

STATE OF NEW YORK DEPARTMENT OF
LABOR

In the Matter of

Sorora Construction, LLC
Respondent

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**

Asbestos Case No.
25783037

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

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held on October 17, 2011 between Albany and Syracuse, New York. The purpose of the hearing was to provide the 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 Sorora Construction, 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 Park Place Commons, 1809 East Fayette Street, Syracuse, New York ("Project").

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 August 29, 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 on August 13, 2011 (HO 1).

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 provisions of the Labor Law or the regulations that are hereinafter particularized.¹

Labor Law § 902 requires contractors that engage in asbestos contracts to have asbestos handling licenses and workers on such projects to have asbestos handling certificates. Labor Law § 909 (1) (a) provides for a civil penalty of up to \$2,500.00 for the initial violation of Labor Law § 902, and up to \$4,000.00 for the second or subsequent violation of such section. Such penalty assessments may be made by the Commissioner and are not subject to the hearing process (*North Shore Mgt. & Maintenance LLC v. New York State Dept. of Labor*, 2010 NY Slip Op 33233U [N.Y. Sup. Ct. Nov. 15, 2010]). However, the Department attorney has made these violations a part of this proceeding, and a recommendation concerning the civil penalty for any license and certificate violations will therefore be made.

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

¹ The Department chose not to request a penalty for one of the violations alleged in the Notice of Hearing, and that violation is not considered herein.

that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Respondent violated 12 NYCRR 56-3.1 (a) and 12 NYCRR 56-3.2 (a) as follows:

- 12 NYCRR 56-3.1 (a) for engaging in the asbestos Project without a valid asbestos handling license;
- 12 NYCRR 56-3.2 (a) for permitting uncertified employees to engage in work on the asbestos Project;

ORDER that Respondent be assessed a civil penalty of \$1250.00 for the violation of 12 NYCRR 56-3.1 (a) and \$1250.00 for the violation 12 NYCRR 56-3.2 (a), for a penalty of \$2500.00;

DETERMINE that Respondent violated 12 NYCRR 56-5.1 (a), which requires an owner or owner's agent to have a licensed asbestos contractor conduct an asbestos survey prior to performing any work on a project;

ORDER that Respondent be assessed a civil penalty of \$1500.00 for the violation of 12 NYCRR 56-5.1;

DETERMINE that Respondent violated 12 NYCRR 56-1.5, which requires the Project owner to contract with a licensed asbestos contractor if there is disturbance of asbestos containing material during the course of work;

ORDER that Respondent be assessed a civil penalty of \$1500.00 for the violation of 12 NYCRR 56-1.5;

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 (\$5500.00), 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 "Jerome A. Tracy", with a long horizontal flourish extending to the right.

Jerome A. Tracy, Hearing Officer