

STATE OF NEW YORK DEPARTMENT OF
LABOR

IN THE MATTER OF

TRIUMPH DEVELOPMENT, 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.

**DEFAULT
REPORT
&
RECOMMENDATION**

Asbestos Case No.
25690897

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 July 18, 2011 between Albany and 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 Triumph Development, LLC ("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 70 Sarles Lane, Pleasantville, New York.

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Steven Pepe, Senior Attorney, of Counsel). There was no appearance made by or on behalf of the Respondent.

FINDINGS AND CONCLUSIONS

On June 17, 2011, the Department duly served a copy of the Notice of Hearing on Respondent by service upon the New York State Secretary of State (HO Ex 1). The Notice of Hearing scheduled a July 18, 2011 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing. The Respondent failed to timely 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 provision of the Labor Law or the Code Rule that is 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 the Code Rule as follows:

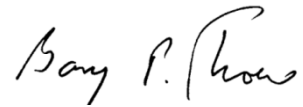
- 12 NYCRR 56-5.1 H: Asbestos Removal Required. Respondent failed to remove all asbestos containing material identified in an asbestos survey.

ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,500.00 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 (\$2,500.00), made payable to the Commissioner of Labor.

Dated: July 22, 2011
Albany, New York

Respectfully submitted,

A handwritten signature in black ink that reads "Gary P. Troue". The signature is written in a cursive style with a large, looping initial "G".

Gary P. Troue, Hearing Officer