

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

E. D. ASBESTOS REMOVAL SERVICES, INC.
Respondent

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

**DEFAULT
REPORT & RECOMMENDATION**

Asbestos Case No.
AN-2-04-0106

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

A hearing was held on July 14, 2009 at New York, 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 E. D. Asbestos Removal Services, Inc. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 (“Code Rule”) when the Respondent undertook an asbestos project located at the Shelter Rock Tennis Club, Powerhouse Road, Manhasset, NY in or about April 2004.

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Tsvi J. Gold, Senior Attorney, of Counsel).

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

HEARING OFFICER DESIGNATION

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

FINDINGS AND CONCLUSIONS

On June 10, 2009, the Department duly served copies of the Notice of Hearing (HO Ex. A) on the Respondent by first class mail and by certified mail (HO Ex. B). The certified mail and the first class mailings were returned as undeliverable (HO Ex. B). However, Counsel for the Department represented at the hearing that service was effectuated by mailing the Notice of Hearing to the corporate representative of the Respondent, Eduardo Diaz, at his address in Florida (Dept. Exs. 1-A through 1-D; T. 5-7). The Notice of Hearing scheduled a July 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, the Respondent is in default in this proceeding.

At the hearing, the Department produced sworn and credible evidence substantially supporting the Department's charges that, as set forth in detail below, the Respondent violated the following particularized provisions of the Labor Law or the Code Rule in connection with the asbestos project located at Shelter Rock Tennis Club, Powerhouse Road, Manhasset, 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 the Respondent committed three (3) violations of the Labor Law and/or the Code Rule as follows:

12 NYCRR Part 56

56-1.8.a Ten-day notice

On the enumerated project, the Respondent failed to post the required notice of the commencement of the project on the entrance to the building and the door to the basement where the asbestos abatement was conducted. (T. 20, 23; DOL Exs. 4 and 5).

56-17.4.a Air sampling and analysis

On the enumerated project, the Respondent, the company hired to perform the asbestos abatement, was performing the asbestos abatement and conducting air monitoring activity contrary to the above referenced code section. (T. 19, 23; Dept. Exs. 4 and 5).

56-18.2 Variance

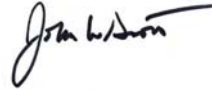
On the enumerated project, the Respondent failed to hang glove bags on pipe insulation for the removal of the pipe insulation in the pool/recreation area as stipulated in Code Rule 56 Applicable Variance no. 108. (T. 12, 18, 23; Dept. Exs. 4 and 5).

DETERMINE and ORDER, that, pursuant to Labor Law § 909 (1) (b), the Respondent be assessed the requested civil penalty of \$5,000.00 for each of the three (3) violations, for a civil penalty in the total amount of \$15,000.00; and

ORDER that the 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 (\$15,000.00) on the Project, made payable to the Commissioner of Labor.

Dated: December 16, 2009
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott". The signature is written in a cursive style with a long horizontal stroke at the end.

John W. Scott, Hearing Officer