

IN THE MATTER OF

PEDRO PETRIE,
d/b/a
M.A.B. RENOVATION GROUP, INC.

for a determination pursuant to Section 909 of the New York Labor Law that violations Labor Law, Article 30 and/or Code Rule 56 took place as hereinafter described.

**DEFAULT
REPORT &
RECOMMENDATION**

Asbestos Case Nos.
25670794, 25697786, 25712627
25712628, 25767362, 25767363
25767364, 25785265, 25832576
25832578, 25832579, 25835985
25835986, 25835987, 25835988

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 June 4, 2012, between Albany, New York 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 Pedro Petrie, d/b/a M.A.B Renovation Group, Inc. (“Respondent”) complied with the requirements of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 when he undertook fifteen (15) asbestos abatement projects located at Hutchinson School, 60 Mill Road, Eastchester, NY (“Hutchinson School Project”); Westchester School for Special Children, 45 Park Avenue, Yonkers, NY (“Westchester School for Special Children Project”); 960 East 230th Street, Bronx, NY (“960 East 230th Street Project”); 93-01 37th Avenue, Queens, NY (“93-01 37th Avenue Project”); 760 Bryant Avenue, Bronx, NY (“760 Bryant Avenue Project”); 750 Bryant Avenue, Bronx, NY (“750 Bryant Avenue Project”); 770 Bryant Avenue, Bronx, NY (“770 Bryant Avenue Project”); 424 East 57th Street, New York, NY (“424 East 57th Street Project”); 80 Wooster Street, New York, NY (“80 Wooster Street Project”); 87-08 Justice Avenue, Queens, NY (“87-08 Justice Avenue Project”); 94-00 Liberty Avenue, Queens, NY (“94-00 Liberty Avenue Project”); 1115 Fifth Avenue, New York, NY (“1115 Fifth

Avenue Project”); 223 West 10 Street, New York, NY (“223 West 10 Street Project”); 357 West 55th Street, New York, NY (“357 West 55th Street Project”); and 40-10 Crescent Street, Queens, NY (“40-10 Crescent Street Project #2”).

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz (Steven J. Pepe, Senior Attorney, of Counsel).

There were no appearances made by or on behalf of Respondent.

HEARING OFFICER DESIGNATION

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

FINDINGS AND CONCLUSIONS

On March 19, 2012, the Department duly served copies of the Notice of Hearing on Respondent by certified mail, return receipt requested, and first class mail. The Department produced an Affidavit of Service and a US Postal Service tracking document indicating that the certified mail was unclaimed. (Hearing Officer Ex 1). The attorney for the Department represented that he spoke with Respondent after service of the Notice of Hearing when Respondent indicated his willingness to resolve the issues raised in the Notice of Hearing. (T. 3-4) The Notice of Hearing scheduled a June 4, 2012 hearing and required that 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 and Code Rule that are hereinafter particularized.

For the foregoing reasons, the findings, conclusions and determinations of the Department should be sustained.

RECOMMENDATIONS

Based upon the default of 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 the 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:

HUTCHINSON SCHOOL PROJECT

DETERMINE that Respondent committed eight (8) violations of 12 NYCRR part 56¹ as follows:

12 NYCRR 56-9.1.D: Final Cleaning Procedures-Third or Final Cleaning and Visual Inspection: Asbestos ceiling debris was discovered on floor plastic sheeting of two asbestos containments on the 2nd floor after air clearance had been received; and ceiling debris was discovered around the top wall perimeter of the south containment and on the ceiling deck of the larger north side containment. (DOL Exs. 2, 4; T.10-11)

12 NYCRR 56-7.4.C: Signs: Asbestos caution signs were not posted on the airlock into the small-sized asbestos containment in the 2nd floor hallway or on the tent enclosure atop the scaffolding platform in the middle stairwell. (DOL Exs. 2, 4; T.11-12)

12 NYCRR 56-3.6.A.1: Ten (10) Day Notice: Respondent failed to post abatement notices at the school to inform persons working on the 1st and 2nd floors that asbestos ceiling abatement was being conducted, the abatement dates, etc. (DOL Exs. 2, 4; T. 12-13)

12 NYCRR 56-3.6.A.2: Notice Detail: Respondent failed to post abatement notices at the school to inform persons working on the 1st and 2nd floors that asbestos ceiling abatement was being conducted, the abatement dates, etc. (DOL Exs. 2, 4; T.13)

12 NYCRR 56-7.5.C.1: Personal Decontamination System Enclosure-Small Project: Respondent installed an enclosure around an approximately 64 square foot section of asbestos ceiling at the south end of the 2nd floor hallway with only an airlock for the asbestos handlers to

