

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

In the Matter of the Appeal of:

VICTORY SCREEN PRINTING  
1450 Manhattan Avenue  
Fullerton, California 92831

Employer

Dockets 12-R3D1-3673 and 3674

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code ordered reconsideration of the Decision of the Administrative Law Judge in the above-entitled matter. After considering the matter, the Board renders the following Decision After Reconsideration.

**JURISDICTION**

On May 31, 2012 an employee of Victory Screen Printing aka BPHM Screenprinting, Inc. (Employer) was using a table saw in order to cut a dowel, when he suffered an injury. The Division of Occupational Safety and Health (Division) subsequently commenced an investigation and issued citations to Employer on November 30, 2012.<sup>1</sup> Citation 1, Item 2 alleges a general violation of section 6151(e)(3)<sup>2</sup> [failure to subject a portable fire extinguisher to an annual maintenance check], a \$135.00 penalty. Citation 2, Item 1 alleges a serious violation of section 4300 [failure to guard hand table saw with a hood], a \$17,100 penalty. Employer appealed these citations.

This matter was heard before Clara Hill-Williams (ALJ) on September 17, 2013. At the hearing, the Division reduced the aforementioned penalties based on various adjustments to the gravity factors. The penalty for Citation 1, Item 2 was reduced to \$50 dollars. Citation 2, Item 1 was reduced to \$12,600. Employer withdrew its appeal to the substance of the citations, reserving only the issue of whether it was entitled to a further reduction in penalties due to financial hardship.

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<sup>1</sup> Although several citations were issued, only Citation 1, Item 2 and Citation 2, Item 1 were appealed and are at issue.

<sup>2</sup> Unless otherwise specified all references are to Sections of Title 8, California Code of Regulations.

Upon review of Employer's financial hardship claim, the ALJ further reduced the penalties down to \$8,870. The Board took this matter under submission on its own motion.

### **ISSUES**

1. Does the evidence warrant a financial hardship reduction granted by the ALJ?
2. If the answer to the first question is in the affirmative, to what extent is a financial hardship reduction warranted?

### **EVIDENCE**

The Decision summarizes the evidence adduced at hearing in detail. We summarize that evidence briefly below, focusing on the portions relevant to the issues presented.

The former President of Employer, Bob Bhaghat (Bhaghat), testified at the hearing. Bhaghat testified that Employer started its business in the year 2000. Bhaghat and his brothers owned 90% of the stock of the company. Bhaghat brought in his cousin, Mahendra Savalia (Savalia), to manage and operate the business, and gave him the remaining 10% percent of the stock.

Savalia worked for Employer up until 2010. Bhaghat testified that in 2010 Savalia quit working for Employer, and started his own business.<sup>3</sup> When Savalia left to start his own business, he took key employees and key customer accounts with him. Bhaghat stated that Savalia's departure, with key employees and key customer accounts, caused irreparable damage to Employer. Although Employer hired replacements for the loss of its key employees, Employer was never able to bounce back after Savalia's departure.

Employer's tax records reveal the alleged harm that Employer suffered due to the aforementioned loss of its key employees and key customer accounts. In 2009, Employer had gross receipts of \$4,601,915, although it claimed a net income loss of \$-75,040. (Exhibit G.) In 2010, Employer had gross receipts of \$4,110,134, although it claimed a net income of only \$38,816. (Exhibit F.) In 2011, Employer had gross receipts of \$2,212,337 and a net income loss of \$-57,372. (Exhibit E.) In 2012, Employer had gross receipts of \$2,369,601 and a net income loss of \$-215,242. (Exhibit C.) Employer did not pay rent<sup>4</sup> or officer salaries during the latter years.

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<sup>3</sup> Employer paid Savalia approximately \$120,000 to repurchase his 10% interest in the company after his departure.

<sup>4</sup> Employer was able to not pay rent because the building was owned by a family business, an LLC.

