

STATE OF NEW YORK DEPARTMENT OF LABOR

In the Matter of

TROY DONIE
Respondent

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

**DEFAULT
REPORT
&
RECOMMENDATION**

Asbestos Case Nos.
7002

To: Honorable Colleen Gardner
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on Tuesday, January 4, 2011, in Albany, 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 Troy Donie ("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 St. Eustace Church, 2450 Main Street, Lake Placid, NY.

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito, Steven Pepe, Senior Attorney, of Counsel.

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

FINDINGS AND CONCLUSIONS

On August 4, 2010, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail (HO Ex 1). Subsequently, the

Hearing Officer issued via regular and certified mail a Notice of Rescheduled Hearing on November 19, 2010, scheduling the matter for January 4, 2011. The first class mailing was not returned, and the certified mailing was returned with the notation “forwarding expired” (HO Ex 2, 3). The Notice of Rescheduled Hearing required the Respondent to serve an Answer at least 14 days in advance of the scheduled hearing.

Respondent failed to 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 provisions of the Labor Law or the Code Rule that are hereinafter particularized.

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 four violations of the Code Rule as follows:

12 NYCRR 56-1.6 [Labor Law § 904 (2)] Notice and recordkeeping requirements.

- 12 NYCRR 56-1.6 (b) (1) – Notification required: 10 days in advance of project commencement, Respondent failed to submit an Asbestos Project Notification or pay the \$200 requisite fee.

12 NYCRR 56-8.1 General requirements – large and small asbestos projects.

- 12 NYCRR 56-8.1 (d) –Enclosure Installation: Personal decontamination enclosure system was not installed prior to preparatory work in the work area.

12 NYCRR 56-12.1 General requirements.

- 12 NYCRR 56-12.1(c) and (g) – Handling: Respondent failed to directly bag asbestos containing materials that were removed. All stripping work was not completed. A large amount of asbestos was found lying about the floor and asbestos debris was found on surfaces. Asbestos was found on pipes that were abated.

12 NYCRR 56-17.1 Schedules and methods.

- 12 NYCRR 56-17.1 – Requisite air monitoring was not performed.

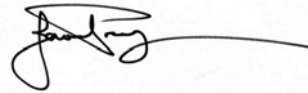
DETERMINE & ORDER that, as required by Labor Law § 904(2), Respondent be liable for and shall pay the unpaid fee of \$200.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909(1)(b), Respondent be assessed the requested maximum civil penalty of \$5,000.00 for each of the Code Rule violations, for a total amount of \$20,000.

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 (\$20,200.00) on the Project, made payable to the Commissioner of Labor.

Dated: February 23, 2011
Albany, New York

Respectfully submitted,



Jerome Tracy, Hearing Officer