

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

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

Complainant,

v.

**AMERICAN & EFIRD LLC
and its successors**

Respondent.

) **DOCKET NO: 2018 - 6007**
)
) **INSPECTION**
) **NO: 318126315**
) **CSHO ID: D1115**
) **FINAL ORDER**

FILED

AUG 28 2020

**NC Occupational & Safety
Health Commission**

THIS CAUSE came on for hearing and was heard via telephone conference before the undersigned R. Joyce Garrett, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on August 25, 2020, at 10:30 A.M. pursuant to a Notice of Hearing dated August 4, 2020 (the "Notice of Hearing"). Rory Agan, Assistant Attorney General appeared as counsel for the Complainant. Travis W. Vance, Esq. of Fisher Phillips LLP, Charlotte, North Carolina, appeared as counsel for the Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the time of the Hearing the parties agreed upon and consented to the following Stipulations.

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, authorized to do business in North Carolina on November 4, 2011, and is active and current in the State of North Carolina, and maintains a place of business in Mount Holly, North Carolina. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(11); all of Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(10).
3. During the period of January 3, 2018 to February 23, 2018, Compliance Safety and Health Officer Carl Burgette, employed by the North Carolina Department of Labor (the "Inspector"), conducted an inspection of the Work Site (the "Inspection").
4. As a result of the Inspection, on or about February 23, 2018, Complainant issued two citations ("Citation 01" and "Citation 02") as more specifically described on Exhibit "A" (sometimes hereinafter referred to collectively as the "Original Citation").
5. Respondent submitted a timely Notice of Contest dated May 2, 2018. Respondent timely filed "Respondent's/ Employer's Statement of Position" which requested that formal pleadings be served. Complainant filed a Complaint on June 25, 2018, and Respondent filed its Answer on July 18, 2018.
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. Respondent and Complainant waive the presence of a court reporter at this Hearing and the making of a transcript of the Hearing. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned and to entry of this Final Order.
8. Respondent posted the Original Citation and the Notice of Hearing as required by the Rules. Neither Complainant nor Respondent has 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 violations alleged in the Original Citation as amended pursuant to Complainant's Motion (hereinafter defined) have 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 and to specific factors applicable to Respondent.

11. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further

*** Respondent will provide to Complainant proof of abatement of Citation 01 Item 001 and Citation 02 Item 002;**

*** Respondent will label the electrical panel referenced in Citation 02 Item 001 with a new legend indicating breakers purpose, including if it is “de-energized”;**

*** Respondent will develop a written standard for maintaining and keeping the SDS for each product (retain from vendor) and ensure they have each on hand; and**

*** Respondent agrees to pay the penalty of \$ 1,200 .00 assessed in this matter within 30 days of the date of this Final Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318126315) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101).**

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 Final Order.

13. 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 further 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 (1) **agrees that it will update the Inspection report in this matter to correct the NAICS code indicated on the report to match the code which was the basis of the inspection**, and (2) **moved to amend the Original Citation as follows** (“Complainant’s Motion”):

(i) with respect to Citation 01 Item 001, reclassify from Serious to NonSerious and reduce the penalty from \$2,400 to \$600;

(ii) delete Citation 02 Item 001 in its entirety;

(iii) with respect to Citation 02 Item 002, retain the NonSerious classification and reduce the penalty from \$1,200 to \$600.

Except as expressly set forth in Complainant’s 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”):

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 objection, procedural or otherwise, 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 Act.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Final 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 Final 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**; Respondent shall pay the penalty of \$ 1,200.00 in the manner set forth in the Stipulations.

This the 25th day of August, 2020.

R. Joyce Garrett
Administrative Law Judge

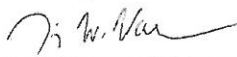
This Final Order may be signed in counterparts, each of which is an original and all of which taken together shall form one single document filed by the Administrative Law Judge. Signatures delivered to the Review Commission by email in PDF format or by fax will be effective to bind the parties.

CONSENTED TO:

For Complainant

Rory Agan
Assistant Attorney General
North Carolina Department of Justice

For Respondent



Travis W. Vance, Esq.
Fisher & Phillips LLP

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 Final Order.

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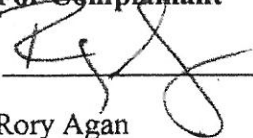
This the 25th day of August, 2020.

R. Joyce Garrett
Administrative Law Judge

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For Complainant



Rory Agan
Assistant Attorney General
North Carolina Department of Justice

For Respondent

Travis W. Vance, Esq.
Fisher & Phillips LLP


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This the 25th day of August, 2020.


R. Joyce Garrett
Administrative Law Judge

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CONSENTED TO:

For Complainant

Rory Agan
Assistant Attorney General
North Carolina Department of Justice

For Respondent

Travis W. Vance, Esq.
Fisher & Phillips LLP

Exhibit "A"
Original Citation

CITATION NUMBER 01 (Type of Violation: Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.219(c)(4)(i) ¹	3/21/2018	\$ 2,400.00

CITATION NUMBER 02 (Type of Violation: NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.303(f)(2) ²	3/21/2018	\$ 00.00
002	29 CFR 1910.1200(g)(8) ³	3/21/2018	\$ 1,200.00

TOTAL **\$ 3,600.00**

¹ Citation alleged there was a conveyor belt with 2 shafts that projected 2 inches which was more than one half the diameter of the shaft and was not guarded by non-rotating caps or safety sleeves.

² Citation alleged that electrical panel B2 600 volts located in the storage rack area was not legibly marked to indicate its purpose.

³ Citation alleged employer did not maintain copies of required safety data sheets for each hazardous chemical in the workplace.

CERTIFICATE OF SERVICE

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

TRAVIS W. VANCE
FISHER & PHILLIPS, LLP
PO BOX 36775
CHARLOTTE, NC 28236

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

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, 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 1 DAY OF September 2020.



Karissa B. Sluss
Docket and Office Administrator
NC OSH Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589
FAX: (919) 733-3020