

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

HY-VAL CONSTRUCTION, INC.

and
Respondent

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

**DEFAULT
REPORT
&
RECOMMENDATION**

Asbestos Case Nos.
25662162

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 27, 2009, in White Plains, 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 Hy-Val Construction, Inc. ("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 2763 Hedwig Drive, Yorktown, New York.

APPEARANCES

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

FINDINGS AND CONCLUSIONS

On July 27, 2009, the Department duly served copies of the Notice of Hearing on Respondent by first class mail and by certified mail (Dept Ex 2). Although the first class mailing was not returned, the certified mailing was returned as “Unclaimed” (*Id.*). The Notice of Hearing scheduled an August 27, 2009 hearing and required that the Respondent serve an Answer at least 14 days in advance of the scheduled hearing. 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 particular provision of the Code Rule 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 one violations of the Code Rule as follows:

- 12 NYCRR 56-5.1 (a) – Asbestos Survey Required: The Code Rule requires that “[a]n owner or an owner's agent ... shall cause to be conducted, an asbestos survey completed by a licensed asbestos contractor using inspectors certified in compliance with Section 56-3.2(d), to determine whether or not the building or structure, or portion(s) thereof to be demolished, renovated, remodeled, or have repair work, contains ACM, PACM or asbestos material. This asbestos survey shall be completed and

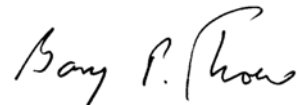
submitted ... prior to commencing work.” The Department’s inspector observed that asbestos shingle siding was disturbed on a pool house. No asbestos survey was conducted prior to the disturbance.

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested maximum civil penalty of \$5,000.00 for the Code Rule violation.

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 (\$5,000.00), made payable to the Commissioner of Labor.

Dated: September 24, 2009
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script, reading "Gary P. Troue".

Gary P. Troue, Hearing Officer