

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

SNS GROUP, INC.
Respondent

A proceeding pursuant to NY Labor Law Article 30 and/or
12 NYCRR 56.

**DEFAULT REPORT &
RECOMMENDATION**

Asbestos Case Nos.
25646031; 25646033;
25646025; 25646028;
25646034-

To: Honorable M. Patricia Smith
Commissioner of Labor
State of New York

A hearing was held on April 15, 2009 at New York, New York, to inquire into and report findings and conclusions, and to make recommendations to the Commissioner of Labor with respect to the issues raised by the investigation conducted by the Asbestos Control Bureau (“Bureau”) of the Division of Safety and Health of the NYS Department of Labor (“Department”). The Bureau had investigated whether SNS Group, Inc. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 (“Code Rule”) when Respondent undertook asbestos projects located at 2301 Newbold Ave., Bronx, NY; 104-20 125th Street, Queens, NY; 948-50 2nd Ave., Manhattan, NY; 63-50 99th Street, Queens, NY; and 26 7th Ave., Manhattan, NY.

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Tsvi J. Gold, Senior Attorney, of Counsel).

There was no appearance by or on behalf of the Respondent.

HEARING OFFICER DESIGNATION

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

FINDINGS AND CONCLUSIONS

On March 13, 2009, the Department duly served copies of the Notice of Hearing (Hearing Officer Exhibit 1) on the Respondent by first class mail and by certified mail. The certified mail was returned as undeliverable as addressed (See, Hearing Officer Ex 2). There is no evidence that the First Class mailings were returned. Additionally, there is evidence in the record that the Respondent received copies of the Notices of Violation, Notice of Compliance Conference, and Notice of Hearing, as these notices were all properly addressed and there is no indication in the record that these first class mailings were returned (T. 29). The Notice of Hearing scheduled an April 15, 2009 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 substantially supporting the Department's charges that, as set forth in detail below, the Respondent violated the following particularized provisions of the Labor Law or the Code Rule in connection with the five (5) asbestos projects located at 2301 Newbold Ave., Bronx, NY; 104-20 125th Street, Queens, NY; 948-50 2nd Ave., Manhattan, NY; 63-50 99th Street, Queens, NY; and 26 7th Ave., Manhattan, NY.

For the foregoing reasons, the findings, conclusions and determinations of the Department 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 three violations of the Labor Law and/or the Code Rule as follows:

Labor Law Section 904.2 Notice requirements.

Any contractor engaged in an asbestos project involving more than two hundred sixty linear feet or more than one hundred sixty square feet of asbestos or asbestos material shall notify ... the commissioner in writing ten days prior to the commencement of the work on the project The notice to the commissioner ... shall be accompanied by a project notification fee.

On all of the five enumerated projects, the Respondent failed to notify the commissioner of the commencement of the projects or to pay the project notification fee. (T.15-16; Dol Ex. 3)

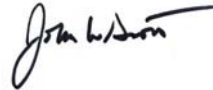
DETERMINE & ORDER, that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,000.00 for the first violation and \$2,000.00 for each of the four (4) succeeding violations, for a civil penalty in the total amount of \$9,000.00; and

Determine & Order, that the Respondent shall pay the project notification fees for each of the five (5) enumerated projects in the total amount of \$2,000.00; 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 in civil penalties and project notification fees (\$11,000.00) on the Projects, made payable to the Commissioner of Labor.

Dated: May 22, 2009
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott". The signature is written in a cursive style with a long horizontal stroke at the end.

John W. Scott, Hearing Officer