

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

AA - Z SERVICES GROUP, INC.

for a determination pursuant to Section 909 of the New York Labor Law that violations of Labor Law, Article 30 and/or Code Rule 56 took place as hereinafter described.

**DEFAULT
REPORT &
RECOMMENDATION**

Asbestos Case Nos.
25810811, 25816295,
25859809, 25868207
25844830

To: Honorable Peter M. Rivera
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held on June 6, 2012, between Albany, New York and 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 AA-Z Services, Inc. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when he undertook five (5) asbestos abatement projects located at 819 Jefferson Street, Woodmere, NY (“Jefferson Street Project #1”); 819 Jefferson Street, Woodmere, NY (“Jefferson Street Project #2”); 1580 Parkview Avenue, Seaford, NY (“Parkview Avenue Project”); 80 Ocean Avenue, Malverne, NY (“Ocean Avenue Project”); and 131 Lakeside Drive, Rockville Center, NY (“Lakeside Drive Project”).

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz, (Steven J. Pepe, Senior Attorney, of Counsel).

There were no appearances made by or on behalf of Respondent.

HEARING OFFICER DESIGNATION

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

FINDINGS AND CONCLUSIONS

On March 23, 2012, the Department duly served copies of the Notice of Hearing on Respondent by certified mail, return receipt requested, and first class mail. The Department produced an Affidavit of Service and a US Postal Service certified mail receipt evidencing that the Notice of Hearing was received by the Respondent. (Hearing Officer Ex 1). The Notice of Hearing scheduled a June 6, 2012 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing.

Respondent failed to answer the charges contained in the Notice of Hearing or appear at the hearing. 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 and Code Rule that are hereinafter particularized.

For the foregoing reasons, the findings, conclusions and determinations of the Department 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 the 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:

JEFFERSON STREET PROJECT #1

DETERMINE that Respondent committed two (2) violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-11.6.B.4.I: Exterior Project Removal of Non-Friable ACM and Other NOB ACMs-Regulated Abatement Work Area Preparation-Critical Barriers-Roofs: The windows directly below the asbestos removal area (roof) on this private home were not plasticized. (DOL Exs. 2, 3; T. 9-10)

12 NYCRR 56-11.6.E: Exterior Project Removal of Non-Friable ACM and Other NOB ACMs-Final Cleaning and Clearance Procedures: At the time of inspection, asbestos containing roofing material had been abated from the vacant house but there was roofing debris on the ground at the front and back of the house. All ACM was not containerized and removed from the site as required by Code Rule 56. (DOL Exs. 4, 5, 6; T. 14-15)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed a civil penalty in the requested amount of \$2,500.00 per violation for a total amount of \$5,000.00 for these two (2) violations.

JEFFERSON STREET PROJECT #2

DETERMINE that Respondent committed two (2) violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-11.7.D: Non-friable Flooring and/or Mastic Removal-Final Cleaning and Clearance Procedures: Respondent had completed gross removal of floor tile but had not done a fine (final) cleaning. Debris from vinyl tile remained strewn across the floor, imprints from the vinyl tile remained and narrow strips of vinyl floor tile remained along the wall inside a closet and an adjacent wall. Samples were taken and all tested positive for asbestos. (DOL Exs. 8, 9, 10; T. 19-20)

12 NYCRR 56-3.4.b.1: Notification: Respondent failed to pay the \$2,000.00 notification fee within the time required by code rule 56. (DOL Ex. 11, 12; T. 23) The notification fee was paid on November 22, 2010. (DOL Ex. 12; T. 23)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed a civil penalty in the requested amount of \$2,500.00 per violation for a total amount of \$5,000.00 for these two (2) violations.

PARKVIEW AVENUE PRPJECT

DETERMINE that Respondent committed two (2) violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-8.5.B: Waste Clean-Up Procedures – Frequency for Containerizing: Respondent had removed the siding from the back and sides of the residence. Pieces of asbestos, transite siding, and tar paper littered the site evidencing that the removal was done in a haphazard manner and no clean-up had been done. (DOL Exs. 14, 15, 16; T. 27-29)

12 NYCRR 56-3.4.B.1: Notification: Respondent failed to file a project notification or pay the pay the project notification fee of \$1,000.00. (DOL Ex. 16; T. 28)

DETERMINE & ORDER that, as required by 12 NYCRR 56-3.4.B.1 and Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid notification fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed a civil penalty in the requested amount of \$2,500.00 per violation for a total amount of \$5,000.00 for these two (2) violations.

