

STATE OF NEW YORK DEPARTMENT OF LABOR

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In the Matter of

MARA CONTRACTORS & ENVIRONMENTAL SERVICES INC.,

MARA CONTRACTING GROUP INC., and

MARA CONSTRUCTION & ENVIRONMENTAL SERVICES INC.,

AS SUBSTANTIALLY OWNED-AFFILIATED ,

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.

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DEFAULT REPORT & RECOMMENDATION

File No. AH-21-003
Resolution Case No. 80063764

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

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held at multiple locations on December 1, 2021. 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 MARA CONTRACTORS & ENVIRONMENTAL SERVICES INC., (“Mara Contractors “), MARA CONTRACTING GROUP INC. (“Mara Contracting “), and/or MARA CONSTRUCTION & ENVIRONMENTAL SERVICES INC. (“Mara

Construction”) complied with the requirements of article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Mara Contractors undertook two (2) asbestos abatement projects located at 410 Greenpoint Ave., Liverpool, NY, and 8269 Brewertown Rd., Cicero, NY; Mara Contracting undertook one (1) asbestos abatement project located at 407 South Main St., North Syracuse, NY; whether Mara Contracting is liable for \$14,250.00 in civil penalties relating to the 410 Greenport Ave., Liverpool project and \$10,250.00 in civil penalties relating to the 8269 Brewertown Rd., Cicero, NY projects; whether Mara Contracting is liable for \$12,000.00 in civil penalties relating to the 407 S. Main St., North Syracuse, NY project; whether Mara Construction is liable for a \$500.00 Initial Asbestos License fee and \$20.00 insufficient funds fee; whether Mara Contractors is liable for a total of \$12,000.00 in Asbestos Project Notification fees associated with eight (8) projects; whether Mara Contracting is liable for a total of \$5,000.00 in Asbestos Project Notification fees associated with three (3) projects; and whether Mara Contractors, Mara Contracting, and Mara Construction are substantially owned-affiliated entities.

APPEARANCES

The Bureau was represented by Department Counsel, Jill Archambault (Evan S. Zablow, Attorney 1, of Counsel).

There were no appearances made by or on behalf of Mara Contractors, Mara Contracting, and/or Mara Construction.

HEARING OFFICER

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

FINDINGS AND CONCLUSIONS

On October 20, 2021, the Department duly served copies of the Notice of Hearing on Mara Contractors, Mara Contracting, and Mara Construction by first class mail and by certified mail. Evidence supports the finding that Mara Contractors, Mara Contracting, and Mara Construction received the First-Class mailings as none of these mailings were returned to the Department as undelivered (HO Exhibit 2; Tr. 6). The USPS tracking reports from the certified mailings to Mara Contractors, Mara Contracting, and/or Mara Construction were not returned to the Department. (T, 6) The Notice of Hearing scheduled a December 1 and 2, 2021 hearing and required that Respondents serve an Answer at least 14 days in advance of the scheduled hearing.

Mara Contractors, Mara Contracting, and Mara Construction failed to answer the charges contained in the Notice of Hearing or appear at the hearing. Therefore, Mara Contractors, Mara Contracting, and Mara Construction are in default in this proceeding.

Following his opening statement, the attorney for the Department indicated that the Department learned of an additional asbestos project commenced by Mara Contracting at 407 South Main St., North Syracuse NY, Inspection Case No. 26678582, that resulted in unpaid notification fees and violations of Code Rule 56. The attorney represented that in October and November 2021 he attempted unsuccessfully to discuss this project with Mara Contracting and obtain its consent to add this project to the previously served Notice of Hearing. The attorney for the Department made a motion to amend the Notice of Hearing to include this additional project. Since the attorney made Mara Contracting aware that the Department intended to include this project as part of its proof at hearing and all Respondents were in default in the proceeding, for the sake of expediency the motion was granted. (T. 11-12). This 407 South Main St., North Syracuse NY project is identified as Project 3 in this Report and Recommendation.

