

STATE OF NEW YORK DEPARTMENT OF LABOR

In the Matter of

SKYLIGHTERS OF NEW YORK LLC,

and

**MATTHEW T. SHAW, Individually and as Owner, Sole
Officer, and Duly Authorized Representative of
SKYLIGHTERS OF NEW YORK LLC,**

for a determination pursuant to Section 464 and 459 of the New York Labor Law that violations of Labor Law Article 16 and/or Industrial Code Rule 39 took place as hereinafter described and that the application to renew License No. D-5799 is denied.

**REPORT
&
RECOMMENDATION**

File No. LIC-22-001

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

Pursuant to a Notice of Hearing, and in accordance with Labor Law article 16, a videoconference hearing was held on May 23, 2022 and May 24, 2022, in Albany, New York, with participating parties and witnesses located at various other sites. The purpose of the hearing was to provide all interested parties an opportunity to be heard on the issues raised in the Notice of Hearing, and inquire into and report findings of fact, conclusions of law and recommendations to the Commissioner of Labor regarding whether Skylighters of New York LLC and Matthew T. Shaw, individually and as owner, sole officer and duly authorized representative of Skylighters of New York LLC (“Respondents”) violated certain provisions of Labor Law Article 16 and/or Industrial Code Rule 39 (12 NYCRR Part 39); and whether the denial by the Industry Inspection Bureau (“Bureau”) of the Division of Safety and Health of the New York State Department of Labor (“Department”), of an application to renew submitted by Matthew T. Shaw on behalf of Skylighters of New York LLC for a license to deal in or manufacture explosives should be sustained.

APPEARANCES

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

Prime appeared by and through its attorney, Lotempio P.C. Law Group (Jack M. Sanchez, Esq., of counsel).

STATEMENT OF THE CASE

The hearing concerned an investigation conducted by the Bureau into whether Respondents complied with the requirements of Article 16 of the Labor Law and/or Industrial Code Rule 39 (12 NYCRR Part 39); whether the \$26,250 civil penalty assessed by the Bureau pursuant to Labor Law § 464 (2)(a) is appropriate and should be upheld; and whether the Respondents, as applicants to renew a License to Deal in and Manufacture Explosives, are sufficiently reliable and experienced to possess a License during the renewal period.

The Department alleges in the Notice of Hearing the following facts in support of its request that the License and Certificate be denied, and violations occurred.

FINDINGS OF FACT

On or about July 3, 2021, an incident occurred in which a truck owned and operated by an employee of Respondents coming back from a firework display in Akron, New York, experienced the detonation of the explosives maintained in the back of that truck on a public highway at or near 8783 South Lake Road, Pembroke, New York, 14036.

Soon thereafter, a recording of the truck driving past houses and then exploding offscreen circulated on social media. Additionally, news segments aired footage of the immediate aftermath of the burnt-out truck while emergency services personnel were onsite clearing the thoroughfare of debris. Respondents were also onsite actively assessing the damage caused to the vehicle and surrounding area.

On or about July 8, 2021, the Bureau performed a site visit at the location of the accident

site. The Bureau inspector observed, among other things, intact live explosive product dispersed about the residential area at the accident site. Soon thereafter, State Police Technical Sergeant and Bomb Technician Brian Pazderski joined the Department's inspector onsite and collected the explosives¹.

On July 8, 2021, Safety and Health Inspector Thomas Nieswiadomy attempted to inspect Respondents' magazines at 5495 Rice Rd., Boston, NY 14025. However, Respondents were not responsive to Mr. Nieswiadomy's contacts. When Mr. Nieswiadomy appeared at Respondents' place of business to perform the inspection, Respondents requested Mr. Nieswiadomy return the next day. Mr. Nieswiadomy requested a record of the inventory that was on the truck involved in the accident. Later that day, Respondents provided a pull sheet—that is, a list of the pyrotechnics to be taken out of the magazine for use at the show.

On or about July 9, 2021, the Bureau performed an inspection of Respondents' magazines located at 5495 Rice Rd., Boston, NY 14025. The Bureau's inspection revealed, among other things, that Respondents did not maintain a running inventory as required by Industrial Code Rule 39.

On or about August 19, 2021, the Bureau performed an inspection of Respondents' magazines located at 5495 Rice Rd., Boston, NY 14025. The Bureau's inspection revealed, among other things, that Respondents did not maintain a running inventory as required by Industrial Code Rule 39.