OCEAN AVENUE PROJECT

DETERMINE that Respondent committed seven (7) violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-3.4.B.6: Additional Contractual Work: Respondent failed to amend the project notification to reflect the increased abatement work and pay the additional project notification fee of \$1,000.00. (DOL Exs. 17, 18, 19; T. 32-33)

12 NYCRR 56-7.2.O: Ventilation for Power Tools: Respondent was removing asbestos containing wall mastic with chipping guns that were not equipped with HEPA attachments or used in conjunction with HEPA vacuums. (DOL Exs. 18, 19; T. 34)

12 NYCRR 56-7.5.B.8: Personal Decontamination System Enclosure-Large Project: Respondent to equip the clean room in the personal decontamination system enclosure with the required lockers, benches and hooks for street clothes. (DOL Exs. 18, 19; T. 35)

12 NYCRR 56-7.8.A.10.VIII: Engineering Controls-Negative Air Pressure Equipment-Installation and Care: Respondent's negative air hose exhausted into the parking lot of the school in close proximity to vehicles and student band practice. Respondent failed to cordon off the termination point of the negative air hose or post necessary signage to indicate that an asbestos abatement project was taking place. (DOL Exs. 18, 19; T. 35-36)

12 NYCRR 56-7.11.F.1.II.A: Tent Construction: Respondent failed to plasticize the ceiling in the hallway leading out to the air lock with the required two (2) layers of six (6) mil fire-retardant plastic thereby leaving the drop ceiling tiles exposed. (DOL Exs. 18, 19; T. 36)

12 NYCRR 56-8.4.E: Handling and Removal Procedures - Handling: Respondent was removing asbestos containing wall mastic with chipping guns that were not equipped with HEPA attachments or used in conjunction with HEPA vacuums. The debris and dust created by the removal was not immediately bagged or containerized as required or wetted with amended water. The dust and debris was allowed to dry on the floor poly and plasticized sinks. (DOL Exs. 18, 19; T. 36-37)

12 NYCRR 56-7.7: Electric Power: Respondent failed to shutdown and lock out the electric power in the negative pressure containment enclosure as evidenced by fluorescent lights were on in the hallway leading out of the airlock. (DOL Exs. 18, 19; T. 37)

DETERMINE & ORDER that, as required by 12 NYCRR 56-3.4.B.1 and Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid notification fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed a civil in the requested amount of \$2,500.00 per violation for a total amount of \$17,500.00 for these seven (7) violations.

LAKESIDE DRIVE PROJECT

DETERMINE that Respondent committed seven (7) violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-3.2.A: Certification and Training: Respondent permitted a person to engage in work on an asbestos project who did not have a valid asbestos handling certificate issued by the Commissioner appropriate to the work performed by such person. (DOL Exs. 21, 24; T. 40-43).

12 NYCRR 56-3.4.B.1: Notification: Respondent removed approximately 300 square feet of asbestos containing floor tile from the basement and several linear feet of pipe insulation from the garage at the project without submitting the required project notification or pay the \$400.00 project notification fee. (DOL Exs. 21, 24; T. 43).

12 NYCRR 56-7.3: Asbestos Abatement Contractor Daily Project Log: Respondent failed to maintain and produce the project log for the removal of the floor tile and pipe insulation to the Asbestos Control Bureau as instructed. (DOL Exs. 21, 22, 24; T. 43-44).

12 NYCRR 56-11.7.A: Non-friable Flooring and/or Mastic Removal – Air Sampling and Analysis: Respondent did not provide any paperwork or information that the required air sampling was performed before, during, and after the abatement. (DOL Exs. 21, 24; T. 44-45).

12 NYCRR 56-11.7.B.2: Non-friable Flooring and/or Mastic Removal – Regulated Abatement Work Area Preparation – Preliminary Preparation: Respondent removed floor tiles from the home without providing personal or waste decontamination units. (DOL Exs. 21, 24; T. 45).

12 NYCRR 56-11.7.C: Removal: Respondent removed the floor tile and pipe insulation without wetting the asbestos materials. (DOL Exs. 21, 24; T. 45).

Labor Law §26: Examination of Books and Papers: Respondent failed to produce all documents related to the floor tile and pipe insulation abatement as requested by the Department in correspondence dated August 26, 2011. (DOL Exs. 21, 22, 24; T. 45-46).

DETERMINE & ORDER that, as required by 12 NYCRR 56-3.4.B.1 and Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid notification fee of \$400.00.

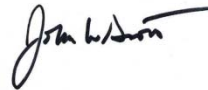
DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed a civil penalty in the requested amount of \$2,500.00 per violation for a total amount of \$17,500.00 for these seven (7) violations.

FINALLY

ORDER that Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, State Office Campus, Building 12, Room 157, Albany, NY 12240 of notification fees in the amount of \$2,400.00 and civil penalties in the total amount of \$50,000.00, for a total payment in the amount of \$52,400.00 made payable to the Commissioner of Labor, for the 20 violations of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 in the Projects that are the subject of the within proceeding.

Dated: September 26, 2012
Albany, New York

Respectfully submitted,



John W. Scott, Hearing Officer