

STATE OF NEW YORK DEPARTMENT OF LABOR

In the Matter of

**DEFAULT
REPORT
&
RECOMMENDATION**

AZZ ENVIRONMENTAL NYC, 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**

**Asbestos Case No.
25924452**

To: Honorable Mario J. Musolino
Acting Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held on January 27, 2016 between Albany and New York, 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 AZZ Environmental NYC, Inc. (“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 Tuxedo Park School, Mountain Farm Road, Tuxedo Park, New York.

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz, Larissa C. Bates, Senior Attorney, of Counsel.

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

HEARING OFFICER

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

FINDINGS AND CONCLUSIONS

On November 23, 2015, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. Although the signed Return Receipts for the certified mail were not returned to the Department, the first class mailings were also not returned evidencing receipt of these notices. Additionally, on January 6, 2016, the Department personally served the Respondent by service of the Notice of Hearing on the Division of Corporations of the New York State Department of State (Hearing Officer Ex. 2). The Notice of Hearing scheduled a January 27, 2016 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 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 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:

DETERMINE that Respondent committed eleven violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-7.2.0 - Ventilation of Power Tools – A drill without a hepa filter was observed in the regulated work area.

12 NYCRR 56-7.3.b – Manometer Readings – Manometer readings were not posted in the daily log for 7/26/2012 and only one reading was posted for 7/25/2012.

12 NYCRR 56-7.7 – Electric Power – It was observed that electric building lighting was on in the work area. Lighting with GFI protection was not in place in the regulated work area.

12 NYCRR 56-7.7.a.1 – Electric Power – Electrical cables and boxes were observed in the work area without any polyethylene wrap in place. No signs warning of the presence of energized circuits were posted.

12 NYCRR 56-7.8.a.1 – Engineering Controls – Negative Air Pressure Equipment – Operation – The negative air pressure equipment was turned off prior to obtaining final clearance.

12 NYCRR 56-7.8.a.4 – Engineering Controls – Negative Air Pressure Equipment – Manometer– It was observed that the manometer was not working.

12 NYCRR 56-7.11.a – A Regulated Abatement Work Area Enclosure – Critical Barriers – It was observed that critical barriers were not in place on in-house lighting, electrical boxes, and negative air trap penetrations. ACM attic debris was found in a tent that housed the negative air traps.

12 NYCRR 56-8.3.a.2.i – Regulated Abatement Work Area Entry and Exit Procedures – Removal of Gross Contamination – Gross ACM debris was found in the non-regulated work area.

12 NYCRR 56- 12.2 – Variances – Variance 12-0847 Debris clean-up for the contaminated attic: white friable debris was observed on an “I” beam in the work area.

12 NYCRR 56-7.8.a.10.v – Engineering Controls – Negative Air Pressure Equipment – Installation and Care – A negative air tube was observed constricted by the use of duct tape.

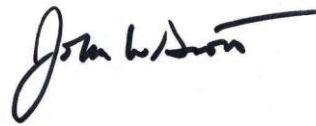
12 NYCRR 56-7.8.a.9 – Engineering Controls – Negative Air Pressure Equipment – Openings in Enclosures – It was observed that negative air trap tubes were not sealed air tight.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the Department's requested total civil penalty of a \$13,750.00 for the eleven Code Rule violations.

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 \$13,750.00, made payable to the Commissioner of Labor.

Dated: March 25, 2016
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Scott", with a long horizontal flourish extending to the right.

John Scott, Hearing Officer