

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
PUBLIC HEALTH HEARING OFFICE**

In re: Stobi Contracting, Inc.

Petition No. 2002-0419-053-009  
August 26, 2003

**MEMORANDUM OF DECISION**

*Procedural History*

On January 17, 2003, the Department of Public Health (“the Department”) filed a Statement of Charges (“the Charges”) against Stobi Contracting, Inc. (“respondent”) notifying it that the Department was seeking an order revoking or imposing other disciplinary action against its asbestos contractor license number 000318 (“the license”). H.O. Exh. 1.

On February 10, 2003, the Department issued a Notice of Hearing (“the Notice”). In the Notice the Commissioner of the Department appointed this Hearing Officer to rule on all motions, determine findings of fact and conclusions of law, and issue an order. H.O. Exh. 1.

On March 25, 2003, the Department filed a Motion to Deem Allegation Admitted (“the Motion”). H.O. Exh. 5. On April 9, 2003, respondent was ordered to file an Answer on or before April 17, 2003. H.O. Exh. 8. Respondent filed an Answer on April 21, 2003, and the Motion was denied on April 28, 2003. H.O. Exhs. 10, 11.

On April 30, 2003, the Department filed an Objection and Motion to Strike Portions of Respondent’s Answer. The Objection to the filing of the Answer was denied, but the Motion to Strike the evidence attached to the Answer was granted. Tr. p. 7.

After one continuance, an administrative hearing was held to adjudicate the Charges on May 6, 2003. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes and §§19a-9-1, et seq. of the Regulations of Connecticut State Agencies (“the Regulations”). Respondent neither appeared at the hearing nor requested that it be continued. Tr. pp. 2-3, 48. The Department appeared at the hearing represented by Attorney Linda Fazzina.

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., Inc. v. S & H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985).

### *Allegations*

#### *A. First Count*

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 000318.
2. In paragraph 2 of the Charges, the Department alleges that in or about March 2002, respondent performed an asbestos abatement project at 18-20 Madison Avenue, Hartford, CT (hereinafter "the property").
3. In paragraph 3 of the Charges, the Department alleges that in or about March 2002, in connection with the asbestos abatement project at the property, respondent violated Connecticut's standards applicable to the performance of asbestos abatement, which standards are found at §§19a-332a-1 to 19a-332a-16, inclusive, of the Regulations in that respondent:
  - a. failed to post warning signs at all approaches to the work area(s), in violation of §19a-332a-5(a) of the Regulations; and/or
  - b. failed to establish and/or maintain applicable engineering controls in the basement work area, until compliance with the reoccupancy requirements of §19a-332a-12 of the Regulations was achieved, including but not limited to,
    - (i) failed to isolate the basement work area from the non-work area(s) with air-tight barriers and/or to maintain said air-tight barriers, in violation of §19a-332a-5(c) of the Regulations; and/or
    - (ii) failed to cover applicable floor and/or wall surfaces in the basement work area with polyethylene sheeting or the equivalent and/or to maintain said floor and/or wall covering, in violation of §19a-332a-5(e) of the Regulations; and/or
    - (iii) failed to maintain negative pressure ventilation units with high efficiency particulate air (hereinafter "HEPA") filtration in sufficient number to allow at least one air change every fifteen minutes, in violation of §19a-332a-5(h) of the Regulations; and/or

- c. failed to utilize clean up procedures within the basement work area, until no visible residue was observed, in violation of §19a-332a-5(g) of the Regulations.
4. In paragraph 4 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§19a-332a(b) and/or 20-440, taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(a), 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(h), 19a-332a-5(g), 19a-332a-12, 20-440-1 and/or 20-440-6(b) of the Regulations.

**B. *Second Count***

5. In paragraph 5 of the Charges, the Department incorporated Paragraphs 1 and 2 of the Charges by reference as if set forth in full.
6. In paragraph 6 of the Charges, the Department alleges that in or about March 2002, respondent failed to provide the Department with records of the asbestos abatement project at the property, in violation of §19a-332a-4(a) of the Regulations.
7. In paragraph 7 of the Charges, the Department alleges that in or about August 2002, respondent engaged in fraud or deceit in the course of professional services when respondent provided the Department with records of the asbestos abatement project at the property, which indicate that asbestos removal work did not occur in the basement work area over the weekend of March 9 and March 10, 2002. Respondent performed asbestos removal work in the basement prior to Monday, March 11, 2002.
8. In paragraph 8 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §20-440, taken in conjunction with §20-440-6(b)(6) of the Regulations.

***Findings of Fact***

1. Respondent was issued Connecticut asbestos contractor license Number 000318 on October 26, 1999, which license was in effect at all times relevant to the Charges. Dept. Exh. 10.
2. In March 2002, respondent performed an asbestos abatement project at the property.
3. On March 8 and 12, 2002 no asbestos project warning signs were posted at the property. Dept. Exh. 1.

