

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

MARK KING

Respondent

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

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Asbestos Case Nos.  
6283

To: Honorable M. Patricia Smith  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on August 4, 2009, 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 Mark King ("Respondent") complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR 56 ("Code Rule") when Respondent undertook an asbestos abatement project at 24 Myers Corner Road, Wappinger Falls, New York.

**APPEARANCES**

The Bureau was represented by Department Counsel, Maria Colavito (Tsvi J. Gold, Senior Attorney, of Counsel). There was no appearance made by or on behalf of Respondent.

## **FINDINGS AND CONCLUSIONS**

On June 19, 2009, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. Respondent signed a U.S. Postal Return Receipt evidencing his receipt of the document (Dept Ex 1). The Notice of Hearing scheduled an August 4, 2009 hearing and required that the Respondent 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 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 the Code Rule as follows:

- 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 \$2,000.00 requisite fee.
- 12 NYCRR 56-1.9 (a) – Building Demolition Survey Required: The Respondent performed demolition on the site without conducting a survey to determine the presence of asbestos or asbestos containing materials.

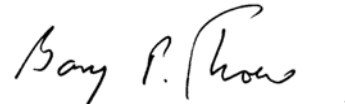
DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent be liable for and shall pay the unpaid fee of \$2,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$5,000.00 for each of the Code Rule violations, for a total amount of \$10,000.00.

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 (\$12,000.00), made payable to the Commissioner of Labor.

Dated: August 10, 2009  
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary P. Troue", followed by a period.

Gary P. Troue, Hearing Officer