

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

SONIC DRIVE IN
1255 N. Willow Avenue
Clovis, CA 93619

Employer

Docket No. 12-R2D5-2734

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the petition for reconsideration filed by Sonic-Willow, Corp. (Sonic-Willow) under submission, renders the following decision after reconsideration.

JURISDICTION

On June 19, 2012, “Sonic Drive In” located at 1255 Willow Avenue, Clovis, CA was inspected by the Division of Occupational Safety and Health, Department of Industrial Relations (“Division”). Following the inspection, the Division cited “Sonic Drive In” for violating workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.¹ Citation 1, Item 1 alleged general violation of section 3203(a) [lack of Injury and Illness Prevention Program]. Citation 1, Item 2 alleged a violation of section 3400(c) [failure to inspect first-aid materials and replenish as necessary].

“Sonic Drive In” subsequently appealed the cited violations. The appeal was filed by Juan C. Ortega, who listed himself within the appeal form as Owner of the Sonic Drive In. (Juan C. Ortega is hereinafter referred to as “Employer.”)

In January 2013, the Board provided Notice to all Parties that a pre-hearing conference would be held on May 6, 2013.

¹ Unless otherwise specified, all references are to California Code of Regulations, Title 8.

On May 8, 2013, following Employer's failure to appear at the pre-hearing conference, the Board issued an "Order To Show Cause Why Sanctions Should Not Be Imposed." Employer was given ten days to respond to the Order to Show Cause.

On June 6, 2013, following Employer's failure to respond to the Order to Show Cause, the Board issued an "Order Dismissing Appeals."

On July 18, 2013, the Board received a phone call from Josh Shannon (Shannon). Shannon informed the Board that the previous franchisee of the cited Sonic Drive In, Employer, had closed the Sonic Drive In and filed bankruptcy. Shannon stated that the Sonic Drive In had been subsequently taken over by a new franchisee, Sonic-Willow; they had taken over the same location. Shannon noted that the Division was improperly pursuing penalties against Sonic-Willow. Board personnel instructed Shannon to provide any documents that indicated that Juan Ortega had no relationship to the current owners/operators of the Sonic Drive In. Shannon was also advised to file a Petition for Reconsideration.

On approximately August 1, 2013, the Board received from Shannon a Statement of Abatement, a Settlement Agreement and General Mutual Release, a Commencement of Term Notice, and Verification/Proof of Service. There was no formal Petition for Reconsideration accompanying these documents. The Statement of Abatement stated:

We (Sonic Willow Corp) have opened this location on 6-18-13. We have no affiliation with previous owner Juan Ortega, or past staff. We have provided Cal/OSHA with the documentation of compliance of the following OSHA codes T8 CCR: 3203 (a) Injury and Illness Prevention Program and T8 CCR: 3400(c) Medical Services and First aid. We have filed an appeal based on a new legal business. We are scheduled an informal conference for Sept. 18th. Inspection #315075887. **(emphasis added.)**

Next, the Commencement of Term Notice indicated that Sonic-Willow Corp., a California Corporation, and a Sonic Drive-In Restaurant Franchisee, had commenced its lease of the property located at 1255 N. Willow Avenue, Clovis, CA effective June 18, 2013.² The accompanying Verification/Proof of Service stated that Shannon had served a Petition for Reconsideration; therefore, the

² In addition, Shannon provided a Settlement Agreement and General Mutual Release ("Settlement Agreement") entered between the landlord of the premises located at 1255 N. Willow Avenue, Clovis, CA and the Ortega Group. The Ortega Group included Juan Ortega, as an individual. The Settlement Agreement noted that Juan Ortega had filed bankruptcy on behalf of himself and other members of the Ortega Group. The Settlement Agreement appears to pertain, in part, to the Ortega Group's release of interest in the above-mentioned premises.

Board inferred that the aforementioned documents collectively constituted Sonic Willow's petition for reconsideration.

On August 14, 2013, the Board received a letter from Shannon, which stated:

[W]e have no affiliation what so ever (sic) with Juan Ortega or any of his past employees. We are a separate franchisee, separate owner, separate business all together (sic). Our legal name is Sonic-Willow, Corp. Juan closed his business down on April 30, 2013. He also has filed bankruptcy. When Juan closed his Sonic business and the store, he took all the employee records, business records and all personal belongings with him. Juan's bills, citations, and legal obligations are still Juan's responsibility!

The second reason why we (Sonic-Willow Corp) are not liable for these citations in question, is the fact that we just started a new business at this location on June 18, 2013. The lease of the building started June 18, 2013, where we brought in our employees, our paperwork, our policies that we follow.³

On August 29, 2013, the Board took the Petition for Reconsideration under submission. The Division did not file an Answer.

ISSUES

May the Division pursue collection of penalties against Sonic Willow?

DECISION AFTER RECONSIDERATION

The Board has reviewed and considered the entire record in this matter. In making this decision, the Board relies upon its independent review of the record in this proceeding.

We find that Sonic-Willow persuasively established within its Petition for Reconsideration, which was unanswered by the Division, that it did not own, operate, or have any affiliation with the Sonic Drive In located at 1225 Willow Avenue, Clovis, CA at the time that the citations were issued, and that it never received any citations.

Since Sonic-Willow did not own, operate, or have any affiliation to the Sonic Drive In at the time that the citations were issued, it did not receive any

³ At this point it is unclear whether this letter was served on the Division as there is no proof of service attached to it. The letter is also unverified. Therefore, we do not rely on this letter in reaching our holding.

citations within six months of the date of the violation. As a result neither the Board nor the Division has jurisdiction over Sonic-Willow. Labor Code section 6317 states: "No citation or notice shall be issued by the division for a given violation or violations after six months have elapsed since occurrence of the violation." The six month statute of limitations has been held by the Board to be jurisdictional. (See, *Kiewit/FCI/Manson (KFM)*, A Joint Venture, Cal/OSHA App. 06-2452, Denial of Petition for Reconsideration (Apr. 2, 2009), citing *Sierra Wes Drywall, Inc.*, Cal/OSHA App. 94-1071, Decision After Reconsideration (Nov. 18, 1998.)

The Board finds that Sonic-Willow is not party to these proceedings. This Decision has no effect as to Employer.

ART CARTER, Chairman
ED LOWRY, Board Member
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: October 6, 2014