

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

FILED

RALEIGH, NORTH CAROLINA

DEC 18 2017

COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA,)
COMPLAINANT,)
v.)
ENRIQUE ELEZONDO dba)
CAROLINA TORTILLAS, LLC and)
ELEZONDO, LLC dba TORTILLAS)
CAROLINA, and its successors,)
RESPONDENT)

OSHANC NO. 2016-5806
OSHANC NO. 2016-5807
INSPECTION NO. 317997625
INSPECTION NO. 318052487
CSHO ID. D4557

NC Occupational Safety
& Health Commission

ORDER

THIS CAUSE came on for hearing before Reagan H. Weaver, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission on November 14, 2017 at 9:30 am pursuant to a Notice of Hearing. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared for the Complainant. Respondents' representative, Enrique Elezondo appeared for himself and for the Respondent Elezondo, LLC. No affected employee of Respondents, or their representatives, attended to have a say in, or participate as a party, in the hearing.

Before initiating the presentation of its case, Complainant's representative asked that the court confer with the parties in chambers in order to see whether the case could be resolved without formal presentation of evidence. The court agreed and a chambers conference was held during which the parties explained their respective positions to each other. Following this conference, the parties conferred privately and then announced that they had agreed to stipulations as set out below and as memorialized in the transcript, a copy of which has been filed with this matter.

This Order is not the outgrowth of an evidentiary hearing. No specific facts or circumstances were introduced of record beyond that which was recorded in the transcript of proceedings to memorialize the settlement.

STIPULATIONS

1. An inspection of the Respondents' workplace located at 115-B N. 2nd St., Saint Paul's, NC 28384 was conducted on August 5, 2015, and citations pursuant to that inspection were issued and are summarized, with penalties, as follows:

Citation 1, Item 1: General Duty Clause for Heat Stress Exposure - \$2,800

- Citation 1, Item 2: Lack of Lockout/Tagout policies - \$2,000
- Citation 1, Item 3: Blender not guarded at point of operation - \$2,800
- Citation 2, Item 1: Place of employment not kept in sanitary or orderly condition – no penalty
- Citation 2, Item 2: Employer verification not established for performance of workplace hazard assessment – no penalty
- Citation 2, Item 3: Educational programs not provided to employees expected to use portable fire extinguishers – no penalty
- Citation 2, Item 4: Covers on junction boxes for main power to ovens not present – no penalty
- Citation 2, Item 5: Flexible cords/cables used as substitute for fixed wiring – no penalty
- Citation 2, Item 6: Strain relief missing for main power cable to tortilla oven – no penalty
- Citation 2, Item 7a: No hazard communication program for employees using cleaning chemicals – no penalty
- Citation 2, Item 7b: No information provided to employees about chemicals being used – no penalty

2. Complainant issued a Notification of Failure to Abate Alleged Violations on April 25, 2016. The Citations proposed are summarized and listed with proposed penalties below:

- Citation1, Item 002: Failure to establish a program of energy control procedures - \$75,000
- Citation 2, Item 002 Failure to verify that a program of workplace hazard assessment had been performed - \$1,500
- Citation 2, Item 007a Failure to develop, implement, and/or maintain a written hazard communication program - \$1,500
- Citation2, Item 007b Failure to provide effective information and training on hazardous chemicals - \$1,500

3. Respondents agree to withdraw their notice of contest to the above citations with the understanding that the total amount owed for citations and penalties will equal eighteen thousand and no/hundredths dollars (\$18,000.00) payable on the following terms:

- a. The first payment of \$500.00 will be due February 10, 2018 and \$500.00 each month thereafter by the 10th of the month with the final payment being planned for January 10, 2021;
- b. In the event that any payment is late, Respondents will be given ten (10) days to cure any notice of default from the date of receipt of such notice which shall be mailed to:

106 West Clark Street, Suite B
Saint Paul's, NC 28384

- c. Respondents will be permitted, in the event that they cannot make full payments, to contact the Department of Labor's budget office to reduce their monthly payments and extend the term of payments in order to account for any reduction in the monthly payments
4. Respondents agree to request, annually, consultative services from the Occupational Safety and Health Office of the North Carolina Department of Labor to assist them at the 106 West Clark Street location or any other future location in the event the business moves within the state of North Carolina. Respondents agree to accept and follow the recommendations of the consultative services personnel.

FINDINGS OF FACT

Based on the above stipulations and the transcript of the proceeding to receive the parties' description of their stipulations, 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 Occupational Safety and Health Act (the "Act") and the jurisdiction of the Occupational Health and Safety Review Commission of North Carolina;
3. Neither party had any objection, procedural or otherwise, to this proceeding.
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:

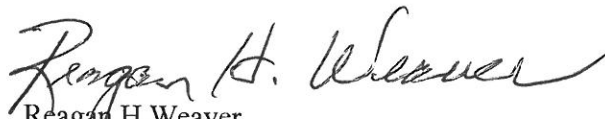
1. That Respondents will pay the total sum of \$18,000.00 in the manner set forth below:

- a. The first payment of \$500.00 will be due February 10, 2018 and \$500.00 each month thereafter by the 10th of the month with the final payment being planned for January 10, 2021;
- b. In the event that any payment is late, Respondents will be given ten (10) days to cure any notice of default from the date of receipt of such notice which shall be mailed to:

107 West Clark Street, Suite B
Saint Paul's, NC 28384

- c. Respondents will be permitted, in the event that they cannot make full payments, to contact the Department of Labor's budget office to reduce their monthly payments and extend the term of payments in order to account for any reduction in the monthly payments.
2. Respondents will request, annually, consultative services from the Occupational Safety and Health Office of the North Carolina Department of Labor to assist them at the 106 West Clark Street location or any other future location in the event the business moves within the state of North Carolina. Respondents agree to accept and follow the recommendations of the consultative services personnel.
 3. The transcript of the proceeding to record the agreement of the parties is to be maintained with the file of these cases to preserve the original record of the parties' agreement.

This the 14 day of December, 2017.


Reagan H. Weaver
Administrative Law Judge

CERTIFICATE OF SERVICE

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

ENRIQUE ELEZONDO
106 CLARK ST.
ST. PAULS, NC 28384

RORY AGAN
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

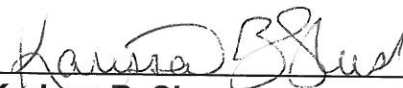
by depositing a copy of the same in the United States Mail, First Class;

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 18th DAY OF December 2017.

ARLENE K. EDWARDS
CHAIRMAN



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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