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

JAN 14 2019

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA	)	**DOCKET NO: 2017-5944**
	)	**INSPECTION NO: 318107646**
Complainant,	)	**CSHO ID: # A6044**
v.	)	
ALLSTONE CORP, LLC and its successors	)	**ORDER**
Respondent.	)	

THIS CAUSE was scheduled for Hearing before the undersigned R. Joyce Garrett, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on November 14, 2018 at 10:00 A.M. pursuant to a Notice of Hearing dated September 26, 2018.

Rory P. Agan, Assistant Attorney General, representing the Complainant was available for the Hearing but Respondent did not appear for the November 14, 2018 hearing.

As a result of Respondent's failure to appear for the Hearing Complainant filed a Motion For Entry of Default Judgment and a Motion For Default Judgment (collectively "Complainant's Motions"). Complainant's Motions are hereby **DENIED**.

Based on the case file including the following

(1) the Notice of Docketing filed August 22, 2017 (with a Certificate of Service certifying service upon Charles Eric Pate, Allstone Corp LLC, 301 N. Green Meadows Dr, Bldg C, Wilmington, NC 28405 by depositing the document in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina on August 22, 2017);

(2) a notice of contest letter dated 9/25/2017 to Karissa B. Sluss, Docket and Office Administrator, NC OSH Review Commission, 422 Blount Street, Raleigh, NC 27601 from Charles Eric Pate – Owner Allstone Corp LLC and its enclosed Statement of Position in which Mr. Pate made, among other statements, the following statement "I formally deny all violations, I object to the penalties and request a hearing.";

(3) Invoice /Debt Collection Notice showing total penalties of $13,500.00;

(4) Citation and Notification of Penalty to Allstone Corp LLC, 301 North Green Meadows Dr, Bldg C, Wilmington, NC 28405, with the Inspection Site 301 North Green Meadows Dr, Bldg C, Wilmington, NC 28405, Inspection Number 318107646, CSHO ID

A6044, Option Report No. 056-01, Inspection Date(s) 5/23/2017 – 5/30/2017, Issuance Date 7/20/2017, together with Citation 01 designated Serious, Items 001a, 001b, 002a, 002b, 003, 004, 005, 006, 007, 008a, 008b, 008c and 009, and Citation 02 designated NonSerious, Item 001; each item setting forth in detail the standard cited as being violated, the specifics on which the violation was based, the abatement date, and the proposed penalty; and

(5) Notice of Hearing filed September 26, 2018 setting the Hearing Date as November 14, 2018 at 10 A.M. at the Lee House, Oak Hearing Room, 2nd Floor, 422 North Blount Street, Raleigh, NC 27601 (with a Certificate of Service certifying service upon Charles Eric Pate, Allstone Corp LLC, 301 N. Green Meadows Dr., Bldg C, Wilmington, NC 28405 by depositing the document in the United States Mail, Certified Mail and Priority Mail, postage prepaid, at Raleigh, North Carolina on September 26, 2018);

and on the statements of Karissa B. Sluss, Docket and Office Administrator, NC OSH Review Commission that Respondent did not notify the Commission of any conflicts with the November 14, 2018 hearing date nor did Respondent notify the Commission of any need for, or request, a continuance; and on the statements of Complainant's counsel Rory P. Agan that Respondent did not contact Complainant regarding the hearing date or a continuance of the hearing date, the undersigned makes the following Findings of Fact and Conclusions of Law and enters an Order accordingly.

FINDINGS OF FACT

1. This case was initiated by a Notice of Contest which followed a citation issued to enforce the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter the "Act").

2. 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 Act. The Review Commission has jurisdiction over the parties and the subject matter to this action.

3. Based on the public records for the North Carolina Secretary of State, Respondent is a North Carolina domestic, manager managed, limited liability company, current and active in the State of North Carolina, and its manager is its Chief Executive Officer Charles Eric Pate whose address is 301 N Green Meadows Drive, Wilmington, North Carolina 28405; Respondent maintains a place of business in Wilmington, North Carolina.

