

STATE OF NEW YORK DEPARTMENT OF
LABOR

IN THE MATTER OF

PALMER-BRYANT REALTY, 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.
25650470

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

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held on June 30, 2011 between Albany and Buffalo, 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 Palmer-Bryant Realty, Inc. ("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 323 Central Avenue, Dunkirk, New York.

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Jeffrey G. Shapiro, Senior Attorney, of Counsel). There were no appearances made by or on behalf of Respondent.

FINDINGS AND CONCLUSIONS

On May 24, 2011, the Department duly served copies of the Notice of Hearing on Respondent by first class and certified mail (Dept Ex 1). A former attorney for the Respondent acknowledged receipt of the Notice, but advised that the company's assets had been sold, that its accounts had been closed, and that it was in the process of formal dissolution (Dept Ex 2). As a consequence, he advised that there was no entity to represent at the hearing (*Id.*) The Notice of Hearing scheduled a June 30, 2011 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing. The Respondent failed to answer the charges contained in the Notice of Hearing or appear at the hearing. As a consequence, the Respondent is in default in this proceeding.

At the hearing, the Department produced sworn and credible evidence 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 committed eight violations of the Code Rule, more particularly described in the Notices of Violation attached to the Notice of Hearing, as follows:

- 12 NYCRR 56-3.1 A: Asbestos abatement performed by non-licensed contractor.
- 12 NYCRR 56-3.1 B: Non-certified workers dismantled boiler.
- 12 NYCRR 56-4.9 C: No air monitoring performed.

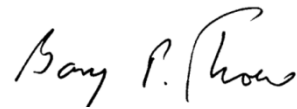
- 12 NYCRR 56-5.1 H: Asbestos not removed before demolition of boiler.
- 12 NYCRR 56-7.8 A 1: Negative air units not used in abatement.
- 12 NYCRR 56-7.11 A: No regulated work area enclosures set up.
- 12 NYCRR 56-3.6 A 1: Occupants with access to basement area not notified of abatement.
- 12 NYCRR 56-5.1 A: No asbestos survey performed.

ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for each of the Code Rule violations, for a total amount of \$8,000.00.

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 (\$8,000.00), made payable to the Commissioner of Labor.

Dated: July 22, 2011
Albany, New York

Respectfully submitted,



Gary P. Troue, Hearing Officer