

**DEFAULT
REPORT
&
RECOMMENDATION**

IN THE MATTER OF

APD SERVICES CORP

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

Asbestos Case Nos.
25765140; 25765141,
25765142; 25765143,
25765147; 25765149;
25728839; 25728848,
25790121; 25790123

To: Honorable Colleen Gardner
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held on May 17, 2011, 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 APD Services Corp. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 (“Code Rule”) when Respondent undertook 10 asbestos abatement projects located at: 1874 Loring Place, Bronx, NY, Asbestos Control No. 25765140 (hereinafter referred to as “Project 1”); 2857 Bhure Avenue, Bronx, NY, Asbestos Control No. 25765141 (hereinafter referred to as “Project 2”); 9602 Flatsland Avenue, Brooklyn, NY, Asbestos Control No. 25765142 (hereinafter referred to as “Project 3”); 1651 Bay Ridge Avenue, Brooklyn, NY, Asbestos Control No. 25765143 (hereinafter referred to as “Project 4”); 122-01 22 Avenue, Queens, NY, Asbestos Control No.

25765147 (hereinafter referred to as “Project 5”); 51-17 Rockaway Beach Blvd., Queens, NY, Asbestos Control No. 25765149 (hereinafter referred to as “Project 6”); Division Avenue High School Auditorium, 120 Division Avenue, Levittown, NY, Asbestos Control No. 25728839 (hereinafter referred to as “Project 7”); Michael F. Stokes Elementary School, 101 Owl Place, Island Trees, NY, Asbestos Control No. 25728848 (hereinafter referred to as “Project 8”); 421 East 88th Street, New York, NY, Asbestos Control No. 25790121 (hereinafter referred to as “Project 9”); and 21-21 Ditmars Blvd., Long Island City, NY, Asbestos Control No. 25790123 (hereinafter referred to as “Project 10”).

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito, Steven 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 April 8, 2011, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. The Department produced a signed a Return Receipt evidencing the Respondent’s receipt of the document on April 11, 2011 (Hearing Officer Ex 1). The Notice of Hearing scheduled a May 17, 2011 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 or the 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:

Project 1

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

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 New York City Department of Environmental Protection (“NYCDEP”) computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 1, but did not notify the Bureau or pay the required notification fee of \$200.00. (DOL Ex. 5; T. 19-21, 24-28)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$200.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this Labor Law violation.

Project 2

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

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 2, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 6; T. 21-22, 26-28)

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

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this Labor Law violation.

Project 3

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

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 3, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 7; T. 22, 26-28)

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

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this Labor Law violation.

Project 4

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

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 4, but did not notify the Bureau or pay the required notification fee of \$1,000.00. (DOL Ex. 8; T. 22-23, 26-28)

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

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this Labor Law violation.

Project 5

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

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 5, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 9; T. 23, 26-28)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this Labor Law violation.

Project 6

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

Labor Law § 904 (2) –Notice Requirements: An audit of the 2009 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of Project 6, but did not notify the Bureau or pay the required notification fee of \$2,000.00. (DOL Ex. 10; T. 23, 27-28)

DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this Labor Law violation.

Project 7

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

12 NYCRR 56-3.4.B.1–Notification: The Respondent failed to notify the Bureau at least 10 calendar days prior to the commencement of Phase II A for this large asbestos project. With respect to this Project 7, the Project Start Date was April 10, 2009 and the Asbestos Project Notification was not received by the Bureau until July 3, 2009. (DOL Exs. 1, 11; T. 23-24, 28-30, 35)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this Labor Law violation.

Project 8

DETERMINE that Respondent committed one violation of the Code Rule as follows:
12 NYCRR 56-3.4.B.1–Notification: The Respondent failed to notify the Bureau at least 10 calendar days prior to the commencement of Phase II A for this large asbestos project. With respect to this Project 8, the Project Start Date was April 10, 2009 and the Asbestos Project Notification was not received by the Bureau until July 3, 2009. (DOL Exs. 2, 12; T. 30-31, 35)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for this Labor Law violation.

Project 9

DETERMINE that Respondent committed one violation of the Code Rule as follows:
12 NYCRR 56-3.4.B.1–Notification: The Respondent failed to pay the requisite fee with the Asbestos Project Notification. With respect to this Project 9, the Respondent filed the Project Notification in a timely manner but failed to pay the requisite fee of \$1,000.00 for this large asbestos. (DOL Exs. 3, 13, 15; T. 31-33, 35-36)

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

Project 10

DETERMINE that Respondent committed one violation of the Code Rule as follows:
12 NYCRR 56-3.4.B.1–Notification: The Respondent failed to pay the requisite fee with the Asbestos Project Notification. With respect to this Project 10, the Respondent filed the Project Notification in a timely manner but failed to pay the requisite fee of \$1,000.00 for this large asbestos. (DOL Exs. 4, 14, 15; T. 33-35, 36)

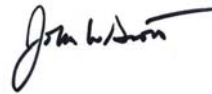
DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent is liable for and shall pay the unpaid fee of \$1,000.00.

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 Project Notification fees in the amount of \$9,200.00 and civil penalties in the amount of \$8,000.00, for the total amount due \$17,200.00 on all the Projects, made payable to the Commissioner of Labor.

Dated: July 15, 2011
Albany, New York

Respectfully submitted,

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

John W. Scott, Hearing Officer