

STATE OF NEW YORK DEPARTMENT OF LABOR

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In the Matter of

WEBB DEVELOPMENT SERVICES CORPORATION

AND

DERECA WEBB AND ALONZO WEBB

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.

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DEFAULT REPORT

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RECOMMENDATION

File No. DSH-0166527

Resolution Case No. 80101888

To: Honorable Roberta Reardon
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter dated July 18, 2024, a videoconference hearing was held on October 2, 2024, in Albany, New York with participating parties and/or witnesses appearing remotely at various other locations. 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 WEBB DEVELOPMENT SERVICES CORPORATION (“Webb Development”) complied with the requirements of article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Webb Development undertook two (2) asbestos abatement projects

located at 460 E. 4Th Street, Mount Vernon, NY (“Project 1”) and 163 Shonnard Terrace, Yonkers, NY (“Project 2”); and whether Webb Development is liable for \$9,250.00 in civil penalties relating to these Projects. During the administrative proceeding the Department also raised an issue regarding a project located at 140 South 10th Avenue, Mount Vernon, NY 10550 (Project No. 26536039). This particular project was not included in the Notice of Hearing, as such no findings or recommendations are made regarding this third project or the alleged civil penalty the Department was looking to impose.¹

APPEARANCES

The Bureau was represented by Department Counsel, Jill Archambault (Debra Collura, Senior Attorney, of Counsel).

There was no appearance by or on behalf of Webb Development or Dereca Webb and Alonzo Webb.

HEARING OFFICER

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

FINDINGS AND CONCLUSIONS

On July 22, 2024, the Department duly served copies of the Notice of Hearing (HO Ex. 1) on Webb Development by first class mail and certified mail. Evidence supports the finding that Webb Development received notice of the Notice of Hearing since none of the certified or first-class mailings were returned as undeliverable. (HO Ex. 2; T. 6) Also, the Department served the

¹ Failure to include this separate project in the pleadings is a deprivation of the notice requirements outlined under the State Administrative Procedure Act §301 (2) and the 1990 Department of Labor Administrative Adjudication Plan §701.4 (4).

trial exhibits on Webb Development. (T. 6) The Notice of Hearing scheduled an October 2, 2024, hearing and required that Webb Development serve an Answer at least 14 days in advance of the scheduled hearing. Webb Development failed to answer the charges contained in the Notice of Hearing or appear at the hearing. Therefore, Webb Development is in default in this proceeding.

At the hearing, the Department produced sworn testimony and credible evidence substantially supporting the Department's charges that Webb Development violated the provisions of the Labor Law or the Code Rule that are hereinafter particularized.

The Department further offered sworn testimony and credible evidence showing how the Department used a Penalty Assessment Calculation Sheet methodology to consistently assess civil penalties against Webb Development in the total amount of \$9,250.00 for the violations of these provisions of the Labor Law or the Code Rule.

RECOMMENDATIONS

Based upon the default of Webb Development in timely answering and contesting the charges contained in the Department's Notice of Hearing, and upon the sworn credible testimonial and documentary evidence adduced at hearing in support of those charges, and based on the record as a whole, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

Project 1

460 E. 4th Street, Mount Vernon, NY, Inspection Case No. 26635561

12 NYCRR 56-11.4 requires that all ACM, PACM or asbestos material must be removed from the building/structure and the asbestos project completed, prior to commencement of demolition activities.

On inspection on 6/15/2021, Safety and Health Inspector David Ramos observed that Webb Development failed to abate all the ACM, PACM and asbestos material prior to the commencement of demolition activities. (DOL Ex.8; T. 32). Therefore, it is:

DETERMINED that Webb Development violated 12 NYCRR 56-11.4 because it failed to abate all of the ACM, PACM and asbestos material prior to the commencement of demolition activities, and it is further,

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Webb Development be assessed the requested civil penalty of \$4,000.00 for one violation of 56-11.4. (DOL EX. 11; T. 53-56)

12 NYCRR 56-3.4.A.3 requires that within ten (10) working days of the expiration, revocation, or non-renewal of an asbestos contractor's asbestos handling license, or upon the receipt of the written request of the Commissioner, or his or her duly authorized representative, any records kept pursuant to this Part shall be delivered to the Asbestos Control Bureau.

