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JULIAN M. CARROLL  
GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

*KOSHRC  
Decision  
Order # 102*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER  
FRANKFORT, KENTUCKY 40601  
PHONE (502) 564-6892

April 10, 1975

H. L. STOWERS  
CHAIRMAN

MERLE H. STANTON  
MEMBER

CHARLES B. UPTON  
MEMBER

KOSHRC # 87

COMMISSIONER OF LABOR,  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

LOUISVILLE CHAIR CO., INC.

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before STOWERS, Chairman; UPTON and STANTON, Commissioners.

STANTON and UPTON, COMMISSIONERS:

This matter is before the Commission upon the direction of Mr. Stanton to review a Recommended Order of Hearing Officer Lloyd Graper, dated February 7, 1975.

The Commission has made a thorough review both of the Hearing Officer's holdings and of the entire record in this case. The findings of the Hearing Officer shall be and hereby are affirmed in all respects not inconsistent with the following opinion.

The Review Commission affirms respondent's citation charging a failure to correct or abate, and hereby REINSTATES the penalties proposed by the Department of Labor for such failure, as follows: Item #16, \$1,087 penalty; Item #17, \$700 penalty; Item #18, \$700 penalty; and Item #27, \$700 penalty. It is a further order of this Commission that the abatement date of July 17, 1974, as sustained by the Hearing Officer, be and it hereby is affirmed.

*Merle H. Stanton*  
Merle H. Stanton, Commissioner

/s/ Charles B. Upton  
Charles B. Upton, Commissioner

STOWERS, CONCURRING in part and DISSENTING in part:

It appearing from the record that the Hearing Officer's reduction of penalty on Items #16, #17, and #18 was justified, I hereby respectfully DISSENT from a reinstatement of the abatement penalties as proposed by the Department of Labor. I do CONCUR, however, in the Commissioners' assessment of Item #27 as one calling for imposition of the \$700 penalty for failure to abate.

/s/ H. L. Stowers

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H. L. Stowers, Chairman

Date: April 10, 1975  
Frankfort, Kentucky

DECISION NO. 102



JULIAN M. CAPROLL

GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

CAPITAL PLAZA TOWER  
FRANKFORT, KENTUCKY 40601  
PHONE (502) 564-6892

February 7, 1975

H. L. STOWERS  
CHAIRMAN

MERLE H. STANTON  
MEMBER

CHARLES B. UPTON  
MEMBER

KOSHRC # 87

COMMISSIONER OF LABOR,  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

LOUISVILLE CHAIR CO., INC.

RESPONDENT

NOTICE OF RECEIPT OF DECISION,  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND RECOMMENDED ORDER,  
AND ORDER OF THIS COMMISSION

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a Decision, Findings of Fact, Conclusions of Law, and Recommended Order of our hearing officer, the Honorable Lloyd Graper, has been received and is attached hereto as a part of this Notice and Order of this Commission.

You will further take notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may within 25 days from date of this notice submit a petition for discretionary review by this Commission.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission, and it is hereby ordered that unless this Decision, Findings of Fact, Conclusions of Law, and Recommended Order by the hearing officer in this matter is called for review and further consideration by a member of this Commission within 30 days of this date, it is adopted and affirmed as the Decision, Findings of Fact, Conclusions of Law, and Final Order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been filed by one or more Review Commission members.

Copy of this Notice and Order has been served by mailing or personal delivery on the following:

Commissioner of Labor  
Commonwealth of Kentucky  
Capital Plaza Tower  
Frankfort, Kentucky 40601  
Attention: Honorable Michael D. Ragland  
OSHA Coordinator

Earl M. Cornett, General Counsel  
Department of Labor  
Capital Plaza Tower  
Frankfort, Kentucky 40601  
Attention: Peter J. Glauber  
Assistant Counsel

The Honorable Joseph A. Worthington (Certified Mail # 775209)  
SMITH & SMITH  
Attorneys at Law  
500 Marion E. Taylor Building  
Louisville, Kentucky 40202

Louisville Chair Company, Inc. (Certified Mail #775210)  
1367 South Eleventh Street  
Louisville, Kentucky 40210  
Attention: Mr. Perry O'Brian, Jr.  
General Superintendent

This 7th day of February, 1975.

  
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Iris R. Barrett  
Executive Director

COMMONWEALTH OF KENTUCKY  
KENTUCKY OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

KOSHRC DOCKET NO. 87

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
RECOMMENDED ORDER

LOUISVILLE CHAIR CO., INC.

RESPONDENT

\* \* \* \* \*

Hon. Peter J. Glauber, Assistant Counsel, Department of Labor,  
Frankfort, Kentucky, for Complainant.

Hon. Joseph Worthington and Hon. James Smith III, of Smith and Smith,  
Louisville, Kentucky, for Respondent.

GRAPER, Hearing Officer.

