

STATE OF NEW YORK DEPARTMENT OF LABOR  
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In the Matter of

JIKA CONTRACTING CORP.

**DEFAULT  
REPORT AND  
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 No.  
25787205

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To: Honorable Colleen Gardner  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on January 6, 2011 in Albany, New York. The purpose of the hearing was to provide all parties 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 JIKA Contracting Corp. ("Respondent") complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR Part 56 ("Code Rule") when Respondent undertook an asbestos abatement project at 373 Prospect Place, Brooklyn, New York.

## **APPEARANCES**

The Bureau was represented by Department Counsel, Maria Colavito, Steven J. Pepe, Senior Attorney, of Counsel. There were no appearances made by or on behalf of Respondent.

## **FINDINGS AND CONCLUSIONS**

On December 3, 2010, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail, (HO Ex 1). The first class mailing was not returned, but the certified mailing was returned as “Unclaimed” (HO Ex 2). The Notice of Hearing scheduled a January 6, 2011 hearing and required the Respondent to 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. Shortly after the hearing concluded, an individual identifying himself as the John Rodriquez, the owner of Respondent, contacted the Hearing Officer. Mr. Rodriquez stated that he wanted to reopen the hearing but gave no explanation for his failure to appear at the scheduled time and place. Mr. Rodriquez confirmed his address, which was the same address to which the Notice of Hearing for this matter had been sent. The Hearing Officer sent a letter to Mr. Rodriguez, with a copy to the Department’s counsel, notifying him that he could request a reopening of the matter and stating that the matter would be held in abeyance for thirty days, pending receipt of such request. More than thirty days passed with no further contact from Mr. Rodriquez or any other individual purporting to represent Respondent. 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 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 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 violated 12 NYCRR 56-3.4.B.1 by failing to notify the Bureau of a large asbestos project;

DETERMINE that Respondent, within three years prior to the issuance of the Notice of Violation in the instant case, admitted to committing four violations of Labor Law Article 30 and/or Code Rule 56 and agreed to pay penalties assessed by the Department as a result of such violations;

DETERMINE that Respondent was responsible for the preparation of a falsified asbestos project notification;

DETERMINE that Respondent violated a provision of 12 NYCRR Part 56 within three years of the last assessment of a civil penalty and also demonstrated a lack of responsibility in the conduct of an asbestos project;

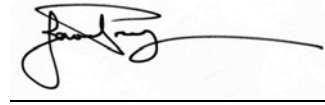
ORDER that, pursuant to Labor Law §909(1)(b), Respondent be assessed the requested maximum civil penalty of \$25,000.00 for one violation of 12 NYCRR 56-3.4.B.1;

ORDER that, pursuant to labor Law §909(2), Respondent's asbestos handling license is hereby revoked and Respondent shall not be eligible to apply for a new asbestos handling license for a period of two years; and

ORDER that Respondent immediately remit payment of the total amount due of \$25,000, made payable to the Commissioner of Labor, to the Division Of Safety & Health, Asbestos Control Bureau, SOB Campus, Building 12, Room 157, Albany, NY 12240.

Dated: February 23, 2011  
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerome A. Tracy", is written over a horizontal line. The signature is stylized and cursive.

Jerome A. Tracy, Hearing Officer