On or about September 13, 2021, the Respondents submitted to the Division of Safety and Health License and Certificate Unit an Application for a License to Deal In or Manufacture Explosives.

On or about September 15, 2021, the Department received Respondents' application to renew License to Deal In or Manufacture Explosives No. D-5799.

On or about November 16, 2021, the Bureau issued Respondents revised Notices of Violation and Orders to Comply previously issued to Respondents.

¹ The incident report filed by the technician indicated that the "Scene was location of a truck fire carrying commercial fireworks from Akron show on July 3rd. Recovered 13 Approx 8 inch tubes with product inside and 6 3" commercial mortars. Items transported and secured at SP Batavia Explosives magazine. A lot of burnt and spent tubes and debris were still present in ditch area off roadway".

By reason of the foregoing findings and discrepancies, contained in said notices, on or about November 19, 2021, the Department denied Respondents' application to renew its License to Deal In or Manufacture Explosives No. D-5799.

On or about November 19, 2021, Respondents filed a timely written demand for a hearing concerning the revised Notices of Violation and Orders to Comply.

On or about November 22, 2021, Respondents submitted an appeal concerning the denial of its application to renew License to Deal In or Manufacture Explosives No. D-5799.

CONCLUSIONS OF LAW

LICENSE DENIAL

Labor Law section 459 (1) provides that:

A license or certificate, or the renewal thereof may be denied where the commissioner has probable reason to believe, based on knowledge or reliable information, or finds, after investigation, that the applicant or any officer, servant, agent or employee of the applicant is not sufficiently reliable and experienced to be authorized to own, possess, store, transport, use, manufacture, deal in, sell, purchase or otherwise handle, as the case may be, explosives...

Due to the gravity and scope of the accident that occurred on a public highway in a residential neighborhood that the Respondents had firsthand knowledge of, I find that the Respondents' failure to ensure that the public's safety was not endangered by conducting a valid inspection of the accident site within a reasonable period of time after the accident transpired to determine if there was any live explosive product left at that site demonstrated that the Respondents are not sufficiently reliable to be authorized to own, possess, store, transport, use, deal in, sell, purchase or otherwise handle explosives. Under these circumstances, the Division had reasonable and just cause to deny the Respondent's application for a license to purchase, own, possess, transport and use explosives for the yearly renewal period of September 2021 to

September 2022².

Respondents had a duty and obligation to protect the public at large and follow up at the accident site to make sure the company's work product in the form of active explosives were not left at the accident site. Regardless of whether police and fire personnel secured and cleared the right of way at the time of the accident, Respondents were still required to secure any and all product they possessed³. The Respondents had more than enough time (five days) to visit the accident site and secure the area prior to the Department's investigation and failed to do so. Had they done their due diligence and combed the site for any duds or misfires, which in the Respondents' own words are still considered a live product, and sent out at least one of over a hundred employees to check the accident site to make sure no live explosive products were on the site within the succeeding days of the accident, they never would have been subject to review and the Department's inspector would have found no debris on the site after the occurrence, and the multitude of violations and resulting investigation would not have occurred.

Respondent Shaw testified that he was at the site, and personally witnessed the extent of the destruction of the vehicle and the scope of the debris zone. He personally spoke to fire and police personnel on the accident site, saw the magnitude of the blast, knew firsthand the extent of the blast zone, knew that the product was scattered throughout the residential area and could see for himself that during the evening hours there was no way to determine if all the explosive product was secured and/or collected. Respondents showed no interest in inspecting or policing the large debris zone associated with the accident even though Respondent Shaw was fully aware of the tragic event and the potential danger it could have caused if someone from the public gained access to any of the live explosive products which Respondents knew were potentially left behind. This failure of the Respondents to ensure the safety of the public from active

² Labor Law §458 (2) No person shall manufacture, deal in, sell, give, test or dispose of explosives unless a license therefor shall have been issued to such person for that purpose by the commissioner as provided in this article, The commissioner, after investigation of the application, shall issue a license or renewal thereof, which shall be valid for not less than one year from the date of issuance, where the commissioner finds that the applicant has complied with the requirements of this article and rules promulgated hereunder.