An inspection was made on January 22, 1974, by the  
Kentucky Department of Labor, Division of Occupational Safety and  
Health, at a place of employment located at 1367 South Eleventh Street  
Louisville, Kentucky, described as a manufacturer of dinette furniture  
On the basis of such inspection, a Citation was issued containing 29  
separate items, all of which were uncontested. On August 5, 1974, a  
follow-up inspection at the same place of employment was made. Based

upon such reinspection, it was alleged that Respondent failed to correct or abate the violations hereinafter specified within the times prescribed:

Item #16, which alleged a violation of Standard 29 CFR 1910.213(d)

(1) (as adopted by OSH-11), described as "Hand-fed circular saws were not guarded by a hood (circular table saws, finish mill; glue warehouse)." The number of days failed to correct was seven, the proposed daily additional penalty was \$150 for a proposed total daily additional penalty of \$1,050 plus \$37, the previously allowed abatement credit, for a proposed total additional penalty for failure to correct of \$1,087 for failure to correct by July 17, 1974, the date to which the abatement date was extended.

Item #17, which alleged a violation of Standard 29 CFR 1910.213(c) (2)

(as adopted by OSH-11), described as "A hand-fed circular saw was not provided with a spreader (glue warehouse)." The number of days failed to correct was seven, the proposed daily additional penalty was \$100 for a proposed total daily additional penalty of \$700 for failure to correct by July 17, 1974, the date to which the abatement date was extended.

Item #18, which alleged a violation of Standard 29 CFR 1910.213(c) (3)

(as adopted by OSH-11), described as "A hand-fed circular saw was not provided with non-kickback fingers or dogs (glue warehouse)." The number of days failed to correct was seven, the proposed daily additional penalty was \$100 for a proposed total daily additional penalty of \$700 for failure to correct by July 17, 1974, the date to which the abatement date was extended.

Item #27, which alleged a violation of Standard 29 CFR 1910.22(d) (1) (as adopted by OSH-11), described as "Approved floor load limit plates were not supplied and securely affixed in a conspicuous place (second, third, fourth and fifth floors of building number two: upper shipping area; sewing room; second floor of carriage house; attic)." The number of days failed to correct was seven, the proposed daily additional penalty was \$100 for a proposed total daily additional penalty of \$700 for failure to correct by July 17, 1974, the date to which the abatement date was extended.

A Notice of Contest was received on September 23, 1974, (original) and on September 27, 1974 (amended), which were, together with a copy of the Citation and the Notice of Proposed Penalty transmitted to and received by the Kentucky Occupational Safety and Health Review Commission on September 30, 1974. A Complaint was filed on October 8, 1974, and an Answer was filed on October 21, 1974.

A Notice of Receipt of Contest was mailed on October 2, 1974, and a Certification of Employer was filed on October 7, 1974. On October 24, 1974, the case was assigned to the Hearing Officer, and, on the same date, a Notice of Hearing was mailed. Pursuant to such Notice, a hearing was held on Tuesday, November 12, 1974, at 11:00 a.m. (EST) on the Third Floor, Legal Arts Building, Seventh and Market, Louisville, Kentucky, under the provisions of KRS 338.071(4), one of the provisions of Chapter 338 of the Kentucky Revised Statutes dealing with the safety and health of employees, which authorizes the Review Commission to hear and rule on appeals from citations, notifications and variances issued under the provisions

of this Chapter and to adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings. Under the provisions of KRS 338.081, hearing authorized by the provisions of such Chapter may be conducted by a Hearing Officer appointed by the Review Commission to serve in its place. After hearing an appeal, the Review Commission may sustain, modify or dismiss a citation or penalty.

After hearing the testimony of the witnesses, and having considered the same together with the exhibits and the stipulations, and the representations of the parties, it is concluded that the substantial evidence on the record considered as a whole supports the following findings of fact:

#### FINDINGS OF FACT

It is found that the previously cited violations described as Items #16, #17, #18, and #27 had not been corrected within the time fixed for abatement by extensions of the abatement date.

Upon the basis of the foregoing, the Hearing Officer makes the following:

#### CONCLUSIONS OF LAW

While the Respondent neglected to request additional extensions of the time fixed for abatement notwithstanding that it received two separate abatement notices immediately before and after the July 17, 1974 abatement date as extended, its conduct following



the original citation clearly indicated that it was an employer anxious to comply with the Occupational Safety and Health Laws, and that its failure to request additional time for abatement was due to oversight rather than any attempt to avoid compliance. Since the Review Commission does not set the penalties for failure to correct or abate by a strict formula, it may, in setting a penalty give such weight as it believes appropriate to the good faith of the employer. Taking into consideration all of the circumstances surrounding the employer's failure to correct or abate, the proposed penalties should be modified as follows: Item #16, the penalty should be reduced to \$150; Item #17, the penalty should be reduced to \$100; Item #18, the penalty should be reduced to \$100; and Item #27, the penalty should be reduced to \$100.

RECOMMENDED ORDER

IT IS ORDERED AND ADJUDGED that the citation charging a failure to correct or abate should be and it hereby is sustained, and IT IS FURTHER ORDERED AND ADJUDGED that the penalties proposed should be reduced to \$150 for Item #16; \$100 for Item #17; \$100 for Item #18; and \$100 for Item #27, and IT IS FURTHER ORDERED AND ADJUDGED that the abatement date of July 17, 1974 shall be and it hereby is sustained.

  
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LLOYD GRAPER  
HEARING OFFICER, KOSHRC

DATED: February 7, 1975  
Frankfort, Kentucky

Decision No. 90