

STATE OF NEW YORK DEPARTMENT OF LABOR

In the Matter of

**REPORT AND
RECOMMENDATION**

L. SIMON INDUSTRIES, LLC

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.
26021894, 26044052
26029390, 26029215

To: Honorable Roberta Reardon
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on December 22, 2016 in Albany, New York and by videoconference at 75 Varick Street, 7th Floor, New York, 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 L Simon Industries, LLC (“Respondent”) complied with the requirements of article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook four asbestos abatement projects at 32-49 45th Street, Astoria, New York 11103; 180 Beach 127th Street Belle Harbor, New York 11694; 1185 Park Avenue, 9K, New York, New York 10128; and 155 Stuyvesant Road Rye, New York 10580.

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz, (Larissa Bates, Senior Attorney, of Counsel).

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

FINDINGS AND CONCLUSIONS

The Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. Respondent signed a Domestic Return Receipt evidencing its receipt of the document (HO 1). Respondent failed to 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 set forth in the Notices of Violation (DOL 1, 2).

Furthermore, the Department requested that, given the size of Respondent, the penalty assessed should be \$300.00 per violation, for a total of \$1800.00.

For the foregoing reasons, the findings, conclusions and determinations of the Department concerning the violations set forth in the Department's Notice of Hearing 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 & ORDER that Respondent violated 12 NYCRR Part 56 § 3.4(b)(1) at three separate locations; and

DETERMINE & ORDER that Respondent violated each of the following regulations on one occasion: 12 NYCRR 56-7.7, 56-7.5(B)(8), and 56-5.5(B)(9); and

DETERMINE & ORDER that, based upon Respondent's size, the penalty for each violation shall be \$300.00, the total amount being \$1800.00; and

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 (\$1800.00), made payable to the Commissioner of Labor.

Dated: September 10, 2017
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Tracy", with a long horizontal flourish extending to the right.

Jerome A. Tracy, Hearing Officer