On inspection on 6/15/2021, Safety and Health Inspector David Ramos observed that Webb Development failed to provide the requested records pertaining to the demolition of the private home located at 460 E 4th St., Mount Vernon, New York within ten (10) working days of written request. Webb Development failed to provide asbestos surveys, sample results, chain of custody, photographs, logbook, asbestos certifications, name and contact information for all workers including the backhoe operator associated with the demolition of the above-mentioned location. (DOL Ex.8; T. 33). Therefore, it is:

DETERMINED that Webb Development violated 12 NYCRR 56-3.4.A.3 because it failed to provide the requested records pertaining to the demolition of the private home located at 460 E

4th St., Mount Vernon, New York within ten (10) working days of written request; and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Webb Development be assessed the requested civil penalty of \$2,500.00 for one violation of 56-3.4.A.3. (DOL EX. 11; T 46-51)

12 NYCRR 56-3.4.B.1 requires that any asbestos abatement contractor who proposes to engage in a Large asbestos project shall notify or cause to be notified, in writing, the Asbestos Control Bureau. Such notice must be received at least ten (10) calendar days prior to the commencement of Phase II A (See Section 56- 2.1) of the asbestos project unless waived in writing by the Commissioner or his or her duly authorized representative. If an asbestos hazard is present which requires immediate attention, or if emergency conditions make it impossible to give notification ten (10) calendar days prior to the commencement of the project, notification in accordance with section 56-3.5 of this Part shall be given. All project notifications shall be accompanied by a nonrefundable fee. The fee shall be paid in any form, except cash, deemed acceptable by the Commissioner of Labor in the notification package. All payments shall be made payable to the Commissioner of Labor in the amounts set forth in the Labor Law.

On inspection on 6/15/2021, Safety and Health Inspector David Ramos observed that Webb Development failed to notify the asbestos control Bureau of an asbestos project. Webb Development demolished a private home that contained both friable and non-friable asbestos material. (DOL Ex.8; T. 34). Therefore, it is:

DETERMINED that Webb Development violated 12 NYCRR 56-3.4.B.1 because it failed to notify or cause to be notified, in writing, the Asbestos Control Bureau at least ten (10) calendar days prior to the commencement of Phase II A; and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Webb Development be assessed the requested civil penalty of \$2,500.00 for one violation of 56-3.4.B.1. (DOL EX. 11; T. 51-53)

Project 2

163 Shonnard Terrace, Yonkers, NY

12 NYCRR 56-3.4.B.2.XIII requires that the notification to the Asbestos Control Bureau shall be made on a form or forms provided by the Commissioner and shall include, but not be limited to, the name, address and phone number of the landfill where the asbestos waste will be transported.

On inspection on 10/28/2020, Safety and Health Inspector David Ramos observed from a review of the project notification, determined that abatement contractor Webb Development failed to provide the required landfill information for asbestos project notification number 26583350. (DOL EXs. 8, 10, 11; T. 36, 38-41). Therefore, it is:

DETERMINED that Webb Development violated 12 NYCRR 56-3.4.B.2.XIII because it failed to provide the required landfill information for asbestos project notification number 26583350; and it is further

DETERMINED & ORDERED that, pursuant to Labor Law § 909 (1) (b), Webb Development be assessed the requested civil penalty of \$250.00 for one violation of 56-3.4.B.2.XIII. (DOL EX. 11; T. 56-58)

FINALLY

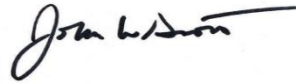
ORDER that Respondents immediately remit payment to the Division of Safety & Health, Asbestos Control Bureau, W. Averell Harriman State Office Campus, Building 12, Room 157,

Albany, NY 12240 in the total amount due of \$9,250.00, assessed on the two (2) Projects at issue herein.

Dated: January 2, 2025

Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott", with a long horizontal flourish extending to the right.

John W. Scott, Hearing Officer