

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

JACK COX, JR.

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 No.  
25743201

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 July 10, 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 Jack Cox, Jr. ("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 526 5<sup>th</sup> Avenue, Troy, New York.

**APPEARANCES**

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

## **FINDINGS AND CONCLUSIONS**

On April 8, 2013, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. Although the first class mailing was not returned, the certified mailing was returned as “Unclaimed” (H.O. Ex. 2). The Notice of Hearing scheduled a July 10, 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 Code Rule that are hereinafter particularized.<sup>1</sup>

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 one violation of 12 NYCRR part 56 as follows:

- 12 NYCRR 56-1.5 Responsibility for Cleanup of Uncontrolled Disturbance: Asbestos containing transit siding was removed and found scattered on the property located at 526 5<sup>th</sup> Avenue, Troy, New York.

DETERMINE that Respondent committed one violation of Labor Law article 30 as follows:

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<sup>1</sup> The licensing and certification violations identified in the Notice of Violation attached to the Notice of Hearing are not the subject of the administrative hearing process and are not considered herein.

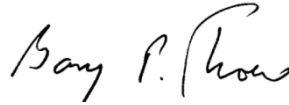
- Labor Law § 908 Authority to Stop Work on a Project: Asbestos work was performed after the property was posted with an Asbestos Project Suspension Notice.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,500.00 for violation of Code Rule 56-1.5 and \$3,000.00 for violation of Labor Law § 908, for a total amount of \$4,500.00.

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 (\$4,500.00), made payable to the Commissioner of Labor.

Dated: July 11, 2013  
Albany, New York

Respectfully submitted,



Gary P. Troue, Hearing Officer