

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

NORTH EAST WALL SURFACING, INC.

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.
25933847

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 September 20, 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 North East Wall Surfacing, Inc. ("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 the former Henry's Cleaners, 1610 State Street, Schenectady, 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 August 21, 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 September 20, 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.

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:

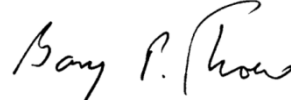
- 12 NYCRR 56-5.1 (a) Asbestos Survey Require. Respondent engaged in an exterior renovation project without first obtaining an asbestos survey to determine the presence of asbestos containing material.

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

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 (\$1,500), made payable to the Commissioner of Labor.

Dated: September 23, 2013
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary P. Troue". The signature is written in a cursive style with a large, sweeping initial "G".

Gary P. Troue, Hearing Officer