At the hearing, the Department produced sworn testimony and credible evidence substantially supporting the Department's charges that Mara Contractors, Mara Contracting, and/or Mara Construction violated the particular provisions of the Labor Law or the Code Rule that are hereinafter particularized.

The Department further offered sworn testimony and credible evidence showing how the Department used a Penalty Assessment Calculation Sheet methodology to consistently assess civil penalties against Mara Contractors and Mara Contracting in the total amount of \$36,500.00 for the violations of the particular provisions of the Labor Law or the Code Rule by Mara Contractors, Mara Contracting, and/or Mara Construction. (DOL Ex. 13; T. 98-116).¹

The Department also offered sworn testimony and credible evidence substantially supporting the Department's charges that Mara Contractors owes Asbestos Project Notification Fees in the total amounts of \$12,000.00 (DOL Exs. 15A-15I; T. 127, 131), Mara Contracting owes Asbestos Project Notification Fees in the amount of \$5000.00 (DOL Exs. 16A-16D; T. 133-135), and Mara Construction owes a \$500.00 Asbestos Handling License initial application fee and a \$20.00 insufficient funds fee. (DOL Exs. 14A-14C; T. 123-125).

RECOMMENDATIONS

Based upon the default of Mara Contractors, Mara Contracting, and/or Mara Construction 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

¹ During the hearing, the Department identified one civil penalty that was duplicative and made a motion to withdraw this penalty and reduce the total assessed civil penalties for all projects to \$36,500.00. The motion was granted. (DOL Ex. 13; T. 99-100).

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

Mara Contractors

410 Greenport Avenue, Liverpool, NY 13088, Inspection Case No. 26502175

12 NYCRR 56-7.5.D.3 requires, in part, that two (2) extra airlocks as defined in Section 56-2.1 shall be constructed as per Section 56-7.5(b)(11) at the entrance to the equipment room or equipment/washroom and at the entrance to the containment or regulated abatement work area(s). These airlocks shall have lockable doorways at the entrance to the airlock from uncontaminated areas. These airlocks shall be cordoned off at a distance of twenty-five (25) feet and appropriately signed in accordance with Section 56-7.4(c). (T. 31).

On inspections on 1/17/2020 and 1/23/20, Senior Industrial Hygienist Elizabeth Kirkland observed that no airlocks were installed at the entrance to either of the two work areas. The doors to these work areas were open at the time of this inspection. No fencing or barrier tape was installed to restrict access to the work areas. No asbestos warning signs were posted anywhere on the property. (DOL Ex.3; T. 32, 43, 45-46). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-7.5.D.3 because it failed to construct the required airlocks and properly restrict access, and post asbestos warning signs. (DOL Ex. 1-3; T. 46); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$2000.00 for one violation of 56-7.5.D.3. (DOL EX. 13).

12 NYCRR 56-7.11.A requires, in part, that critical barriers shall be constructed to seal off all openings and penetrations to the regulated abatement work area including, but not limited to, operable windows and skylights, doorways and corridors (which shall not be used for passage), ducts, grills, diffusers, HVAC system seams, and any other penetrations to surfaces within the regulated abatement work area. (T. 34, 35).

On inspection on 1/17/2020, Elizabeth Kirkland observed that no critical barriers were installed in either of the two work areas. (DOL Exs.3; T. 35). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-7.11.A because it failed to construct the required critical barriers to seal off all openings and penetrations to the regulated abatement work areas. (DOL Ex.3; T. 35); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$2000.00 for one violation of 56-7.11.A. (DOL EX. 13).

12 NYCRR 56-7.11.B.1 requires, in part, that isolation barrier partitions shall be constructed of wood or metal framing in all openings larger than thirty-two (32) square feet, except that where any one dimension is one foot or less, framing is not required. (T. 36).

