

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

|  |   |                               |
|--|---|-------------------------------|
| <b>COMMISSIONER OF LABOR FOR<br/>THE STATE OF NORTH CAROLINA</b> | ) | <b>DOCKET NO: 2013 - 5538</b> |
|  | ) |                               |
|  | ) | <b>INSPECTION</b>             |
|  | ) | <b>NO: 317301562</b>          |
| <b>Complainant,</b>  | ) |                               |
|  | ) | <b>CSHO ID: H1305</b>         |
| <b>v.</b>  | ) |                               |
| <b>TOAD TRAILERS LLC</b>   | ) | <b><u>FINAL ORDER</u></b>     |
| <b>and its successors</b>  | ) |                               |
| <b>Respondent.</b>   | ) |                               |

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**THIS CAUSE** coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on March 10, 2015 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:30 a.m. Jill Cramer, Assistant Attorney General appeared as counsel for the Complainant, and Scott Ketron, Manager 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 Respondent’s Notice of Contest, it appears that no injuries were sustained and that: the Inspector (hereinafter defined) alleged: (collectively referred to herein sometimes as “Citation 1”) Citation 1 Item 1, a serious violation of 29 CFR 1910.136(a) with a penalty of \$600 based on employees not wearing protective footwear; Citation 1 Item 2a, a serious violation of 29 CFR 1910.213(h)(1) based on a

radial arm saw not being sufficiently guarded; Item 2b, a serious violation of 29 CFR 1910.213(d)(1) based on a portable table saw not having appropriate guard covering; and Item 2c, a serious violation of 29 CFR 1910.213(h)(4) based on a Dewalt brand radial arm saw on retracting to its resting position when pulled forward and released; Item 2a, 2b and 2c were grouped for penalty purposes with a penalty of \$1,000; Citation 1 Item 3, a serious violation of 29 CFR 1910.303(b)(1)(vii) with a penalty of \$1,000 based on duct tape being used to cover unused openings in a 120/208 V electrical panel; Citation 1 Item 4a, a serious violation of 29 CFR 1910.304(g)(5) based on the path to ground from circuits, equipment and enclosures were not permanent, continuous and effective; Item 4b, a serious violation of 29 CFR 1910.334(a)(2)(i) based on failure to inspect portable cord and plug connected electrical equipment and flexible extension cords; Item 2a and 4b were grouped for penalty purposes with a penalty of \$1,400; Citation 1 Item 5, a serious violation of 29 CFR 1910.305(b)(1)(ii) with a penalty of \$1,000 based on unused openings in boxes, cabinets, or fittings were not effectively closed. The Inspector also alleged: (collectively referred to herein sometimes as "Citation 2") Citation 2 Item 1, a nonserious violation of 29 CFR 1910.141(d)(2)(ii) without penalty based on lavatories not provided with hot and cold, or tepid running water; Citation 2 Item 2, a nonserious violation of 29 CFR 1910.303(b)(2) without penalty based on listed or labeled electrical equipment was not used or installed in accordance with instructions; Citation 2 Item 3, a nonserious violation of 29 CFR 1910.305(b)(2)(i) without penalty based on all pull boxes, junctions boxes, and fittings were not provided with covers identified for the purpose; Citation 2 Item 4, a nonserious violation of 29 CFR 1910.305(g)(1)(iv)(A) without penalty based on flexible cords being used as permanent wiring; Citation 2 Item 5, a nonserious violation of 29 CFR 1910.305(g)(1)(iv)(C) without penalty based on flexible cords and cable were run through doorways, windows, or similar openings; and Citation 2 Item 6, a nonserious violation of 29 CFR 1910.305(g)(2)(iii) without penalty based on flexible cords and cables not being connected to devices and fittings so that strain relief is provided. Respondent denied all such allegations of serious violations and objected to such penalties.

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 North Carolina limited liability company, designated 'current-active' under the laws of the State of North Carolina, which at the time of the Inspection conducted business in the State of North Carolina and maintained a place of business in Tabor City, 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 September 9, 2013, an Occupational Safety and Health Compliance Officer ("Inspector") with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 1007A Pireway Road in Tabor City, North Carolina (the "Inspection").
4. As a result of the Inspection, on November 7, 2013, Complainant issued Citation 1 and Citation 2 as more specifically described previously herein (Citation 1 and Citation 2 are sometimes referred to collectively 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.
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.
9. Respondent agrees that the violations alleged in the Original Citation have been abated, and agrees to use its best efforts to comply with the requirements of the Act with respect to the Standards cited. Respondent does not currently have an active manufacturing facility in North Carolina.
10. Respondent provided strong and persuasive evidence of financial hardship. Giving due consideration to the financial condition of the Respondent and the financial hardship that paying the proposed penalty would have on the Respondent, it is appropriate to have a reduction in penalty.
11. Respondent agrees that prior to opening a manufacturing facility in North Carolina it will contact Consultative Services Bureau of the OSH Division of the North Carolina Department of Labor and request appropriate consultative services.
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.
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 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 Items 1 through 5 inclusive by eliminating the penalty in its entirety due to extreme financial hardship in this specific circumstance;

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.

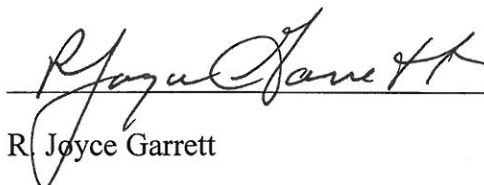
**CONCLUSIONS OF LAW**

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 10<sup>th</sup> day of March, 2015

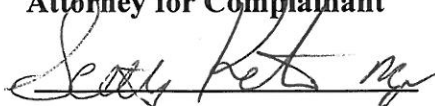
  
\_\_\_\_\_  
R. Joyce Garrett

Administrative Law Judge

**CONSENTED TO:**

  
\_\_\_\_\_  
Jill Cramer, Assistant Attorney General  
Attorney for Complainant

Jill Cramer, Assistant Attorney General  
Attorney for Complainant

  
\_\_\_\_\_  
Scott Ketron, Manager  
Representative for Respondent

Scott Ketron, Manager  
Representative for Respondent

CERTIFICATE OF SERVICE

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

SCOTTIE KETRON  
TOAD TRAILERS LLC  
9700 KINGS ROAD  
MYRTLE BEACH, SC 29572

JILL CRAMER  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629

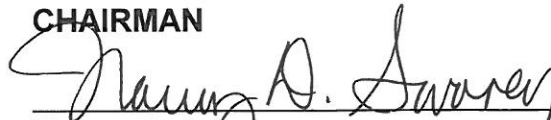
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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 11<sup>th</sup> DAY OF March 2015.

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