³ Labor Law §450 (3) "For all purposes of this article, explosives in the possession of an employee with the scope of his duties, shall be considered to be in the possession of the employer." Although, Respondent Shaw was not driving the vehicle when the incident occurred, he was fully aware of the destruction that occurred and should have returned to accident to retrieve the live explosive product in his possession.

explosive product at the accident site provided the Commissioner a probable reason to believe (as required by statute) that the Respondents are not sufficiently reliable to own, possess, store, transport, use, manufacture, deal in, sell, purchase or otherwise handle, as the case may be explosives; and as such, the Division had sufficient grounds to deny the Respondents' application to renew its License to Deal In or Manufacture Explosives under license No. D-5799 for the application period at issue; and that denial is sustained.

CIVIL PENALTY

Regulations have been promulgated to enforce the provisions of Article 16 including the imposition of a civil penalty for failure to adhere to the regulations as directed.

Labor Law § 464 provides for the imposition of a civil penalty in an amount not to exceed ten thousand dollars per violation per day until the violation is corrected. In assessing the penalty amount, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violations, and the history of previous violations. The Respondents are an experienced employer, of large size (over one hundred employees), with over nineteen years of work history who produced thousands of firework displays over the years and has no history of previous violations, however Respondents initially did not fully cooperate with the Department, Respondents did not completely remedy all the violations that were issued and given the size and depth of the explosion that occurred in the back of the truck in a residential neighborhood on a public highway, the Respondents should have known the explosion accident site should have been treated as any other display site⁴ and immediately returned in the day light hours for visual inspection of the accident site to ensure there was no duds or live explosive product was left in the area, especially given the gravity of the explosive area personally witnessed by Respondent Shaw. Respondents failed to ensure that the accident site was clear of all the live explosive product in its possession that it was responsible for as required under the statute. Additionally, the Respondents had a duty to notify the Department of the accident and resulting debris and should have worked with the Department

⁴ Respondent Shaw testified the procedure after every high-profile display is completed is that they engage in a cooldown period in which they do a visual inspection of the grounds to ensure there are no embers or duds which can still explode, so are considered a live explosive product.

on clearing the site, if in fact they had done so. Failure to notify necessary parties, and immediately returning to and visually inspecting and policing the site the next day presented a very large danger to the public at large given the accident occurred in a residential neighborhood and anyone could have access to the live product dispersed along the roadside because of this unfortunate event. Since the Respondents made no effort to take the time to learn what live explosive product was still left on the side of the highway after the highly destructive accident which resulted in a large debris zone that should have been inspected, any violations and penalties assessed by the Bureau and associated with that event and accident site are appropriate. Although the gravity of the remaining violations of 12 NYCRR 39.6 (d)(1)(i)-(iii) do not rise to the level of the seriousness of explosive product left on the side of the road, that does not diminish the importance of adhering to those statutory requirements to protect the public and those violations shall be upheld as well. I find the totality of the evidence sufficient to support the Department's request that the Commissioner assess a civil penalty against the Respondents in the amount of \$26,250.00 for all named violations assessed as a result of the Bureau's investigation.

RECOMMENDATIONS

I RECOMMEND that the Commissioner of Labor adopt the Findings of Fact and Conclusions of Law as the Commissioner's determination of the issues raised in this case, and based on those Findings and Conclusions, the Commissioner should:

DETERMINE that Respondents violated the provisions of Labor Law Article 16 and/or Industrial Code Rule 39 at issue; and

DETERMINE that the Bureau had sufficient grounds to deny the Respondents' application to renew its License to Deal In or Manufacture Explosives under license No. D-5799 for the application period at issue and that denial is sustained; and

DETERMINE & ORDER that, pursuant to Labor Law § 464, that Respondents be assessed the Department's requested civil penalty of \$26,250.00.

ORDER that RESPONDENTS immediately remit payment to the Division of Safety & Health, Industry Inspection Bureau, Attn: Program Manager 2, State Office Campus, Building

12, Room 161A, Albany, NY 12240 of the total amount due (\$26,250.00), made payable to the Commissioner of Labor.

ORDER that the Respondents be denied a License to Deal In or Manufacture Explosives for the renewal period cited in their application, however given the duration of the denial, now be given the opportunity to refile for renew once the civil penalties and applications fees are paid in full.

Dated: September 23, 2022
Albany, New York

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marshall H. Day", is written over a light blue rectangular background.

Marshall H. Day, Hearing Officer