On inspection on 1/17/2020, Elizabeth Kirkland observed that no isolation barriers were erected to contain either of the two work areas. (DOL Exs.3; T. 36). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-7.11.B.1 because it failed to construct the required isolation barriers to contain either of the two work areas. (DOL Ex.3; T. 36); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$2000.00 for one violation of 56-7.11.B.1. (DOL EX. 13).

12 NYCRR 56-7.5.B.1 requires, in part, that a personal decontamination system enclosure shall be provided outside the regulated abatement work area and attached to all locations where personnel shall enter or exit the regulated abatement work area. This system must be kept clean, sanitary and climate controlled at all times in conformance with all federal, state and local government requirements. (36-37).

On inspection on 1/17/2020, Elizabeth Kirkland observed that the temperature was below freezing. No heat was supplied to the remote personal decontamination system enclosure. (DOL Exs.3; T. 37-38). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-7.5.B.1 because it failed to provide heat to the remote personal decontamination system enclosure. (DOL Ex.3; T. 38); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$1750.00 for one violation of 56-7.5.B.1. (DOL EX. 13).

12 NYCRR 56-7.5.B.9 requires, in part, that the shower room shall contain one (1) shower per every six (6) full shift abatement workers, calculated on the basis of the largest work shift. Each showerhead shall be supplied with hot and cold water adjustable at the tap. (T. 38).

On inspection on 1/17/2020, Elizabeth Kirkland observed that the temperature was below

freezing. The water hose to the decontamination system was frozen. There was no water, hot or cold, in the shower. (DOL Exs.3; T. 38). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-7.5.B.9 because there was no hot and cold water in the showers. (DOL Ex.3; T. 38); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$2000.00 for one violation of 56-7.5.B.9 (DOL EX. 13).

12 NYCRR 56-7.5.E.1 requires, in part, that a waste decontamination system enclosure shall be provided outside the regulated abatement work area and shall be attached to the regulated abatement work area. (T. 39).

On inspection on 1/17/2020, Elizabeth Kirkland observed that no waste decontamination system was provided for either of the two work areas. (DOL Exs.3; T. 39). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-7.5.E.1 because it failed to provide a waste decontamination system at both work area. (DOL Ex.3; T. 39); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$2000.00 for one violation of 56-7.11.A. (DOL EX. 13).

12 NYCRR 56-7.8.A.2 requires that negative air ventilation units shall be installed and made operational after critical barriers and isolation barriers are installed. (T. 39-40).

On inspection on 1/17/2020, Elizabeth Kirkland observed that no negative air pressure equipment was installed at any time in either of the two work areas. (DOL Exs.3; T. 40).

Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-7.8.A.2 because it failed to install and make operational negative air pressure equipment at the two work areas. (DOL Ex.3; T. 40); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$2500.00 for one violation of 56-7.11.A. (DOL EX. 13).

Project 2

Mara Contractors

8269 Brewerton Rd., Cicero, NY 13039, Inspection Case No. 26502180

12 NYCRR 56-11.6.B.1 requires that the asbestos project regulated abatement work area shall extend twenty-five (25') feet from the perimeter of the immediate work area and shall have signage in accordance with Section 56-7.4. (T. 59).

On inspection on 1/31/2020, Elizabeth Kirkland observed that the regulated abatement work area was isolated with barrier tape approximately ten (10') feet, the width of the drop cloth, from the active work area. There was ample room on the property to accommodate the required twenty-five (25') feet and to include waste dumpster and the lift. No asbestos warning signs were posted on the barrier tape. (DOL Exs.6; T. 60). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-11.6.B.1 because it failed

to isolate the full asbestos project regulated abatement work area and post the necessary warning signs. (DOL Ex. 6; T. 60); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$1500.00 for one violation of 56-11.6.B.1. (DOL Ex. 13).

12 NYCRR 56-11.6.B.4.VII requires that for larger work area removals, any operable windows or openings to the building at the work level or on the floor below within twenty-five (25) feet of the immediate work area shall be plasticized with two (2) layers of six (6) mil fire retardant polyethylene sheeting. (T. 60).