Bhaghat testified that Employer was simply not sustainable as a company after Savalia's departure, and so the shareholders decided to sell it. Bhaghat testified that Employer sold all of its assets to M2 Display (M2) in or about November 2012 for \$1.1 million. (Exhibit D.) Bhaghat testified that the assets of the company were sold below value. To illustrate the point that the company was sold below value, he testified that Employer had purchased a printer only two years earlier at a price of approximately \$1.2 million, and they sold the assets of the company only a few years later for \$1.1 million. After the sale of the company, Bhaghat also testified that he was still required to make several payments for one of the printers, totaling approximately \$22,000 a month.

M2, the company that purchased Employer's assets, is not affiliated with Employer in anyway. Bhaghat testified that he has no plans to start any other screen printing business. He introduced corporation dissolution documents that were filed with the California Secretary of State showing that Employer had been dissolved. (Exhibits A and B.) Bhaghat states that he intends to solely focus on his main business Precision Plastic Printing (PPP), which manufactures plastic shampoo and lotion bottles for businesses like Paul Mitchell. Employer requested financial relief based on the foregoing facts.

### **DECISION AFTER RECONSIDERATION**

The Board has independently reviewed and considered the entire record in this matter, including the Division's Petition. In making this decision, the Board has taken no new evidence.

As noted, Employer sought and the ALJ granted a reduction of penalties based on Employer's financial circumstances. In reviewing the ALJ's decision we start by considering the purpose of the California Occupational Safety and Health Act (the Act). Labor Code section 6300 states:

The California Occupational Safety and Health Act of 1973 is hereby enacted for the purpose of assuring safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health.

The mandate of the Act is to assure safe and healthful working conditions for all California workers. (*Delta Transportation, Inc.*, Cal/OSHA App. 08-R2D1-4999, Decision After Reconsideration (Aug. 15, 2012), *see also*, *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar.

27, 2006).<sup>5</sup> The goal of the occupational safety and health program in California is to prevent injuries from taking place. (*Miller/Thompson J.D. Steel, Harris Rebar, a Joint Venture*, Cal/OSHA App. 99-3121, Decision After Reconsideration (Sep. 26, 2001); see also, *Underground Construction, Inc.*, Cal/OSHA App. 98-4104, Decision After Reconsideration (Oct. 30, 2001).) The Act establishes various mechanisms for achieving its goal, for example authorizing the creation of workplace safety standards and imposing civil penalties on employers which are found to have violated such standards. The Act also allows the Appeals Board to adjust penalties consistent with the Act's enacted purpose, which is worker safety.<sup>6</sup>

The Employer here has not made any showing that a reduction in civil penalties would further the purpose of the Act. Here, while Employer's alleged personnel issues were unfortunate, they have little to do with worker safety. The Board finds that the granting of financial hardship relief under these circumstances would diminish the deterrent value of civil penalties.

In order to promote the purposes of the Act, "the Division, like other public agencies, including its federal counterpart, justifiably relies on the deterrent effect of monetary penalties as a means to compel compliance with safety standards." (*Delta Transportation, Inc.*, Cal/OSHA App. 08-R2D1-4999, Decision After Reconsideration (Aug. 15, 2012), citing, *Reich v. Occupational Safety and Health Com'n* (OSHRC) (11th Cir. 1997) 102 F.3d 1200, 1203, *Atlas Roofing Co., Inc. v. OSHRC* (5th Cir. 1975) 518 F.2d 990, 1001, *affd.* (1977) 430 U.S. 442.) As noted in *Reich v. OSHRC*, (11th Cir. 1997) 102 F.3d 1200, 1203:

Because of the large number of workplaces which OSHA must regulate, relying solely on workplace inspections is an impractical means of enforcement. We accept that OSHA must rely on the on the threat of money penalties to compel compliance by employers.

"[T]he threat of civil penalties serves as a 'pocket-book deterrence' against violations of occupational safety and health standards." (*Miller/Thompson J.D. Steel, Harris Rebar, a Joint Venture*, Cal/OSHA App. 99-3121, Decision After Reconsideration (Sep. 26, 2001), citing, *Atlas Roofing Co., Inc. v. OSHRC* (5th Cir. 1975) 518 F.2d 990, 1001.)