4. Respondent is an "employer" as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).

5. During the period of May 23, 2017 and May 30, 2017 an Occupational Safety and Health Officer with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at 301 North Green Meadows Dr, Bldg C, Wilmington, North Carolina (the "Inspection").

6. As a result of the Inspection, on July 20, 2017, Complainant issued the following Citations and Notifications of Penalty (herein collectively referred to as the "Original Citation"):

CITATION 01 (Serious)

Item No.	Standard	Abatement Date	Penalty
Grouped			
001a	29 CFR 1910.36(d)(1)	7/28/2017	$ 900.00
001b	29 CFR 1910.37(a)(3)	Corrected during Inspection	0.00
Grouped			
002a	29 CFR 1910.133(a)(1)	7/28/2017	900.00
002b	29 CFR 1910.132(d)(2)	7/28/2017	0.00
003	29 CFR 1910.136(a)	7/28/2017	1,500.00
004	29 CFR 1910.145(f)(3)	7/28/2017	2,100.00
005	29 CFR 1910.176(a)	7/28/2017	2,100.00
006	29 CFR 1910.178(m)(5)(i)	Corrected during Inspection	900.00
007	29 CFR 1910.213(b)(3)	7/28/2017	1,500.00
Grouped			
008a	29 CFR 1910.213(c)(1)	Corrected during Inspection	1,500.00
008b	29 CFR 1910.213(c)(2)	Corrected during Inspection	0.00
008c	29 CFR 1910.213(c)(3)	Corrected during Inspection	0.00
009	29 CFR 1910.305(g)(2)(ii)	Corrected during Inspection	2,100.00

CITATION 02 (NonSerious)

Item No.	Standard	Abatement Date	Penalty
001	29 CFR 1910.37(b)(2)	7/28/2017	0.00

7. Respondent timely filed it Notice of Contest and the Review Commission has jurisdiction over the subject matter and the parties to this action.

8. All notices required by the Act and by any applicable procedural and substantive rules have been given; specifically a Notice of Hearing setting forth the date and time of this Hearing was served upon the Respondent and the Complainant on September 26, 2018 as set forth in the Certificate of Service attached to the Notice of Hearing.

9. The Hearing in this matter was at 10 A.M. on November 14, 2018 by the undersigned; Complainant was represented by Rory P. Agan, Assistant Attorney General. No representative of the Respondent appeared for the Hearing. Respondent did not notify the Commission of any conflicts with the November 14th date nor did it notify the Commission of any need for a continuance. Respondent did not contact Complainant with any request for a continuance. Since

the time of the Hearing to the date of this Order, Respondent has not contacted the undersigned regarding this case or its failure to appear at the Hearing, and the undersigned has not been informed by the Commission or by Complainant's counsel that it has been contacted by the Respondent regarding this case or Respondent's failure to appear at the Hearing.

10. Rule .0503 (Failure To Appear) of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission (the "Rules of Procedure") provides:

(a) Subject to the provisions of Paragraph (c) of this Rule, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights to participate and be heard in the hearing. Unjustifiable failure to appear may result in a declaration of default and a decision against the defaulting party in accordance with Rule .0309(a) of this Chapter. Such parties shall be served with a copy of the decision of the Board.

(b) Requests for rehearing based on justifiable failure to appear must be made, in the absence of extraordinary circumstances, within five days after the scheduled hearing date.

(c) The Board or the hearing examiner, upon a timely showing of good cause, may excuse such failure to appear. In such event, the hearing may be rescheduled.

11. Rule .0309 (Failure To Obey Rules) of the Rules of Procedure provides:

(a) **Sanctions.** Failure to file or serve any pleading or otherwise proceed as provided by these rules may result in a declaration of default and a decision against the defaulting party. The declaration and decision may be initiated by the hearing examiner or Review Board or result from the motion of a party to the hearing examiner, Review Board, or Review Board Chairman. If the decision is made by a hearing examiner or the Review Board Chairman, the decision will become the decision of the Review Board unless review is initiated by any Review Board member or by the appeal of the defaulting party.

