

DEFAULT

REPORT

&

RECOMMENDATION

IN THE MATTER OF

AEG, INC.

Respondent

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

Asbestos Case Nos.

AC-07-04-0483

AC-07-04-0484

AC-07-04-0485

AC-07-04-0486

AC-07-04-0487

AC-07-04-0488

AC-07-04-0489

AC-07-04-0490

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

A hearing was held on May 14, 2009 at Syracuse, New York, to inquire into and report findings and conclusions, and to make recommendations to the Commissioner of Labor with respect to the issues raised by the investigation conducted by the Asbestos Control Bureau (“Bureau”) of the Division of Safety and Health of the NYS Department of Labor (“Department”). The Bureau investigated whether AEG, 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 eight (8) asbestos projects located at 229 West Street, Carthage, NY; 256 and 262 State Street, Carthage, NY; 331 Stone Street, Watertown, NY; 312 Stone Street, Watertown, NY; 234 Bellew Avenue, Watertown, NY; 540 Jefferson Street, Watertown, NY; 128 Woodruff, Watertown, NY; and 238 Arsenal Street, Watertown, NY.

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Tsvi J. Gold, 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 26, 2009, the Department duly served copies of the Notice of Hearing (Hearing Officer Exhibit A) on Respondent by first class mail and by certified mail. The certified mail was received by the Respondent (See, Hearing Officer Ex B). The Notice of Hearing scheduled a May 14, 2009 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. After the hearing commenced, the Hearing Officer received a letter from Steven P. Mancuso, Esq. (Hearing Officer Ex. C), wherein Mr. Mancuso offered no response to the allegations contained in the Notice of Hearing, but affirmatively stated that he “is not the president, nor ever was, of AEG, Inc.” Mr. Mancuso requested a stay of the within proceedings pending the outcome of ongoing federal prosecution involving the Respondent and its alleged principals. This request for a stay was denied (T. 18).

At the hearing, the Department produced sworn and credible evidence substantially supporting the Department’s charges that, as set forth in detail below, Respondent violated the following particularized provisions of the Labor Law or the Code Rule in connection with the eight (8) asbestos projects located at 229 West Street, Carthage, NY; 256 and 262 State Street, Carthage, NY; 331 Stone Street, Watertown, NY; 312 Stone Street, Watertown, NY; 234 Bellew Avenue, Watertown, NY; 540 Jefferson Street, Watertown, NY; 128 Woodruff, Watertown, NY; and 238 Arsenal Street, Watertown, NY.

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 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:

DETERMINE that Respondent committed fifteen (15) violations of the Labor Law and/or the Code Rule as follows:

12 NYCRR Part 56 Notice requirements.

56-1.6(b)(1) When Required

Any contractor engaged in an asbestos project involving more than two hundred sixty linear feet or more than one hundred sixty square feet of asbestos or asbestos material shall notify in writing ... the Asbestos Control Bureau of the department's Division of Safety and Health ... ten days prior to the commencement of the project All project notifications shall be accompanied by a nonrefundable fee ... made payable to the commissioner of labor in the amounts set forth in the Labor Law.

On all of the eight (8) enumerated projects, the Respondent failed to notify the Bureau of the commencement of the projects or to pay the project notification fees. (T. 13; DOL Ex. 9).

12 NYCRR Part 56 Building Demolition Survey Requirements.

56-1.9(e) Abatement Required

If the building survey finds that a building to be demolished contains asbestos or asbestos containing material ..., no ... demolition work (shall be) commenced by any owner or agent prior to completion of an asbestos remediation contract performed by a licensed asbestos contractor, in conformance with all standards set forth in this Part (rule).

With the exception of the project located at 238 Arsenal Street, Watertown, NY, on all of the remaining seven (7) enumerated projects, the Respondent failed to offer the Bureau any confirmation that the material identified in the building surveys was removed prior to the demolition of the respective structures. (T. 13; DOL Ex. 9).

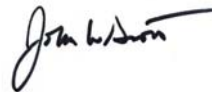
DETERMINE and ORDER, that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for each of the fifteen (15) violations, for a civil penalty in the total amount of \$75,000.00; and

DETERMINE and ORDER, that the Respondent shall pay the project notification fees for each of the eight (8) enumerated projects in the total amount of \$8,300.00; and

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 in civil penalties and project notification fees (\$83,300.00) on the Projects, made payable to the Commissioner of Labor.

Dated: June 15, 2009
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott", with a stylized flourish at the end.

John W. Scott, Hearing Officer