

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

ANGELO RUSSO

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 No.
25855939

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

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on June 3, 2013 in Albany, New York. The purpose of the hearing was to provide the parties with 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 Angelo Russo ("Respondent") complied with the requirements of article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook an asbestos abatement project at 61 5th Avenue, Troy, New York.

APPEARANCES

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz (Steven Pepe, Senior Attorney, of Counsel). There was no appearances made by or on behalf of Respondent.

FINDINGS AND CONCLUSIONS

On March 29, 2013, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. The Notice of Hearing scheduled a June 3, 2013 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing. Respondent failed to timely 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 charge that Respondent violated the particular provision of the Labor Law or the Code Rule 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:

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows:

12 NYCRR 56-1.5 Responsibility for Cleanup of Uncontrolled Disturbance.

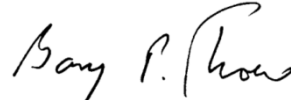
- 12 NYCRR 56-1.5 – Upon discovery of a disturbance, the property owner shall be responsible for contracting with a licensed asbestos contractor for the immediate isolation of the disturbance and cleanup in accordance with 12 NYCRR part 56. Following a tenant complaint and inspection by the Bureau, duct wrap materials in the middle and rear bedroom closets were tested and found to contain asbestos. By a July 7, 2011 Notice of Violation and Order to Comply, the Respondent was ordered to contain or remove the material by a licensed asbestos contractor. Respondent has provided no response to the Notice of Violation and no evidence of remediation has been received by the Department.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00.

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 (\$2,500.00), made payable to the Commissioner of Labor.

Dated: June 4, 2013
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary P. Troue".

Gary P. Troue, Hearing Officer