

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

IRMA J. DUARTE-LEMUS

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 Nos.
25866692, 25884467

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 April 22, 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 Irma J. Duarte-Lemus ("Respondent") complied with the requirements of Labor Law article 30 (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook an asbestos abatement project at 22 Main Street, Ravena, New York.

APPEARANCES

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

FINDINGS AND CONCLUSIONS

On February 28, 2013, the Department duly served a copy of the Notice of Hearing on Respondent by first class mail and by certified mail (H.O. Ex 2). The Notice

of Hearing scheduled an April 22, 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 charges that Respondent violated the particular provisions of the Labor Law or the regulations 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 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 two violations of 12 NYCRR part 56 as follows:

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

An August 10, 2011, inspection disclosed that asbestos containing material was disturbed during construction performed at an unoccupied one or two family structure at 22 Main Street, Ravena, New York. Asbestos containing material was found both inside the structure and outside on the ground and in a dumpster. The inspector explained the asbestos regulations to the owner and the owner contracted with a licensed contractor to clean up the site. A December 9, 2011, follow-up inspection disclosed that the outside conditions had been cleaned up but the inside disturbance still needed remediation. A May 8, 2012, inspection disclosed that the inside disturbance, which consisted of asbestos containing pipe insulation that had fallen on the basement floor and was identified in NYS DOL Variance number 11-1198, still needed to be cleaned up by licensed asbestos contractor.

12 NYCRR 56-5.1 (a) Asbestos Survey Required.

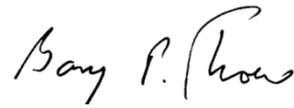
An August 10, 2011, inspection disclosed that an asbestos survey had not been performed prior to construction at 22 Main Street, Ravena, New York.

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

Dated: April 25, 2013
Albany, New York

Respectfully submitted,

A handwritten signature in black ink that reads "Gary P. Troue". The signature is written in a cursive style with a large, looping initial "G".

Gary P. Troue, Hearing Officer