On inspection on 1/31/2020, Elizabeth Kirkland observed that none of the operable windows or openings to the building were plasticized. All of the ACM siding was being abated. (DOL Exs.6; T. 60-61). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-11.6.B.4.VII because it failed to plasticize all operable windows or openings to the building (T. 61); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$1500.00 for one violation of 56-11.6.B.4.VII. (DOL Ex. 13).

12 NYCRR 56-7.5.B.8 requires that the clean room shall be sized to accommodate the full work shift of asbestos abatement contractor personnel, as well as the air sampling technician and the project monitor. If the largest work shift consists of three (3) or less full shift abatement workers, the minimum clean room size is reduced to twenty-four (24) square feet of floor space.

Benches, lockers, and hooks shall be provided for street clothes. (T. 61-62).

On inspection on 1/31/2020, Elizabeth Kirkland observed that the area of the clean room floor was approximately 9 square feet, not the minimum of 24 square feet, and no provisions were made for storing street clothes and shoes. (DOL Exs.6; T. 62). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-7.5.B.8 because it failed provide a clean room with the requires minimum floor square footage and provision of storage for street clothes and shoes (T. 62); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$1500.00 for one violation of 56-7.5.B.8. (DOL Ex. 13).

12 NYCRR 56-7.5.B.9 requires, in part, that the shower room shall contain one (1) shower per every six (6) full shift abatement workers, calculated on the basis of the largest work shift. Each showerhead shall be supplied with hot and cold water adjustable at the tap. (T. 63).

On inspection on 1/31/2020, Elizabeth Kirkland observed that there was no water to the shower at the time of the inspection. The water hose was frozen, and the generator was not running. (DOL Exs.6; T. 63). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-7.5.B.9 because there was no hot and cold water in the showers. (DOL Ex.6; T. 63); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$1750.00 for one violation of 56-7.5.B.9.

(DOL EX. 13).

12 NYCRR 56-8.4.B requires, that no dry removal or dry disturbance of asbestos material shall be permitted. (T. 63-64).

On inspection on 1/31/2020, Elizabeth Kirkland observed that at all times during the inspection there was no water available to the handler who was removing ACM siding because the water hose was frozen. The siding was being abated dry. (DOL Exs.6; T. 64). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-8.4.B because there was dry removal of ACM siding. (DOL Ex.6; T. 64); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contractors be assessed the requested civil penalty of \$2500.00 for one violation of 56-8.4.B. (DOL EX. 13).

12 NYCRR 56-8.5.B requires, in part, that during Phase II B, all waste generated shall be bagged. Wrapped or containerized immediately upon removal. All waste material shall be kept adequately wet at all times. (T. 65).

On inspection on 1/31/2020, Elizabeth Kirkland observed that the ACM siding debris accumulated on the drop cloth was dry. There was no water available to wet the debris because the water hose was frozen. The debris was bagged dry. (DOL Exs.6; T. 65). Therefore, it is

DETERMINED that Mara Contractors violated 12 NYCRR 56-8.5.B because all ACM waste material was not kept adequately wet at all times. (DOL Ex.6; T. 65); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara

Contractors be assessed the requested civil penalty of \$1500.00 for one violation of 56-8.5.B. (DOL EX. 13).

Project 3

Mara Contracting

407 South Main St., North Syracuse, NY, 13212 Inspection Case No. 26678582

12 NYCRR 56-7.11.E requires, in part, that all floor, wall, and ceiling surfaces, except where abatement of ACM, PACM or asbestos material shall be performed on those specific surfaces, shall be covered with two (2) layers of, at a minimum, six (6) mil fire-retardant plastic sheeting. (T. 75).

