

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

PJ MARIN CONSTRUCTION, INC.,
and its substantially owned-affiliated entity,
J.D. MARTIN RENOVATION, INC.

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 Nos.
25790778, 25797589

To: Honorable Peter M. Rivera
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a video hearing was held on July 19, 2013, between Albany and New York, 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 PJ Marin Construction, Inc. ("Respondent") complied with the requirements of article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when Respondent undertook two asbestos abatement projects, the first at the Masera Learning Center, 650 Udall Road, West Islip, New York ("Project 1") and the second at the James E. Allen Jr./Sr. High School, 35 Cannon Road, Melville, New York (Project 2"). The hearing also concerned the issue of whether Respondent is a successor of J.D. Martin Renovation, Inc. ("J.D. Martin") and therefore responsible as a substantially owned-affiliated entity for J.D. Martin's stipulation to pay a \$5,000 civil penalty on an asbestos abatement project performed by J.D. Martin.

APPEARANCES

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz (Steven Pepe, Senior Attorney, of Counsel). There was no appearance made by or on behalf of Respondent.

FINDINGS AND CONCLUSIONS

On June 13, 2013, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail. Respondent signed a Domestic Return Receipt evidencing its receipt of the document (H.O. Ex. 2). The Notice of Hearing scheduled a July 19, 2013 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. The Department also provided sworn and credible evidence that J.D. Martin had previously stipulated with the Department to pay a \$5,000.00 civil penalty to resolve violations in connection with Asbestos cases numbered 25665683, 25665625 and 25694852; that the \$5,000.00 stipulated civil penalty remains unpaid; and that Respondent is the successor of J.D. Martin and as such is a substantially owned-affiliated entity within the meaning of Labor Law § 901 (18) (c) jointly and severally responsible for the payment of J.D. Martin's unpaid civil penalty pursuant to Labor Law § 909 (1) (a).

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 56-3.4 (b) (1) Project Notification.

- 12 NYCRR 56-3.4 (b) (1) – Respondent failed to timely pay the required \$2,000.00 project notification fee.

Project 2

DETERMINE that Respondent committed one violation of 12 NYCRR part 56 as follows:

12 NYCRR 56-3.4 (b) (4) Postponement, Cancellation or Changes to Completion Dates of Projects.

- 12 NYCRR 56-3.4 (b) (4) – Respondent failed to amend the postponed start date on the project notification.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$3,500.00 for each of the Code Rule violations, for a total amount of \$7,000.00.

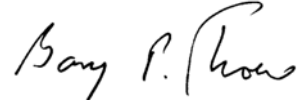
DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (a), Respondent is a substantially-affiliated entity of J. D. Martin and as such is liable for the payment of the \$5,000.00 civil penalty J.D. Martin stipulated to pay.

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

Dated: July 24, 2013
Albany, New York

Respectfully submitted,

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

Gary P. Troue, Hearing Officer