

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

BRANKA ROVCANIN

for a determination pursuant to Sections 903 and 909 of the New York Labor Law as to the revocation of an Asbestos Handling License and Certificate.

**REPORT
&
RECOMMENDATION**

Case No.
LIC-12-0003

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

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on October 16, 2012, 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 the denial, by the Division of Safety and Health (“Division”) of the New York State Department of Labor (“Department”), of a renewal application for an Asbestos Handling Certificate submitted by Branka Rovcanin (“Applicant”).

APPEARANCES

The Division was represented by Acting Department Counsel, Pico Ben-Amotz, (Stephen Pepe, Senior Attorney, of Counsel).

The Applicant appeared on her own behalf.

FINDINGS OF FACT

The Applicant was the holder of an Asbestos Handling Certificate that was valid through March 2011. (T.8) In January 2012, the Department received an e-mail inquiry from the New York City Department of Environmental Protection (“DEP”) asking the Department to verify an Asbestos Handling Certificate issued to the Applicant and valid

for the period of March 2011 through March 2012. (HO Ex 1, Ex. A; T. 18) The Department also received a January 11, 2012 fax transmission from a company that employed the Applicant, attaching a copy of an Asbestos Handling Certificate with an expiration date of March 2012. (HO Ex. 1, Ex. B; T. 19) DEP had no record of the Applicant for the period of this Asbestos Handling Certificate. (T. 18) Neither the Department nor the New York State Department of Motor Vehicles (“DMV”) had any records indicating that the Applicant was ever in possession of an Asbestos Handling Certificate valid for the period of March 2011 through March 2012. (T. 8, 10, 18, and 21)

On January 12, 2012 the Department received an Asbestos Certificate Application from the Applicant requesting Air Sampling Tech and Project Monitor certification. (HO Ex. I, Ex. C; T. 19) The Department requested that the Applicant send in the actual Asbestos Handling Certificate (“hard card”) that had an expiration date of March 2012. (HO Ex. 1, Ex. C, D; T. 20) In response to this request for the Asbestos Handling Certificate hard card, the Applicant sent a copy of her Asbestos Handling Certificate that expired on March 2011. (HO Ex. 1, Ex. E; T. 20) Thereafter, the Department determined to deny the Applicant’s application to renew her Asbestos Certificate of Competence by letter dated March 28, 2012. (HO Ex. 1, Ex. F; T. 20) Specifically, the facts relied upon by the Department to support the denial were that the Department had no record of ever issuing the Applicant a Certificate of Competence with a March 2012 expiration date for project monitor and air sampling technician and DMV had no record of issuing the card with that expiration date to the Respondent. In the absence of any record of issuing this Certificate of Competence with a March 2012 expiration date, the Department determined there was reason to believe that the documents the Applicant provided to the Department and other government agencies “were altered in some fashion without the knowledge or consent of the issuing agencies.” (HO Ex. 1, Ex. G; T.20-21)

The Applicant submitted a second Asbestos Certificate Application dated March 28, 2012 (HO Ex. 1, Ex.G; T. 22), which was denied by letter dated April 6, 2012 for the same reason as the previous application. (HO Ex. 1, Ex.H; T. 22) Thereafter, the Applicant requested a hearing by letter dated April 5, 2012. (HO Ex. 1, Ex. J; T. 23)

The Applicant was issued a Certificate of Competence with an expiration date of

March 2013. (T. 47) The Applicant received this Certificate because it is standard Department procedure to issue a Certificate if the Applicant has requested a hearing. (T. 47)

The Applicant testified that she had a Certificate of Competence with an expiration date of March 2012. (T. 31) The Applicant further testified that she presented the card to an employee of the Department when she came to the Department of Labor office in Albany on January 12, 2012 to complete her Asbestos Certification Application. (T. 30) The Applicant testified that the Department employee told her to keep the March 2012 certification hard card until the Department sent her a new one. (T. 28-31) However, the Applicant did not produce this Certificate of Competence hard card to the Department in response to its two requests and she also did not produce it at the hearing. Also, the Applicant did not offer any reason why she sent a copy of her Certificate of Competence with an expiration date of March 2011 in response to the Department's request for the actual 2012 certification hard card. (T. 28)

CONCLUSIONS OF LAW

According to part 56-2.2 of title 12 of the New York Code of Rules and Regulations, "notification of denial of a certificate on any grounds other than failure to complete the certificate application shall set forth the grounds for such denial." In this case, the License and Certificate Unit advised Applicant by letters dated March 28, 2012 and April 6, 2012 that her certificate renewal application was being denied because, since neither the Department nor the DMV ever issued the Applicant a certificate or card with the March 2012 expiration date, "there is reason to believe that the documents [Respondent] provided to this and another government agency were altered in some fashion without the knowledge or consent of the issuing agencies. As asbestos certificates may only be issued to persons who can be relied upon to provide true and accurate information to this and other government agencies, there is good cause for denial of your application for renewal."

The Applicant was given multiple opportunities to produce the actual certificate

and card with the March 2012 expiration date and she failed or refused to do so. Although the Applicant testified that she presented the card to the Department employee when she completed her Application for Renewal on January 12, 2012, this is not sufficient to explain why she did not produce the card in response to the Department's subsequent requests. The Department's lack of any indication that the 2012 Asbestos Handling Certificate was issued to the Applicant, coupled with the Applicant's failure to produce the actual card she used to create the copies she presented to the Department and other government agencies, is a sufficient demonstration of a degree of unreliability that is inconsistent with approval of the application at issue in the case.

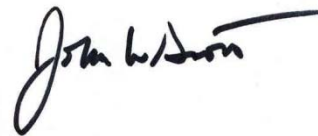
RECOMMENDATIONS

I RECOMMEND that the Commissioner of Labor adopt the Findings of Fact and Conclusions of Law as the Commissioner's determination of the issues raised in this case, and based on those Findings and Conclusions, the Commissioner should:

DETERMINE that the Division had sufficient grounds to deny the renewal application for Asbestos Handling Certificate number 09-11634;

ORDER that Applicant be denied an Asbestos Handling Certificate; and

ORDER that Ms. Branka Rovcanin, the Applicant, within fifteen (15) days of receipt of the Commissioner of Labor's Determination & Order, return every one of her expired and current Asbestos Handling Certificates to the License & Certificate Unit, SOB Campus Building 12, Room 161, Albany, New York 12240.



Dated: August 22, 2013
Albany, New York

John W. Scott, Hearing Officer