4. As of March 8, 2002, respondent had not performed any asbestos abatement work at the property. Dept. Exh. 1.
5. On March 11, 2002, the following conditions existed in the basement of the property:
  - a. asbestos containing material ("ACM") had been removed;
  - b. the work area was not contained;
  - c. no HEPA filtration was in place;
  - d. no polyethylene sheeting was present on the walls and/or floors; and,
  - e. visible residue was present.Dept. Exh. 5; Tr. pp. 14-17, 45-46.
6. On March 12, 2002, the following conditions existed in the basement of the property:
  - a. the boiler had been stripped of ACM and covered with encapsulate;
  - b. the work area was not contained;
  - c. no HEPA filtration was in place;
  - d. there was no evidence that barriers had been previously placed to isolate the work area from non-work areas;
  - e. there was no evidence that polyethylene sheeting, or its equivalent had been previously placed on the walls and/or floors of the work area; and,
  - f. samples taken from the boiler on that date tested positive for the presence of asbestos.Dept. Exhs. 1, 3; Tr. pp. 28-29, 40.
7. On March 13, 2002, the basement work area was cleared for reoccupancy. Dept. Exh. 5; Tr. pp. 19-20.
8. On March 13, 2002, the Department directed respondent to supply certain specified records pertaining to the work it performed at the property. Dept. Exhs. 1, 6.
9. On March 27, 2002, the Department renewed its request to respondent for records pertaining to the work it performed at the property. Dept. Exhs. 1, 6.
10. On or about August 26, 2002, respondent supplied the requested records to the Department. Dept. Exh. 7.

11. The records supplied by respondent to the Department state that respondent did not commence removal of ACM from the basement at the property until March 13, 2002. Dept. Exh. 7; Tr. p. 33.
12. Exposure to asbestos fibers is a significant risk to human health. Tr. pp. 34, 40.

### *Discussion and Conclusions of Law*

Pursuant to §20-440-6(b) of the Regulations, the Department may take any action authorized by *Conn. Gen. Stat.* §19a-17 against an asbestos contractor who violates any regulation governing asbestos abatement or licensure. Section 19a-332a-2 of the Regulations prohibits any person from engaging in asbestos abatement unless it is in compliance with §§19a-332a-3 to 19a-332a-12 of the Regulations. Those regulations require an asbestos contractor, *inter alia*, to: (1) post warning signs at all approaches to work areas; (2) isolate work areas from non-work areas and seal all openings between work areas and non-work areas, including all windows and doors, with polyethylene sheeting; (3) cover all floors and wall surfaces in work areas with polyethylene sheeting; (4) provide a sufficient number of HEPA fans to allow at least one work place air change every 15 minutes; (5) clean-up all work areas until no visible residue is observed; and, (6) provide records of asbestos abatement projects to the Department upon its request. *See*, §§19a-332a-5(a), 19a-332a-5(c), 19a-332a-5(e), 19a-332a-5(g), 19a-332a-4(a) of the Regulations, respectively. In addition, Section 20-440-6(b)(6) of the Regulations prohibits an asbestos contractor from engaging in fraud and/or deceit in the course of professional services or activities.

In establishing such violations, the Department bears the burden of proof by a preponderance of the evidence. *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 (10th 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); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995).

**A. First Count**

With regards to paragraphs 1, 2, and 5 of the Charges, the evidence establishes that respondent held asbestos contractor license number 000318 at all times referenced in the Charges, and that respondent performed asbestos abatement work at the property in March of 2002. FF 1, 2. The Department, therefore, sustained its burden of proving these allegations.

With regard to paragraph 3(a) of the Charges, the evidence establishes, and respondent does not deny, that respondent failed to post warning signs at all approaches to the work area in question as required by §19a-332a-5(a) of the Regulations. FF 3; H.O. Exh. 10. Respondent claims that it posted signs on a dumpster that were later removed by others. Even if this claim were true, it would not excuse respondent's failure to post signs at all approaches to the work area as required by the §19a-332a-5(a). The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraphs 3(b)(i) of the Charges, respondent originally claimed that it set up containment at the property on March 9 and 10, 2002, but removed it before March 11, 2002, because it erroneously believed that post-abatement reoccupancy criteria testing had been successfully performed sometime on March 10 or 11, 2002. *See*, 19a-332a-12 of the Regulations and Dept. Exhs. 1, 5, 9. In its Answer, however, respondent claimed that it did not perform asbestos abatement in the basement until March 13, 2002, and that it properly isolated the basement work area at that time.

