

# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

## PUBLIC HEALTH HEARING SECTION

February 25, 2011

Marvin Klash, Owner  
J&M Contracting Services  
61 Scott Drive  
Bloomfield, CT 06002

CMRRR# 917108 2133 3932 0601 6269  
First Class Mail

Matthew Antonetti, Principal Attorney  
Legal Office - MS#12LEG  
Department of Public Health  
410 Capitol Avenue  
P. O. Box 340308  
Hartford CT 06134-0308

Interdepartmental Mail

**RE: Marvin Klash dba J&M Contracting Sales  
Petition No. 2009-2009340**

Dear Mr. Klash and Attorney Antonetti:

Enclosed please find a copy of the Final Memorandum of Decision rendered by Hearing Officer Stacy M. Owens in the above-referenced case.

Sincerely,

Janice E. Wojick, Hearings Liaison  
Public Health Hearing Section, MS #13PHO  
Tel. 860-509-7648 FAX 860-509-7553

c: Jewel Mullen, M.D., M.P.H., M.P.A., Commissioner  
Michael J. Purcaro, Chief of Administration  
Henry Salton, Assistant Attorney General  
Ellen Blaschinski, Branch Chief, Regulatory Services Branch  
Suzanne Blancaflor, Section Chief, Environmental Health  
Linda Fazzina, Staff Attorney, Legal Office



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**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
Public Health Hearing Office**

**In re: Marvin Klash, d/b/a J&M Contracting Services**

**Petition No. 2009-2009340**

**MEMORANDUM OF DECISION  
*Procedural History***

On October 19, 2010, the Department of Public Health (“the Department”) filed a Statement of Charges (“the Charges”) against Marvin Klash *d/b/a* J&M Contracting Sales (“respondent”) notifying it that the Department was seeking disciplinary action against its asbestos contractor license number 002241 (“the license”) for violations of §20-476 of the Connecticut General Statutes (“the Statutes”). Rec. Exh. 1.

On November 5, 2010, the Department issued a Notice of Hearing (“the Notice”) scheduling a hearing for December 8, 2010. In the Notice, the Commissioner of the Department appointed the undersigned to rule on all motions, determine findings of fact and conclusions of law, and issue an order. Rec. Exhs. 1.

On December 8, 2010, an administrative hearing was held to adjudicate the Charges. The hearing was conducted in accordance with Chapter 54 of Statutes, and §§19a-9-1, *et seq.*, of the Regulations of Connecticut State Agencies (“the Regulations”). Respondent neither appeared at the hearing nor requested a continuance.<sup>1</sup> Attorney Linda Fazzina represented the Department.

During the hearing, the Department made an oral Motion to Deem the Allegations Admitted for respondent’s failure to file an answer. The Motion was granted.

This Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer’s findings of fact, conclusions of law, and order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst. V. S&H computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985).

***Allegations***

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 002241.

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<sup>1</sup> Following the close of the record on December 8, 2010, respondent filed a written Motion to Reschedule the Hearing on December 10, 2010. The Motion to Reschedule was denied.

2. In paragraph 2 of the Charges, the Department alleges that in or about October 2009, respondent was the lead abatement contractor of record with the City of New London, CT Lead Hazard Reduction Program for a project at 36 Lincoln Avenue, New London, CT (hereinafter “the property”).
3. In paragraph 3 of the Charges, the Department alleges that on or about October 9, 2009, three workers performed lead abatement at the property without the certification required pursuant to, without limitation, §20-476 of the Statutes.
4. In paragraph 4 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to §20-481 of the Statutes.

#### *Findings of Fact*

1. The Department provided respondent reasonable and adequate written notice of the allegations contained in the Charges and the hearing scheduled for December 8, 2010. Rec. Exh. 1, 2.
2. Respondent did not file an answer to the allegations contained in the Charges, nor did respondent appear for the hearing. Tr. 12/8/10, pp. 2-4.
3. Pursuant to the undersigned’s ruling on December 8, 2010, granting the Department’s oral Motion to Deem the Allegations Admitted, all of the above allegations are deemed admitted and true. Tr., pp, 3, 4.

#### *Discussion and Conclusions of Law*

Pursuant to §§19a-14, 19a-17, and 19a-14a of the Statutes, the Department has the authority to discipline an asbestos contractor license. Further, pursuant to §19a-17 of the Statutes, in effect at the time, the Department may assess an asbestos contractor a civil penalty of up to \$25,000 per incident for violating any of the statutes and regulations governing asbestos abatement or licensure.

In establishing the underlying violations to support such discipline, the Department bears the burden of proof by a preponderance of the evidence. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008); *Swiller v. Comm’r. of Public health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, reh’g den., 451 U.S. 933 (1981); *Bender v. Clark*, 744 F. 2d 1424 (10<sup>th</sup> Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.*, 627 F. 2d 240, 243 (D.C. Cir. 1980); all as cited in *Bridgeport Ambulance Service, Inc. v. Connecticut Dept. of Health*

*Services*, No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989).

In accordance with Section 19a-9-20 of the Regulations, a hearing shall proceed, "at the time and place specified in the notice of hearing, notwithstanding any failure of the respondent to file an answer within the time provided. If no answer has been timely filed, the allegations shall be deemed admitted." In this case, respondent failed to file an answer to the complaint or appear for hearing. Thus, the allegations were deemed admitted.

Respondent's actions constitute serious violations that posed a danger to the health and safety of the public, and may well warrant harsher discipline. However, in light of there being no submission of evidence of any prior disciplinary action or continuing violations, respondent's license is hereby assessed a civil penalty of \$3,000.00 (\$1,000 for each worker performing lead abatement on October 9, 2009 without certification).

Respondent should be aware that if future violations occur, more severe disciplinary action, up to and including revocation, may be imposed.

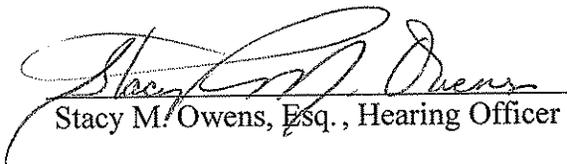
***Order***

Based on the record in this case, the above Findings of Fact and Conclusions of Law, this Hearing Officer orders that:

1. Respondent shall pay a civil penalty of \$3,000.00 (Three Thousand Dollars) by certified or cashier's check payable to the "Treasurer, State of Connecticut." The check shall reference the Petition Number on its face, shall be payable within thirty days of the date of this decision, and shall be addressed and sent to:

Ronald Skomro, R.S., Supervising Environmental Sanitarian  
State of Connecticut Department of Public Health  
450 Capitol Avenue, MS #51AIR  
P.O. Box 34038  
Hartford, Connecticut 06134-0308

2. This Order is effective upon signing.

  
Stacy M. Owens, Esq., Hearing Officer

2/25/2011  
Date

**CERTIFICATION**

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Final Memorandum of Decision was sent this 25<sup>th</sup> day of February 2011 certified mail return receipt requested and first class mail to:

Marvin Klash, Owner  
J&M Contracting Services  
61 Scott Drive  
Bloomfield, CT 06002

CMRRR# 917108 2133 3932 0601 6269  
First Class Mail

*and Interdepartmental Mail to:*

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Janice E. Wojick, Hearings Liaison