

IN THE MATTER OF

EMTADE CONTRACTING, INC.

Respondent

A proceeding pursuant to NY Labor Law article 30 and/or  
12 NYCRR 56.

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Asbestos Case Nos.  
28776; 25633045;  
25654599; 25654600  
25654601; 25654602  
25654603

To: Honorable M. Patricia Smith  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on May 19, 2009, in New York, New York. The purpose of the hearing was to provide all parties an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned an investigation conducted by the Asbestos Control Bureau ("Bureau") of the Division of Safety and Health of the New York State Department of Labor ("Department") into whether Emtade Contracting, Inc. ("Respondent") complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 ("Code Rule") when Respondent undertook seven separate asbestos abatement project at (1) 180 Myrtle Avenue, Brooklyn (Project "1"); (2) 462 First Avenue, Manhattan (Project "2"); 418 East 45<sup>th</sup> Street, Brooklyn (Project "3"); (4) 119-01 18<sup>th</sup> Avenue, Queens (Project "4"); (5) 43-16 43<sup>rd</sup> Avenue, Queens (Project "5"); (6) 221-28 Edmore Avenue, Queens (Project "6"); and (7) 462 1<sup>st</sup> Avenue, Manhattan (Project "7").

At the hearing, the Department moved to amend the hearing notice to include an additional project, 440 Riverdale Avenue, Brooklyn (Project "8") on which the

Department had served Respondent with a new violation notice(Dept. Ex. 12), which motion was granted (T. 5-7).

### **APPEARANCES**

The Bureau was represented by Department Counsel, Maria Colavito (Tsvi J. Gold, Senior Attorney, of Counsel). There was no appearance made by or on behalf of Respondent. During the course of the hearing, however, at 2:00 P.M. (a ½ hour after the 1:30 P.M scheduled to start), it was brought to the hearing officer's attention by a Bureau investigator who had just completed his testimony that Respondent caused to be hand-delivered to his attention an unsigned letter addressed to the Commissioner (but not delivered to the Commissioner's office), with no signature line identifying its author, requesting a postponement of the proceeding due to its president/project manager purportedly being outside the country on another project, where he had been since February 2009 (T. 15-17; H.O. 2). That untimely and improperly directed request was denied on the hearing record (T. 17).

### **FINDINGS AND CONCLUSIONS**

On March 27, 2009, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail, which signed a Return Receipt evidencing its receipt of the document (H.O. Ex. 1). The Notice of Hearing scheduled a May 19, 2009 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing. The Notice further advised the Respondent that any request for an adjournment was to be made directly to the hearing officer, with notice to the Department's counsel, at least 14 days in advance of the hearing date. Respondent failed to timely answer the charges contained in the Notice of Hearing or appear at the hearing. I find the hand-delivery of the untimely and improperly directed postponement request to have been a delay tactic. As a consequence, Respondent is in default in this proceeding.

At the hearing, the Department produced sworn and credible evidence substantially supporting the Department's charges that Respondent violated the particular provisions of the Labor Law or the Code Rule that are hereinafter particularized.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau should be sustained.

## **RECOMMENDATIONS**

Based upon the default of the Respondent in timely answering and contesting the charges contained in the Department's Notice of Hearing, and upon the sworn testimonial and documentary evidence adduced at hearing in support of those charges, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

### **Project 1**

DETERMINE that Respondent committed two violations of the Code Rule as follows:

12 NYCRR 56-3.4. Notice and Record-Keeping Requirements

- 12 NYCRR 56-3.4 (b) (1) – Notification. Asbestos project notification and fee required 10 days in advance of project commencement. Respondent failed to submit an Asbestos Project Notification or pay the \$1,000.00 requisite fee.

12 NYCRR 56-13.6. Notification of residential and business occupants.

- 12 NYCRR 56-3.6 (a) (1) – Ten-Day Notice to Occupants: Notices to occupants were not posted at the worksite.

### **Project 2**

DETERMINE that Respondent committed one violation of the Labor Law Article 30 as follows:

Labor Law § 904.2. Notice Requirements.

Asbestos project notification and fee required 10 days in advance of project commencement. Respondent failed to submit an Asbestos Project Notification or pay the \$300.00 requisite fee.

### **Project 3**

DETERMINE that Respondent committed one violation of the Labor Law Article 30 as follows:

Labor Law § 904.2. Notice Requirements.

Asbestos project notification and fee required 10 days in advance of project commencement. Respondent failed to submit an Asbestos Project Notification or pay the \$1,000.00 requisite fee.

#### **Project 4**

DETERMINE that Respondent committed one violation of the Labor Law Article 30 as follows:

Labor Law § 904.2. Notice Requirements.

Asbestos project notification and fee required 10 days in advance of project commencement. Respondent failed to submit an Asbestos Project Notification or pay the \$1,000.00 requisite fee.

#### **Project 5**

DETERMINE that Respondent committed one violation of the Labor Law Article 30 as follows:

Labor Law § 904.2. Notice Requirements.

Asbestos project notification and fee required 10 days in advance of project commencement. Respondent failed to submit an Asbestos Project Notification or pay the \$500.00 requisite fee.

#### **Project 6**

DETERMINE that Respondent committed one violation of the Labor Law Article 30 as follows:

Labor Law § 904.2. Notice Requirements.

Asbestos project notification and fee required 10 days in advance of project commencement. Respondent failed to submit an Asbestos Project Notification or pay the \$1,000.00 requisite fee.

#### **Project 7**

DETERMINE that Respondent committed one violation of the Labor Law Article 30 as follows:

Labor Law § 904.2. Notice Requirements.

Asbestos project notification and fee required 10 days in advance of project commencement. Respondent failed to submit an Asbestos Project Notification or pay the \$200.00 requisite fee.

## Project 8

DETERMINE that Respondent committed one violation of the Code Rule as follows:

### 12 NYCRR 56-3.4. Notice and Record-Keeping Requirements

- 12 NYCRR 56-3.4 (b) (1) – Notification. Asbestos project notification and fee required 10 days in advance of project commencement. Respondent failed to submit an Asbestos Project Notification or pay the \$1,000.00 requisite fee.

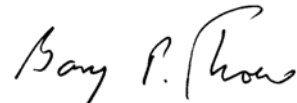
DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent be liable for and shall pay the unpaid fee of \$6,000.00, which, together with a bounced check fee of \$20.00, equals \$6,020.00 owed to the Department (Dept. Ex.13).

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested maximum civil penalty of \$2,500.00 for each of the nine (9) violations, for a total amount of \$22,500.00.

ORDER that Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, SOB Campus, Building 12, Room 157, Albany, NY 12240 of the total amount due (\$28,520.00), made payable to the Commissioner of Labor.

Dated: June 15, 2009  
Albany, New York

Respectfully submitted,



Gary P. Troue, Hearing Officer