(b) **Review.** Review of a decision against a defaulting party, whether made by the hearing examiner or Review Board Chairman, must be directed by a Review Board member or sought by a party within 30 days of the filing date of the decision.

12. Respondent did not within 5 days of the date of the Hearing request a rehearing or show cause why a rehearing should be granted, pursuant to its rights under Rule .0503(b).

13. The Respondent's failure to appear at the Hearing in this matter on November 14, 2018 effectively serves as a waiver of all rights to participate and be heard in the Hearing.

14. With respect to the alleged violation of 29 CFR 1910.36(d)(1) employees were not able to open an exit door from the inside at all times without keys, tools, or special knowledge; with respect to the alleged violation of 29 CFR 1910.37(a)(3) exits routes were not kept free and unobstructed in that materials or equipment was placed, either permanently or temporarily, within the exit route; in each instance employees were exposed to the work conditions; there was a possibility of an accident the probable result of which would be serious physical injury;

Respondent was aware of or with reasonable diligence could have been aware of the conditions; the violation is a serious violation; a penalty of $900.00 for these violations as grouped was calculated in accordance with the Complainant's Field Operations Manual.

15. With respect to the alleged violation of 29 CFR 1910.133(a)(1) Respondent did not ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation; with respect to 29 CFR 1910.132(d)(2) the Respondent did not verify, through a written certification, that the required workplace hazard assessment had been performed; employees were exposed to the work conditions; in each instance there was a possibility of an accident the probable result of which would be serious physical injury; Respondent was aware of or with reasonable diligence could have been aware of the conditions; the violation is a serious violation; a penalty of $900.00 for these violations as grouped was calculated in accordance with the Complainant's Field Operations Manual.

16. With respect to the alleged violation of 29 CFR 1910.136(a) Respondent did not ensure that each affected employee uses protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects, or objects piercing the sole, and where such employee's feet are exposed to electrical hazards; employees were exposed to the work condition; there was a possibility of an accident the probable result of which would be serious physical injury; Respondent was aware of or with reasonable diligence could have been aware of the condition; the violation is a serious violation; a penalty of $1,500.00 was calculated in accordance with the Complainant's Field Operations Manual.

17. With respect to the alleged violation of 29 CFR 1910. 145(f)(3) tags were not used as a means to prevent accidental injury or illness to employees who were exposed to hazardous or potentially hazardous conditions, equipment or operations which were out of the ordinary, unexpected or not readily apparent; employees were exposed to the work condition; there was a possibility of an accident the probable result of which would be serious physical injury; Respondent was aware of or with reasonable diligence could have been aware of the condition; the violation is a serious violation; a penalty of $2,100.00 was calculated in accordance with the Complainant's Field Operations Manual.

18. With respect to the alleged violation of 29 CFR 1910.176(a) permanent aisles or passageways were not appropriately marked; employees were exposed to the work condition; there was a possibility of an accident the probable result of which would be serious physical injury; Respondent was aware of or with reasonable diligence could have been aware of the condition; the violation is a serious violation; a penalty of $ 2,100.00 was calculated in accordance with the Complainant's Field Operations Manual.

19. With respect to the alleged violation of 29 CFR 1910.178(m)(5)(i) when a powered industrial truck is left unattended, load engaging means were not fully lowered, controls were not neutralized, power was not shut off, and brakes set; employees were exposed to the work condition; there was a possibility of an accident the probable result of which would be serious physical injury; Respondent was aware of or with reasonable diligence could have been aware of

the condition; the violation is a serious violation; a penalty of $ 900.00 was calculated in accordance with the Complainant's Field Operations Manual.

20. With respect to the alleged violation of 29 CFR 1910.213(b)(3) provisions were not made to prevent woodworking machine(s) from automatically restarting upon restoration of power after power failure; employees were exposed to the work condition; there was a possibility of an accident the probable result of which would be serious physical injury; Respondent was aware of or with reasonable diligence could have been aware of the condition; the violation is a serious violation; a penalty of $ 1,500.00 was calculated in accordance with the Complainant's Field Operations Manual.

