

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC NO. 2841-96

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

RPM TRAILERS, INC.

RESPONDENTS

* * * * *

ORDER OF THIS REVIEW COMMISSION

This commission called the RPM Trailers, Inc. case for review under our authority contained in section 47 (3) of our rules of procedure (ROP)¹. We ordered Mr. Gary Hogue, former president of RPM Trailers, to submit a copy of RPM's 1995 corporate income tax return. Mr. Hogue submitted the form to this commission and we received it without objection on November 22, 1996.

We reviewed the facts of this case, including the 1995 tax return, and find that RPM raised the issue of financial hardship. Transcript of the Evidence (TE) 57-58. We find the submitted tax form shows a loss of \$48,711 for 1995 and confirms RPM's financial hardship. Further, we find upon review of the U.S. tax return, the Kentucky state tax return, the Kentucky corporation license tax return and the Hart County occupational license tax return that RPM ceased business operations in 1995.

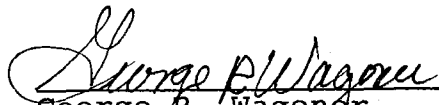
RPM, through its president Gary Hogue, complained that the penalty proposed was excessive. TE 58. While the secretary of

¹ Enacted as section 47 (3), 803 KAR 50:010.

labor, the enforcer of the Kentucky occupational safety and health act (KRS chapter 338), may propose penalties, this commission is responsible for setting penalties in contested cases. KRS 338.991 (6). Whatever work hazards in existence at the time of the inspection were abated by the termination of the enterprise in 1995.

In Blue Ridge Flooring Co., CCH OSHD 20,895, the federal administrative law judge vacated penalties where the business faced liquidation due to financial losses. We find, in the instant case, the \$1,350 penalty excessive when compared to the \$48,711 tax loss for the year 1995 and the liquidation of the employer's business in the same year. By our authority in KRS 338.991 (6) we therefore set the combined penalty in this case at \$1.

We affirm our hearing officer's recommended order to the extent it is consistent with this order.


George R. Wagoner
Chairman

s/Charles E. Yates
Charles E. Yates
Member

s/Donald A. Butler
Donald A. Butler
Member

Copy of the foregoing Order has been served upon the following parties in the manner indicated:

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(Messenger Mail)

MR GARY W HOGUE
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(First Class Mail)

This 3rd day of January, 1997.

A handwritten signature in cursive script, appearing to read "Sue Ramsey", is written over a horizontal line.

Sue Ramsey
Assistant Director
KOSH Review Commission
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