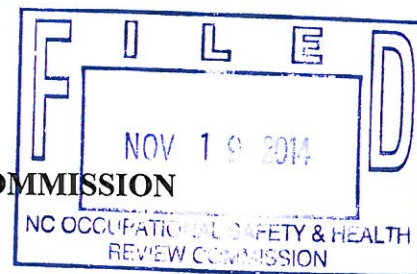


**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**



COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2014 - 5612
)	
)	INSPECTION
)	NO: 317362846
Complainant,)	
)	CSHO ID: W2024
v.)	
ASTRO HOLDING COMPANY LLC)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on November 19, 2014 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Jason Rosser, Assistant Attorney General appeared as counsel for the Complainant, and Tom Henninger, District Supervisor 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”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. Based on the Original Citation and the Statement of Employer’s/Respondent’s Position, a single citation (“Citation 1”) was issued alleging a

violation of 29 CFR 1910.176(b)¹ classified as ‘serious’, with as assessed penalty of \$2,500.00; the alleged violation was ‘Corrected During Inspection’; Respondent denied such allegations and objected to such penalty.

As a result of this Hearing, 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, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter “the Act”). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a Delaware limited liability company duly authorized to do business in the State of North Carolina under the laws of the State of North Carolina, and maintains a place of business in Apex, North Carolina. 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 March 12, 2014, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor conducted a partial inspection of Respondent’s worksite located at 1471 North Garnett St. in Henderson, North Carolina (the “Inspection”).
4. As a result of the Inspection, on May 7, 2014, Complainant issued Citation 1 (also sometimes referred to herein as 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.

¹ Citation 1 Item 1: 29 CFR 1910.176(b): Storage of material created a hazard: Between January 6 and March 12, 2014, at the employer’s floor covering store premises inside the Roses Store, at 1471 North Garnett Street, Henderson, NC 27536: The storage of approximately 75 carpet remnants (12 feet wide and ranging from 10 to 20 feet long), and approximately 25 vinyl flooring remnants (12 feet wide and ranging from 8 to 12 feet lone), on rolls, 12 feet long, placed on end against the left, right, and rear walls of the department, created a hazard in that there was no means to prevent the rolls from falling, in that, for example: when one or more rolls are removed, remaining rolls can topple and cause others to fall, like dominoes, and they may fall into the aisle and strike an employee or employees who may be working there or passing.

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 confirms that the violation alleged in Citation 1 has been abated.

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.

11. Respondent agrees to pay the penalty assessed in this matter within 15 business days of the date of this Final Order. Payment of the penalty is to be made by check or money order made payable to "NC Department of Labor, OSHA Division" and should include the inspection number (317362846). Payment shall be sent directly to the Department of Labor, addressed to Jack Brinson, Budget Division, 4 West Edenton Street, Raleigh, North Carolina 27602.

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 Complainant's 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 reducing the amount of the penalty from \$2,500 to \$750;**

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 violation alleged in the Original Citation as amended has 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 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 19th day of November, 2014.




R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:



**Jason Rosser, Assistant Attorney General
Attorney for Complainant**



**Tom Henninger, District Supervisor
Representative for Respondent**

CERTIFICATE OF SERVICE

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

**TOM HENNINGER
ASTRO HOLDING COMPANY LLC
3712 SAWYERS MILL DRIVE
APEX NC 27539**

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

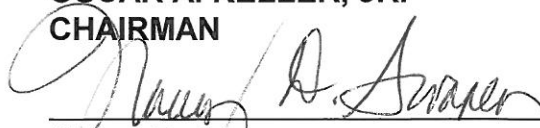
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

**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 20th DAY OF November 2014.

**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**