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<sup>5</sup> "In establishing an employer's duty to maintain a safe working environment, the relevant Labor Code provisions speak in the broadest possible terms and have been interpreted in the broadest possible terms even before the adoption of the Act." (*Miller/Thompson J.D. Steel, Harris Rebar, a Joint Venture*, Cal/OSHA App. 99-3121, Decision After Reconsideration (Sep. 26, 2001), citing, *Carmona v. Division of Industrial Safety*, (1975) 13 Cal.3d 303.)

<sup>6</sup> See, *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (March 27, 2006).

The grant of financial hardship relief in the present circumstances, given the lack of any showing that it would benefit worker safety, would diminish the deterrent effect of civil penalties. If we were to affirm the ALJ's decision to grant a financial hardship reduction here, it could inappropriately provide employers "an economic incentive to avoid a penalty [or have a penalty significantly reduced] by going out of business, and, perhaps reincorporating under a different name" without due regard for worker safety. (*Delta Transportation, Inc.*, Cal/OSHA App. 08-R2D1-4999, Decision After Reconsideration (Aug. 15, 2012), citing, *Reich v. Occupational Safety and Health Com'n* (OSHRC) (11th Cir. 1997) 102 F.3d 1200, 1203.) It would lessen the incentive for an employer that is going out of business for normal commercial reasons to comply with the Act. (*Ibid.*) It would also lessen protection for other workers who may eventually find themselves under the employ of the former business owners, should those former owners go into business in a different industry, or should those former owners be in a position to influence the safety program in another business. (*Delta Transportation, Inc.*, Cal/OSHA App. 08-R2D1-4999, Decision After Reconsideration (Aug. 15, 2012).) Additionally, the former owners would not be incentivized to comply with the Act in future employment, knowing that merely going out of business could afford significant penalty relief for a business. Allowing for such things to pass would be inconsistent with the purpose of the Act and it would undermine the deterrent value of penalties on other employers.

We hold that Employer has failed to show that the requested financial hardship relief would further the purposes of the Act, and that it would undermine the deterrent effect of the civil penalties. The civil penalties are affirmed in their full amount, as adjusted by the Division at the hearing. This decision does not affect the ALJ's order allowing installment payments.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: MARCH 11, 2015

## SUMMARY TABLE DECISION AFTER RECONSIDERATION

In the Matter of the Appeal of:

**VICTORY SCREEN PRINTING**  
**Docket No(s). 2012-R3D1-3673 and 3674**

Abbreviation Key:	Reg=Regulatory
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division

IMIS No. 315529735
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Site: 1456 S. Manhattan Ave., Fullerton, CA 92831  
Date of Inspection: 06-11-2012 ~ 11/08/2012

Date of Citation: 11/30/2012

DOCKET	C I T E M	I T E M	SECTION	T Y P E	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	A F F I R M E D	V A C A T I O N	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY ASSESSED BY ALJ	FINAL PENALTY ASSESSED BY BOARD
12-R3D1-3673	1	2	6151(e)(3)	Reg	DOSH gave maximum GF credit and 10% history credit.	x		\$135	\$50	<b>\$50</b>
12-R3D1-3093	2	1	4300(a)	SAR	DOSH reduced severity to medium and gave 30% credit for size. ALJ gave 30% reduction – financial hardship.	x		\$17,100	\$8,820	<b>\$12,600</b>
<b>Sub-Total</b>								\$17,235	\$8,870	<b>\$12,650</b>

**Total Amount Due\***

<b>\$12,650</b>
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(INCLUDES APPEALED CITATIONS ONLY)

NOTE: Payment of final penalty amount should be made to: Accounting Office (OSH) Department of Industrial Relations P.O. Box 420603 San Francisco, CA 94142
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\*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4291 if you have any questions.

The penalty set for on this table is payable in twenty-four (24) monthly installments. The first payment of \$529 is due May 1, 2015 and then \$527 is due on the 1<sup>st</sup> of every succeeding month until the total is fully paid. One late payment renders the entire balance immediately due and payable. Notwithstanding the foregoing, Employer may make a payment arrangement approved by the Department of Industrial Relations Accounting Office.

POS: 3/11/2015