

STATE OF NEW YORK DEPARTMENT OF LABOR

In the Matter of

GREAT AMERICAN CONTRACTING, INC.

**DEFAULT
REPORT
&
RECOMMENDATION**

**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 Nos.
25889358, 26015244**

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 Great American Contracting, Inc. (“Respondent”) complied with the requirements of article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook two asbestos abatement projects located at: 821 Bedford Avenue, Brooklyn, New York, Asbestos Case Number 25889358 (Project #1) and 460 Dunham Avenue, Mount Vernon, New York, Asbestos Case Number 26015244 (Project #2).

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. Respondent signed a Return Receipt evidencing its receipt of the document (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 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:

Project #1

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

12 NYCRR 56-3.4.b.1- Notice and Record Keeping Requirements – requires that a contractor notify the Department of an asbestos project and pay the related fee. The required fee was not included with the required notification.

12 NYCRR 56-3.4.b.1 – Notice and Record Keeping Requirements – requires that a contractor notify the Department of an asbestos project at least ten days prior to the start of the project. The respondent did not submit the notification to the Department ten days prior to the start of the project.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the Department’s requested total civil penalty of a \$1,080.00 for the two Code Rule violations.

Project #2

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

12 NYCRR 56-11.6.b.4.vii – Exterior Project Removal of Non-friable ACM and Other NOB ACMs – Regulated Abatement Work Area Preparation – Critical Barriers – Facades – It was observed that the windows around the abatement area were plasticized with only one layer of plastic sheeting. In addition, an attic window in the front of the house had no plastic sheeting sealing it and the window was left open.

12 NYCRR 56- 11.6.b.4.viii – Exterior Project Removal of Non-friable ACM and Other NOB ACMs – Regulated Abatement Work Area Preparation – Critical Barriers – Facades – Plastic tarps were observed on the ground at both the rear and south side driveway where transite siding removal had just been performed. The plastic tarps only extended ten feet from the base of the house and this resulted in loose pieces of asbestos transite siding littering the driveway beyond the plastic tarps. The house has two stories and the Code Rule requires an additional ten feet of plastic tarp layering.

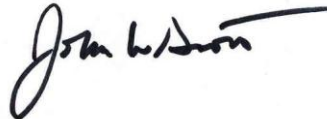
12 NYCRR 56 – 7.5.b.9 – Personal Decontamination System Enclosure – Large Project – The personal decontamination enclosure shower was installed without a tub or catch basin beneath the showerhead.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the Department's requested total civil penalty of a \$1,620.00 for the three 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 \$2,700.00, the total amount due on Project #1 and Project #2, 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