¹ The Notices of Violation for the Hutchinson School Project were initially issued to M.B.A. Renovation Group, Inc. on 8/21/2008 or 10/14/2008 and then reissued on 10/19/2011 to Pedro Petrie, d/b/a MAB Renovation Group, Inc.

access and leave the work areas. There was no clean room, shower room, or equipment room installed. (DOL Exs. 2, 4; T. 13-15)

12 NYCRR 56-3.6.D: Duration of Posting: Respondent failed to post abatement notices at the school to inform persons working on the 1st and 2nd floors that asbestos ceiling abatement was being conducted, the abatement dates, etc. The notices have to stay posted until the completion on the project. (DOL Exs. 2, 4; T. 15)

12 NYCRR 56-7.8.A.4: Engineering Controls-Negative Air Pressure Equipment-Manometer: There was no manometer on the two 2nd floor asbestos abatement containments. (DOL Exs. 2, 4; T. 15-16)

12 NYCRR 56-3.4.A.3: Surrender of Records: Respondent failed to submit a copy of the supervisor's asbestos project log for the Hutchinson School Project as directed by the Department's Safety and Health Inspector. (DOL Ex. 5; T. 17-18)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed a civil penalty in the total amount of \$5,000.00 for these 8 violations.

WESTCHESTER SCHOOL FOR SPECIAL CHILDREN PROJECT

DETERMINE that Respondent committed six (6) violations of 12 NYCRR part 56² as follows:

12 NYCRR 56-7.8.A.4: Engineering Controls – Negative Air Pressure Equipment – Manometer: There was no manometer installed by the respondent on the date of inspection (12/29/2008). A manometer was seen on subsequent inspections. (DOL Exs. 7, 10; T. 22)

12 NYCRR 56-7.11.E: Regulated Abatement Work Area Enclosure-Floor, Wall and Ceiling Plasticizing and Sealing: The boiler room work area ceiling was not plasticized by the respondent. (DOL Exs. 7, 10; T. 22)

12 NYCRR 56-7.8.11: Engineering Controls – Negative Air Pressure Equipment – Exhaust Location: One of two active negative air machines had its exhaust hose separated from

² The Notices of Violation for the Westchester School for Special Children Project were initially issued to M.B.A. Renovation Group, Inc. on 1/20/2009 or 1/29/2009 and then reissued on 10/19/2011 or 11/9/2011 to Pedro Petrie, d/b/a M.A.B. Renovation Group, Inc.

the negative air unit. As a result, half of the filtered air from the abatement area was being exhausted back inside the abatement area. (DOL Exs. 7, 10; T. 22-23)

12 NYCRR 56-7.5.B.9: Personal Decontamination System Enclosure – Large Project: The shower room lacked towels and the shower lacked shower curtains to prevent water leakage. (DOL Exs. 7, 10; T. 23-24)

12 NYCRR 56-7.7: Electric Power: Respondent failed to lock out electricity to the boiler room where gross asbestos removal was being performed. (DOL Exs. 8, 10; T. 24-25)

12 NYCRR 56-8.2.G.3.I: Access to and Maintenance of Decontamination System and Regulated Abatement Work Area Enclosure – Loss of Enclosure Integrity: Respondent left asbestos containing debris wedged behind the metal door of the boiler flue. (DOL Exs. 7, 11; T. 25)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed a civil penalty in the total amount of \$5,000.00 for these violations.³

960 EAST 230th STREET PRPJECT

DETERMINE that Respondent committed one violation of Labor Law, §904.2⁴ as follows:

Labor Law, §904.2: Notice Requirement: Respondent failed to pay the project notification fee of \$1,000.00. (DOL Exs. 13; T. 29-30)

DETERMINE & ORDER that, pursuant to Labor Law § 909 (1) (b), Respondent be assessed the requested civil penalty of \$500.00 for the violation.⁵

³ The \$5000.00 civil penalty is based upon a stipulation entered into by Respondent and the Department for this project. (DOL Ex. 12; T. 45)

⁴ The Notice of Violation for the 960 East 230 Street Project was initially issued to M.B.A. Renovation Group Inc. on 4/15/2009 and then reissued on 10/19/2011 to Pedro A. Petrie, d/b/a M.A.B. Renovation Group Inc.