21. With respect to the alleged violation of 29 CFR 1910.213(c)(1) circular handfed ripsaw(s) were not guarded by an automatically adjusting hood which completely enclosed that portion of the saw above the table and above the material being cut; with respect to 29 CFR 1910.213(c)(2) handfed circular ripsaw(s) were not furnished with a spreader to prevent material from squeezing the saw or being thrown back on the operator; and with respect to 29 CFR 1910.213(c)(3) handfed ripsaw(s) were not provided with non kickback fingers or dogs so located as to oppose the thrust or tendency of the saw to pick up the material or to throw it back toward the operator; in each instance employees were exposed to the work conditions; in each instance there was a possibility of an accident the probable result of which would be serious physical injury; Respondent was aware of or with reasonable diligence could have been aware of the conditions; the violation is a serious violation; a penalty of $ 1,500.00 for these violations as grouped was calculated in accordance with the Complainant's Field Operations Manual.

22. With respect to the alleged violation of 29 CFR 1910.305(g)(2)(ii) flexible cords were not used only in continuous lengths without splice or tap; employees were exposed to the work condition; there was a possibility of an accident the probable result of which would be serious physical injury; Respondent was aware of or with reasonable diligence could have been aware of the condition; the violation is a serious violation; a penalty of $ 2,100.00 was calculated in accordance with the Complainant's Field Operations Manual.

23. With respect to the alleged violation of 29 CFR 1910.37(b)(2) each exit was not clearly visible and marked by a sign reading Exit; there was a possibility of an accident; Respondent was aware of or with reasonable diligence could have been aware of the condition; the violation is a nonserious violation; a penalty of $0.00 was calculated in accordance with the Complainant's Field Operations Manual.

CONCLUSIONS OF LAW

1. 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.

2. This action was properly brought and the undersigned has jurisdiction to hear this matter.

3. The Respondent is subject to the provisions of the Act.

4. The Respondent is a defaulting party for its failure to appear at the Hearing.

5. The Respondent has violated the cited provisions of the Act, and such violations are classified as Serious or NonSerious as set forth in this Order.

6. The penalty for each violation was properly calculated in accordance with the Complainant's Field Operations Manual and is just and fair.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED that

ORDER

1. Citation 01, Item 001a and 001b is affirmed as a serious violation of 29 CFR 1910.36(d)(1) and 29 CFR 1910.37(a)(3) as grouped with a penalty of $900.00.

2. Citation 01, Item 002a and 002b is affirmed as a serious violation of 29 CFR 1910.133(a)(1) and 29 CFR 1910.132(d)(2) as grouped with a penalty of $900.00.

3. Citation 01, Item 003 is affirmed as a serious violation of 29 CFR 1910.136(a) with a penalty of $1,500.00.

4. Citation 01, Item 004 is affirmed as a serious violation of 29 CFR 1910.145(f)(3) with a penalty of $2,100.00.

5. Citation 01, Item 005 is affirmed as a serious violation of 29 CFR 1910.176(a) with a penalty of $2,100.00.

6. Citation 01, Item 006 is affirmed as a serious violation of 29 CFR 1910.178(m)(5)(i) with a penalty of $900.00.

7. Citation 01, Item 007 is affirmed as a serious violation of 29 CFR 1910.213(b)(3) with a penalty of $1,500.00.

8. Citation 01, Item 008a, 008b, and 008c is affirmed as a serious violation of 29 CFR 1910.213(c)(1), 29 CFR 1910.213(c)(2), and 29 CFR 1910.213(c)(3) as grouped with a penalty of $1,500.00.

9. Citation 01, Item 009 is affirmed as a serious violation of 29 CFR 1910.305(g)(2)(ii) with a penalty of $2,100.00.

CERTIFICATE OF SERVICE

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

CHARLES ERIC PATE
ALLSTONE CORP., LLC
301 N. GREEN MEADOWS DR
BLDG C
WILMINGTON, NC 28405

RORY AGAN
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, 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 14 DAY OF January, 2019.

ARLENE K. EDWARDS
CHAIRMAN

Karissa B. Sluss

Karissa B. Sluss
Docket and Office Administrator
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