

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

ROBERT FEARBY d/b/a D&B ROOFING

Respondent

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

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Asbestos Case Nos.  
AC-02-05-0007

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 18, 2009, in Buffalo, 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 Robert Fearby, d/b/a D&B Roofing ("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 the Medina Train Museum, 530 West Avenue, Medina, 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. A signed Return Receipt card evidencing Respondent's receipt of the document was received in evidence (Dept Ex 1). The Notice of Hearing scheduled an August 18, 2009 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing. No Answer was served by Respondent upon the Hearing Officer or Department Counsel, as required by the Notice of Hearing, but Respondent did send a letter to the Department investigator essentially admitting the violations and alleging ignorance of the law (Dept. Ex. 8). Respondent failed to appear at the hearing and, as a consequence, is in default in this proceeding.

At the hearing, the Department produced sworn and credible evidence substantially supporting the Department's charges that Respondent was an experienced roofing contractor who knew or should have known of the requirements of Labor Law Article 30 and Code Rule 56 and nevertheless 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 failing to appear and contest 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 three (3) violations of Labor Law Article 30 and/or the Code Rule as follows:

- Labor Law § 904 (2) – Notification required: 10 days in advance of project commencement. Respondent engaged in an asbestos project involving over 10,000 square feet of asbestos roofing materials and failed to submit an Asbestos Project Notification or pay the required \$1,000.00 fee.

- 12 NYCRR 56-1.5 – Responsibility of contractor: Contractor shall permit only those persons with valid asbestos handling certificates to engage in work on an asbestos project. Respondent allowed two workers to perform removal of asbestos roofing materials who lacked valid asbestos handling certificates.
- 12 NYCRR 56-17.1 – Air Monitoring Required. Requisite air monitoring was not performed.

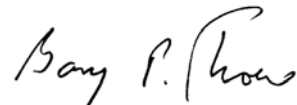
DETERMINE & ORDER that, as required by Labor Law § 904 (2), Respondent be liable for and shall pay the unpaid fee of \$1,000.00.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$4,500.00 for the three violations.

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 (\$5,500.00), made payable to the Commissioner of Labor.

Dated: August 21, 2009  
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary P. Troue".

Gary P. Troue, Hearing Officer