On inspection on 9/2/2021, Patricia Ward, Senior Safety & Health Inspector, observed that the non-abatement surfaces, inside the containment, were not plasticized as required. observed that the clean room was a three foot by three-foot air lock that lacked any lockers, benches, or hooks (DOL Exs. 7, 9; T. 76). Therefore, it is

DETERMINED that Mara Contracting violated 12 NYCRR 56-7.11.E because it failed to plasticize the non-abatement surfaces, inside the containment, as required (DOL Ex. 7, 9; T. 76); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contracting be assessed the requested civil penalty of \$2250.00 for one violation of 56-7.11.E. (DOL EX. 13).

12 NYCRR 56-7.8.A.1 requires, that the negative air pressure equipment shall operate continuously, twenty-four (24) hours a day, from startup of negative air pressure equipment, through the cleanup operations and satisfactory clearance air sampling results being obtained, or the asbestos project is complete. (T. 76).

On inspection on 9/2/2021, Patricia Ward observed that none of the negative air machines in the interior basement containment work area were operating. (DOL Exs. 7, 9; T. 76-78).

Therefore, it is

DETERMINED that Mara Contracting violated 12 NYCRR 56-7.8.A.1 because it failed to maintain continuous negative air operation as required. (DOL Exs. 7, 9; T. 76-78); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contracting be assessed the requested civil penalty of \$2250.00 for one violation of 56-7.8.A.1. (DOL EX. 13).

12 NYCRR 56-8.3.A.1.III requires, in part, that all persons shall proceed first to the clean room, remove all street clothing, store these items in lockers, and don personal protective equipment as appropriate for the abatement work area. Two (2) layers of protective clothing shall be donned for entry to regulated abatement work areas from the remote personal decontamination systems. (T. 85-86).

On inspection on 9/16/2021, Elizabeth Kirkland observed that Mr. Odoh did not remove any street clothes before donning a single Tyvek suit and entering the regulated work area. (DOL Exs.7, 10; T. 86). Therefore, it is

DETERMINED that Mara Contracting violated 12 NYCRR 56-8.3.A.1.III personnel failed to remove street clothes and don requires personal protective equipment before entering the abatement work area (DOL Ex. 10; T. 86); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contracting be assessed the requested civil penalty of \$2500.00 for one violation of 56-8.3.A.1.III. (DOL EX. 13).

12 NYCRR 56-8.3.A.2.IV requires that persons shall proceed to the equipment room where coveralls, head covering, foot covering and gloves shall be removed. Disposable clothing shall be deposited into labeled containers for disposal. Reusable containment clothing, footwear, head covering, and gloves shall be stored in the equipment room when not being used in the regulated abatement work area. Respirators shall not be removed during the process. (T. 86-87).

On inspection on 9/16/2021, Elizabeth Kirkland observed that Mr. Odoh did not remove and store his reusable containment clothing and footwear in the equipment room prior to entering the shower room. (DOL Exs. 7, 10; T. 87). Therefore, it is

DETERMINED that Mara Contracting violated 12 NYCRR 56-8.3.A.2.IV because Mr. Odoh did not remove and store his reusable containment clothing and footwear in the equipment room prior to entering the shower room as required (DOL Ex. 10; T. 87); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contracting be assessed the requested civil penalty of \$2500.00 for one violation of 56-8.3.A.2.IV. (DOL EX. 13).

12 NYCRR 56-8.3.A.2.V requires, in part, that persons shall proceed to the shower area and fully and vigorously shower and shampoo to remove residual asbestos contamination. (T. 87).

On inspection on 9/16/2021, Elizabeth Kirkland observed that Mr. Odoh did not use the shower when exiting the regulated work area and entered the clean room of the decontamination system dressed in the coveralls and boots worn inside the work area. (DOL Exs. 7, 10; T. 87). Therefore, it is

DETERMINED that Mara Contracting violated 12 NYCRR 56-8.3.A.2.V because Mr. Odoh did not use the shower when exiting the regulated work area and entering the clean room

of the decontamination system (DOL Ex. 10; T. 87); and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Mara Contracting be assessed the requested civil penalty of \$2500.00 for one violation of 56-8.3.A.2.V. (DOL EX. 13).