⁵ Respondent has paid all Notification Fees referenced in the Notices of Violation and Orders to Comply for all projects included in the Notice of Hearing. (DOL Ex. 28; T. 45)

93-01 37th AVENUE PROJECT

DETERMINE that Respondent committed one violation of Labor Law, §904.2⁶ as follows:

Labor Law, §904.2: Notice Requirement: Respondent failed to pay the project notification fee of \$1,000.00. (DOL Exs. 13; T. 29-30)

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

424 EAST 57th STREET PROJECT

DETERMINE that Respondent committed one violation of 12 NYCRR part 56⁷ as follows:

12 NYCRR 56-3.4(b)(1): Notice and recordkeeping requirements- Notification: Respondent failed to pay the required notification fee of \$2,000.00 when the Asbestos Project Notification was sent to the Department. (DOL Exs. 16, 17; T. 32-33).

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

760 BRYANT AVENUE PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 New York City Department of Environmental Protection (“NYCDEP”) computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that the Respondent notified NYCDEP of the 760 Bryant Avenue Project, but did not notify the Bureau or pay the required notification fee of \$2000.00. (DOL Ex. 18; T. 33-34, 36-37)

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

⁶ The Notice of Violation for the 93-01 37th Avenue Project was initially issued to M.B.A. Renovation Group Inc. on 4/15/2009 and then reissued on 10/20/2011 to Pedro A. Petrie, d/b/a M.A.B. Renovation Group Inc.

⁷ The Notice of Violation for the 424 East 57th Street Project was initially issued to M.B.A. Renovation Group Inc. on 6/18/2010 and then reissued on 9/8/2011 to Pedro A. Petrie, d/b/a MAB Renovation Group, Inc.

750 BRYANT AVENUE PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that Respondent notified NYCDEP of the 750 Bryant Avenue Project, but did not notify the Bureau or pay the required notification fee of \$2000.00. (DOL Ex. 19; T. 34, 36-37)

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

770 BRYANT AVENUE PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that Respondent notified NYCDEP of the 770 Bryant Avenue Project, but did not notify the Bureau or pay the required notification fee of \$2000.00. (DOL Ex. 20; T. 34, 36-37)

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

80 WOOSTER STREET PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that Respondent notified NYCDEP of the 80 Wooster Street Project, but did not notify the Bureau or pay the required notification fee of \$2000.00. (DOL Ex. 21; T. 34, 36-37)

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

87-08 JUSTICE AVENUE PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that Respondent notified NYCDEP of the 87-08 Justice Avenue Project, but did not notify the Bureau or pay the required notification fee of \$2000.00. (DOL Ex. 22; T. 34-35, 36-37)

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

94-00 LIBERTY AVENUE PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that Respondent notified NYCDEP of the 94-00 Liberty Avenue Project, but did not notify the Bureau or pay the required notification fee of \$2000.00. (DOL Ex. 23; T. 35-37)

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

1115 FIFTH AVENUE PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that Respondent notified NYCDEP of the 1115 Fifth Avenue Project, but did not notify the Bureau or pay the required notification fee of \$400.00. (DOL Ex. 24; T. 35-37)

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

223 WEST 10 STREET PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that Respondent notified NYCDEP of the 223 West 10 Street Project, but did not notify the Bureau or pay the required notification fee of \$2000.00. (DOL Ex. 25; T. 35-37)

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

357 WEST 55TH STREET PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that Respondent notified NYCDEP of the 357 West 55th Street Project, but did not notify the Bureau or pay the required notification fee of \$2000.00. (DOL Ex. 26; T. 35-37)

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

40-10 CRESCENT STREET PROJECT

DETERMINE that Respondent committed one violation of the Labor Law as follows:

Labor Law § 904 (2) –Notice Requirements: An audit of the 2011 NYCDEP computer list of all notified asbestos abatement projects in the jurisdiction of NYCDEP disclosed that Respondent notified NYCDEP of the 40-10 Crescent Street Project, but did not notify the Bureau or pay the required notification fee of \$2000.00. (DOL Ex. 27; T. 35-37)

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

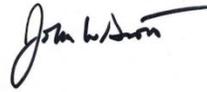
FINALLY

ORDER that Respondent immediately remit payment to the Division Of Safety & Health, Asbestos Control Bureau, State Office Campus, Building 12, Room 157, Albany, NY 12240 of the civil penalties in the total amount of \$16,500.00, made payable to the Commissioner of

Labor, for the 27 violations of Article 30 of the Labor Law (§§ 900 *et seq.*) or 12 NYCRR part 56 in the Projects that are the subject of the within proceeding.

Dated: September 26, 2012,
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott". The signature is written in a cursive style with a long horizontal stroke extending to the right.

John W. Scott, Hearing Officer