

STATE OF NEW YORK DEPARTMENT OF LABOR

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In the Matter of

MADISON SPRING VALLEY-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

File No.: AH-16-016
Asbestos Inspection No.: 26097253

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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 May 11, 2018, in Albany, New York, between Albany and White Plains. 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 Madison Spring Valley, LLC ("Respondent") complied with the requirements of article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook an asbestos abatement project at 38 Madison Avenue, Spring Valley, New York.

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz (Kimberly A. Wedderburn, Empire Fellow, of Counsel).

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

HEARING OFFICER

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

FINDINGS AND CONCLUSIONS

On April 5, 2018, 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 2). The Notice of Hearing scheduled a May 11, 2018 hearing 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:

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

12 NYCRR 56-5.1.A Asbestos Survey Required

- The requisite survey was not completed and submitted to the Bureau prior to commencing work.

12 NYCRR 56-3.4.A.3 Surrender of Records

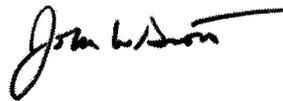
- The records requested by the Bureau for this project on April 21, 2015 were never received.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$3,000.00 for the violation of 12 NYCRR 56-5.1.A for failing to submit the requisite survey and \$2,000.00 for the violation of 12 NYCRR 56-3.4.A.3 for failing to provide the requested records, for a total civil penalty of \$5,000.00.

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 (\$5,000.00), made payable to the Commissioner of Labor.

Dated: September 12, 2018
Albany, New York

Respectfully submitted,



John W. Scott, Hearing Officer