SUBSTANTIALLY OWNED-AFFILIATED ENTITY

Substantially owned-affiliated entities are jointly and severally liable for payment of any civil penalty ordered pursuant to Labor Law 909 (1) (b) ("Any substantially owned-affiliated entity of such asbestos contractor shall be held jointly and severally liable for the payment of such civil penalty. The commissioner may issue an order directing payment of such civil penalty by the asbestos contractor and any substantially owned-affiliated entity.").

A substantially owned-affiliated entity is, among other things, "any . . . (c) successor of the asbestos contractor . . ." (Labor Law § 901 [18]). " 'Successor' means an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor." (Labor Law § 901 [19]).

Additionally, a substantially owned-affiliated entity is also:

"any . . . (f) entity which exhibits any other indicia of control over the asbestos contractor or over which the asbestos contractor exhibits control, regardless of whether the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include, but not be limited to, power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity."

(Labor Law § 901 [18] [emphasis added]).

The Legislature intended the definition of substantially owned-affiliated entity to be read expansively to address the realities of whether entities are substantially owned-affiliated entities

(Bistran Materials, Inc. v. Angello, 296 AD2d 495, 497 [2d Dept. 2002]).

The Department produced sworn testimony and credible evidence substantially supporting the Department's charges that Mara Contractors, Mara Contracting, and/or Mara Construction are all substantially owned-affiliated entities.²

On October 6, 2017, Mara Construction submitted an application for an Asbestos Handling License (DOL 14B). Raphael Odoh is listed as the sole director on the application (DOL 14B). During 2019 and 2020, Mara Contractors submitted various Asbestos Project Notifications and undertook various asbestos abatement projects (DOL 1, 4, 15B-15I). During 2021, Mara Contracting submitted various Asbestos Project Notifications and undertook various asbestos abatement projects (DOL 7, 16B-16D).

Mara Contractors and Mara Contracting both provide the same mailing address, Duly Authorized Representative (Raphael Odoh), and phone number on their respective Asbestos Project Notifications (*compare* DOL 1 p. 0004, DOL 4, *and* DOL 15B-15I *with* DOL 7 p. 0096, *and* DOL 16B-16D). Furthermore, Mara Contractors and Mara Contracting also have the same registered address with the Department of State (DOL 11-12). Raphael Odoh was the sole representative of Mara Contractors at the Liverpool and Cicero projects and Mara Contracting at the North Syracuse project. In this capacity, Raphael Odoh coordinated with Bureau staff and other contractors regarding each RESPONDENTS' abatement activities and compliance with Industrial Code Rude 56. (DOL 1, 4, 7, 11, 12, 14B, 15B-15I, 16B-16D; T 20, 23, 26, 28-29, 36, 53, 71, 79, 88-89).

² At the conclusion of the hearing the Department was directed to submit Proposed Findings of Fact and Conclusions of Law on the issue of substantially owned-affiliated entities which was timely received on 1/19/2022.

For the foregoing reasons, the RESPONDENTS are substantially owned-affiliated entities as the terms are defined in Labor Law § 901 [18]). Therefore, it is

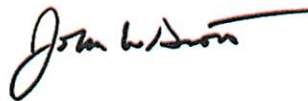
DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), RESPONDENTS are substantially owned-affiliated entities and therefore subject to joint and several liability for civil penalties totaling \$36,500.00, unpaid asbestos handling license application fees and insufficient funds fee totaling \$520.00, and asbestos project notification fees totaling \$17,000.00.

FINALLY

ORDER that Respondents immediately remit payment to the Division of Safety & Health, Asbestos Control Bureau, W. Averell Harriman State Office Campus, Building 12, Room 157, Albany, NY 12240 in the total amount due of \$54,020.00, assessed on all Projects at issue herein, made payable to the Commissioner of Labor.

Dated: January 31, 2023
Albany, New York

John W. Scott, Hearing Officer



Office of Administrative Adjudication