

STATE OF NEW YORK DEPARTMENT OF LABOR

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In the Matter of

VANWORMER BUILDERS 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

File No.: AH-21-001

Resolution Case No. 80022277

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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 on April 20, 2021, 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 VanWormer Builders Inc. ("Respondent") complied with the requirements of article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook two asbestos abatement projects located at: 8 West Road, Troy, New York, Asbestos Inspection Case Number: 26354615 ("Project 1") and 1659 Oneida Street, Schenectady, New York, Asbestos Inspection Case Number: 26389096 ("Project 2").

APPEARANCES

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

There were no appearances made by or on behalf of Respondent.

HEARING OFFICER

Marshall H. Day was designated as Hearing Officer and conducted the hearing in this matter.

FINDINGS AND CONCLUSIONS

On March 8, 2021, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. Respondent signed a Return Receipt evidencing its receipt of the document (Hearing Officer Ex 3). The Notice of Hearing scheduled April 20, 2021 and April 21, 2021 hearing dates 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:

Project 1

DETERMINE that Respondent committed three violations of 12 NYCRR part 56 as follows:

12 NYCRR 56-5.1 (j) Asbestos Survey Requirements - Unidentified and Unassessed
Asbestos

- Contractor engaged in the disturbance of asbestos containing material during renovation work on the project site without securing the requisite renovation survey prior to commencement of work.

12 NYCRR 56-3.4 (a) (4) Surrender of Records

- The records requested by the Bureau for this project on July 30, 2018 were not provided in a timely manner.

12 NYCRR 56-12.2 Variances

- Contractor failed to follow the requested site-specific variance for proper handling of contaminated waste.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$2,250.00 for the violation of 12 NYCRR 56-5.1 (j) for failing to submit the requisite survey, \$500 for the violation of 12 NYCRR 56-3.4 (a) (4) for failure to surrender records and \$3,250.00 for the violation of 12 NYCRR 56-12.2 for failing to comply with the terms and conditions of the requested variance.

Project 2

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows:

12 NYCRR 56-5.1 (j) Asbestos Survey Requirements - Unidentified and Unassessed Asbestos

- The requisite renovation survey submitted to the Bureau prior to commencing work did not cover the extent of the work performed leading to unidentified materials being disturbed on both the interior and exterior of the renovated structure.

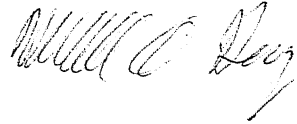
DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$1,500.00 for the violation of 12 NYCRR 56-5.1 (j) for failing to submit the requisite survey for the work performed.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the Department's requested total civil penalty of \$7,500.00 for the four Code Rule violations on both projects.

ORDER that Respondent immediately remit payment to the Division of Safety & Health, Asbestos Control Bureau, State Office Building Campus, Building 12, Room 157, Albany, NY 12240 of the total amount due (\$7,500.00), made payable to the Commissioner of Labor.

Dated: June 25, 2021
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marshall H. Day". The signature is written in a cursive style with a large, stylized initial "M".

Marshall H. Day, Hearing Officer