules”).

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

8. Respondent posted the Original Citation and the Hearing Order 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 period.

9. Respondent agrees that the violations alleged in Original Citation have been abated based on having no employees. Respondent agrees that in the event it restarts its business and hires employees (a) it shall install a functional bathroom facility with hot/cold running water for employee use, and (b) it shall complete appropriate hazardous assessment certifications.

10. The parties agree that upon granting of Complainant’s Motion the penalty for each Item designated in the Original Citation as amended pursuant to Complainant’s Motion 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.

12. 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 Order.

14. Complainant and Respondent agree that provided the respective Motions of each party are granted 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. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to the Complainant Motion. The parties further agree that (i) 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, and (ii) none of the foregoing 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 waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. 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 litigation and shall not be used for any other purpose 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”):

amend Citation 1 by reclassifying from serious to non-serious without penalty;

amend Citation 2 by keeping the non-serious classification but (i) deleting subpart b) of Item 1a, and (ii) designating Citation 2 to be without penalty;

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”), and Respondent confirmed that the violations alleged in the Original Citation as amended have been abated :

to 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.

### **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.

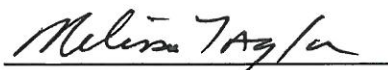
**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 1st day of October, 2013.


  
\_\_\_\_\_  
R. Joyce Garrett, Administrative Law Judge

**CONSENTED TO:**

  
\_\_\_\_\_

**Melissa Taylor, Assistant Attorney General**

**Attorney for Complainant**

  
\_\_\_\_\_

**Ray DeBruhl, Manager-Member  
| Representative for Respondent**

**Exhibit "A"**  
**Original Citation**

**CITATION NUMBER 1 (Type of Violation: Serious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
Grouped			
1a	29 CFR 1910.141(d)(2)(ii)	09/03/2012	\$ 1,500.00
1b	29 CFR 1910.141(d)(2)(iii)	09/03/2012	

**CITATION NUMBER 2 (Type of Violation: Nonserious)**

Grouped			
1a	29 CFR 1910.132(d)(1)	09/03/2012	\$ 450.00
1b	29 CFR 1910.132(d)(2)	09/03/2012	

**TOTAL**                      **\$ 1,950.00**

CERTIFICATE OF SERVICE

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

RAY DeBRUHL  
OUTER BANKS OUTDOOR FURNITURE COMPANY LLC  
PO BOX 6103  
KINSTON NC 28501

MELISSA TAYLOR  
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 2nd DAY OF October 2013.

OSCAR A. KELLER, JR.  
CHAIRMAN

  
\_\_\_\_\_  
Nancy D. Swaney  
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

