

**IN THE MATTER OF**

**\* BEFORE THE MARYLAND**

**\* COMMISSIONER OF LABOR**

**BRICKS-R-US, INC.**

**\* AND INDUSTRY**

**\* MOSH CASE NO.: JI9460050**

**\* OAH NO.: 99-DLR-MOSH-41-990000130**

**\* \* \* \* \***

**FINAL DECISION AND ORDER**

This matter arose under Maryland Occupational Safety and Health Act, Labor and Employment Article, Title 5, *Annotated Code of Maryland*. Following an inspection, the Maryland Occupational Safety and Health Unit of the Division of Labor and Industry (MOSH), issues eleven (11) citations to Bricks-R-U's, Inc. (the Employer), alleging violations of various safety standards. Following an evidentiary hearing, Administrative Law Judge Judith Finn Plymyer, sitting as the Hearing Examiner, issued a Proposed Decision affirming the citations and the proposed penalties.

The Employer filed a request for review. The Commissioner of Labor and Industry (the Commissioner) held a hearing and heard argument from the parties. Based upon a review of the entire record and consideration of relevant law and the parties arguments, the Commissioner has decided to affirm the Hearing Examiner's findings of fact<sup>1</sup> and conclusions of law,<sup>2</sup> and to adopt her recommendation to affirm the citations and penalties.

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<sup>1</sup> It is undisputed, as the Hearing Examiner found at page 9 of her Proposed Decision, that the inspection in this case occurred on July 16, 2000. Finding of Fact 22 is therefore corrected to reflect that the inspection took place on July 16, 1999, rather than July 15, 1999.

<sup>2</sup> At the evidentiary hearing, and again on review, the Employer asserted, *inter alia*, that the citations should be dismissed because it was not informed of its duties and responsibilities under the MOSH law. As observed by the Hearing Examiner, ignorance of a standard does not

## ORDER

Accordingly, the Commissioner of Labor and Industry, hereby **ORDERS**, on this 1<sup>st</sup> day of August, 2000, that:

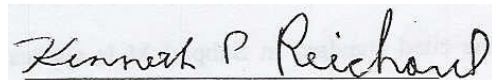
1. Citation I, Item 1a, alleging a serious violation of 29 CFR 1926.451(b)(1), is **AFFIRMED**.
2. Citation 1, Item 1b, alleging a serious violation of 29 CFR 1926.451(f)(7), is **AFFIRMED**.
3. Citation 1, Item 1c, alleging a serious violation of 29 CFR 1926.451(g)(1), is **AFFIRMED**.
4. Citation 1, Item 1d, alleging a serious violation of 29 CFR 1926.452(c)(2), is **AFFIRMED**.
5. Citation 1, Item 1e, alleging a serious violation of 29 CFR 2916.454(a), is **AFFIRMED**.
6. Citation 2, Item 1, alleging an other than serious violation of 29 CFR 1926.20(b)(1), is **AFFIRMED**.
7. Citation 2, Item 2, alleging an other than serious violation of 29 CFR 1910.1200(e)(1), is **AFFIRMED**.

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excuse non-compliance. Proposed Decision at 11. *See Allen v. Tittsworth*, 269 Md. 677, 686, 309 A.2d 476, 482 (1973)(presumption that every person knows the law). Further, at the evidentiary hearing, the Employer conceded that on an earlier project, the same MOSH Inspector that conducted the inspection in this case, provided the Employer with a copy of his business card, and the Employer used the phone number on this card to gather information about compliance with the MOSH law. Tr. At 163.

8. Citation 2, Item 3, alleging an other than serious violation of 29 CFR 1910.1200(g)(1), is **AFFIRMED**.
9. Citation 2, Item 4, alleging an other than serious violation of 29 CFR 1910.1200(h)(1), is **AFFIRMED**.
10. Citation 2, Item 5, alleging an other than serious violation of Labor and Employment Article, §5-405(b)(1), *Annotated Code of Maryland*, is **AFFIRMED**.
11. Citation 2, Item 6, alleging an other than serious violation of Labor and Employment Article, §5-406(a)(1), *Annotated Code of Maryland*, is **AFFIRMED**.
12. The proposed penalty for the five Citation 1 violations of \$900, is **AFFIRMED**.
13. The proposed penalty for the six Citation 2 violations of \$1,650, is **AFFIRMED**.

This **ORDER** becomes final 15 days after it issues. Judicial review may be requested by filing a petition for judicial review in the appropriate circuit court. Consult Labor and Employment Article, §5-215, *Annotated Code of Maryland*, and Maryland Rules, Title 7, Chapter 200.



Kenneth P. Reichard  
Commissioner of Labor and Industry