

STATE OF NEW YORK: DEPARTMENT OF LABOR  
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In the Matter of

B And A Demolition And Removal, Inc.  
Respondent,

**DEFAULT**  
**REPORT**  
**&**  
**RECOMMENDATION**

For a determination pursuant to Section 909 of the New York  
Labor Law that violations of Labor Law, article 30 and/or  
12 NYCRR part 56  
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Case No's.:  
2570731; 25717465;  
25717485; 25717507;  
25717514; 25717523

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 August 8, 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 B & A Demolition and Removal, Inc. ("Respondent"), complied with the requirements of Labor Law article 30 or 12 NYCRR part 56 when Respondent undertook six asbestos abatement projects at:

- Former Starfish/Robeks/Bagel Boss, Merrick Plaza Shopping Center, 2905-2101 Merrick Road, Merrick, NY, Asbestos Case No. 25707371 ("Project 1");
- Avenue J and 13<sup>th</sup> Street, Brooklyn, New York, Asbestos Case No. 25717465 ("Project 2");
- 361 Atlantic Avenue, Oceanside, New York, Asbestos Case No. 25717485 ("Project 3");

- 2544 Flatbush Avenue, Brooklyn, New York, Asbestos Case No. 25717507 (“Project 4”);
- 999 Stewart Avenue, Bethpage, New York, Asbestos Case No. 25717514 (“Project 5”); and
- 3136 Clubhouse Road, Merrick, New York, Asbestos Case No. 25717523 (“Project 6”).

### **APPEARANCES**

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz (Steven Pepe, Senior Attorney, of Counsel).

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

### **FINDINGS AND CONCLUSIONS**

On July 7, 2011, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. Respondent signed and returned a Domestic Return Receipt evidencing its receipt of the Notice (Dept Ex 1). The Notice of Hearing scheduled a hearing for August 8, 2011, and required Respondent to serve an Answer at least 14 days in advance of the scheduled hearing. The Notice also required any request for an adjournment to be made in writing at least 14 days prior to the hearing. Respondent did not serve an Answer and did not appear at the hearing.

After the hearing concluded, the Hearing Officer was notified by the Department attorney that, at some time on August 8, 2011, the Bureau’s New York City office had received an unsigned, handwritten telefax, purporting to be from Respondent, which requested an adjournment because the Respondent was “unprepared.” The Department opposed any adjournment or reopening of the hearing. The Hearing Officer determined that the request was a request to reopen the hearing, and denied the request. However, the Hearing Officer informed the Respondent how to obtain a copy of the transcript for the hearing and gave the Respondent the opportunity to submit proposed findings and conclusions. Respondent failed to respond to the Hearing Officer’s decision and did not submit proposed findings and conclusions. Given Respondent’s failure to appear, submit

an Answer to the charges contained in the Notice of Hearing, or submit proposed findings and conclusions, it 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 12 NYCRR part 56 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:

#### **Project 1**

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows: 12 NYCRR 56-5.1 (a) Asbestos Survey required. Respondent employed an unlicensed contractor to conduct an asbestos Survey.

DETERMINE AND ORDER that Respondent be assessed the requested civil penalty of \$5000.00.

#### **Project 2**

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows: 12 NYCRR 56-5.1 (a) Asbestos Survey required. Respondent employed an unlicensed contractor to conduct an asbestos Survey.

DETERMINE AND ORDER that Respondent be assessed the requested civil penalty of \$5000.00.

### **Project 3**

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows: 12 NYCRR 56-5.1 (a) Asbestos Survey required. Respondent employed an unlicensed contractor to conduct an asbestos Survey.

DETERMINE AND ORDER that Respondent be assessed the requested civil penalty of \$5000.00.

### **Project 4**

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows: 12 NYCRR 56-5.1 (a) Asbestos Survey required. Respondent employed an unlicensed contractor to conduct an asbestos Survey.

DETERMINE AND ORDER that Respondent be assessed the requested civil penalty of \$5000.00.

### **Project 5**

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows: 12 NYCRR 56-5.1 (a) Asbestos Survey required. Respondent employed an unlicensed contractor to conduct an asbestos Survey.

DETERMINE AND ORDER that Respondent be assessed the requested civil penalty of \$10000.00.

### **Project 6**

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows: 12 NYCRR 56-5.1 (a) Asbestos Survey required. Respondent employed an unlicensed contractor to conduct an asbestos Survey.

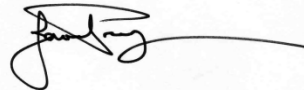
DETERMINE AND ORDER that Respondent be assessed the requested civil penalty of \$10000.00.

**Finally**

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 (\$40,000.00) on all the Projects, made payable to the Commissioner of Labor.

Dated: December 1, 2011  
Albany, New York

Respectfully submitted

A handwritten signature in black ink, appearing to read 'J. Tracy', with a long horizontal flourish extending to the right.

Jerome A. Tracy, Hearing Officer  
Office of Administrative Adjudication

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