The position advanced by respondent in its Answer is clearly untrue since the evidence establishes that respondent performed asbestos abatement in the basement sometime on March 9 and/or March 10, 2002. FF 4-6. The weight of the evidence also establishes that no containment was present in the basement on March 11, 2002, and that no containment had been installed in the basement prior to that date. FF 5, 6. The basement work area was not cleared for reoccupancy until March 13, 2002. FF 7. Since respondent was required by §§19a-332a-5(c) and 19a 332a-12 of the Regulations to maintain containment in the basement until that post-abatement clearance had been successfully completed, its original defense is also unavailing. *See*, §19a-332a-12(b) and Tr. pp. 21, 22. The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraphs 3(b)(ii) of the Charges, the evidence establishes that respondent did not install polyethylene sheeting in the basement work area prior to performing asbestos abatement work there on March 9 or 10, 2002. The evidence also establishes that such sheeting was not maintained in the basement work area from the time respondent performed its asbestos abatement work in that area until that work area was cleared for reoccupancy as required by §§19a-332a-5(e) and 19a 332a-12 of the Regulations. FF 5-7. The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraphs 3(b)(iii) of the Charges, the evidence establishes that respondent performed asbestos abatement in the basement of the property sometime on March 9 and/or 10, 2002. The evidence also establishes that respondent failed to maintain HEPA ventilation units in the basement work area of the property until compliance with the reoccupancy requirement of §19a 332a-12 of the Regulations had been achieved in violation of §19a-332a-5(h) of the Regulations. FF 4-6. The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraphs 3(c) of the Charges, the evidence establishes that respondent failed to clean up the basement work area at the property until no visible residue was observed in violation of §19a-332a-5(g) of the Regulations. Respondent's claim to the contrary is not credible. FF 5, 6. The Department, therefore, sustained its burden of proving this allegation.

**B. Second Count**

With regard to paragraph 6 of the Charges, the evidence establishes that the Department requested records from respondent regarding the asbestos abatement project it completed at the property *three times* in March of 2002. Respondent did not supply those records to the Department until August of 2002. FF 8, 10. Section 19a-332a-4(a) of the Regulations provides that such records "shall be available to the Department upon request." The evidence, therefore, does not support respondent's claim that it supplied those records "immediately." *See*, H.O. Exh. 10. By waiting over four months to supply the requested records, respondent failed to comply with the requirements of §19a-332a-4(a). The Department, therefore, sustained its burden of proving this allegation.

With regard to paragraph 7 of the Charges, the evidence establishes that the records ultimately supplied to the Department by respondent regarding the asbestos abatement it performed at the property were neither truthful nor accurate. FF 4-6, 10. By submitting false and inaccurate reports to the Department respondent engaged in fraud and deceit in the course of its professional services in violation of §20-440-6(b)(6) of the Regulations. The Department, therefore, sustained its burden of proving this allegation.

### Order

Based on the record in this case, the above Findings of Fact and Conclusions of Law, and pursuant to *Conn. Gen. Stat.* §§19a-17(a), and §§20-440 and 20-440-6(b) of the Regulations, the following Order is hereby issued concerning the asbestos contractor license of Stobi Contracting, Inc., license number 000318:

1. Respondent shall pay a civil penalty of \$7,500 by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on its face, and shall be payable within thirty days of the effective date of this decision.
2. Respondent's license shall be suspended for a period of three months from the effective date of this decision. All originals of respondent's license shall be surrendered to the Department within ten days of the effective date of this decision.
3. Following the period of suspension, respondent's license shall be placed on probation under the following terms and conditions:
  - a. Respondent shall obtain at its own expense the services of a licensed asbestos abatement project monitor, pre-approved by the Department ("the monitor"), to conduct on-site inspections of all asbestos abatement projects undertaken by respondent until the monitor reports to the Department that respondent has successfully completed five such projects in compliance with all applicable statutes and regulations.
    - (1) The monitor shall have the right to monitor any and all work on the projects by any means that he or she deems necessary to determine whether respondent is conducting the abatement in accordance with all applicable statutes and regulation;
    - (2) Respondent shall cooperate fully with the monitor;

- (3) Respondent shall provide the monitor with the original records maintained on each asbestos abatement project monitored;
  - (4) The monitor shall prepare and submit directly to the Department a written report stating briefly (1) that the asbestos abatement projects reviewed were completed with reasonable skill and safety and in compliance with applicable statutes and regulations, and (2) the dates, locations, and duration of all site inspections and meetings with respondent's officers and employees; and,
  - (5) If the monitor determines at any time that respondent is not in compliance with the statutes and/or regulations regarding its license, he/she shall immediately notify the Department.
- b. During the period of probation respondent is prohibited from engaging in any asbestos abatement project if the monitor is unavailable to monitor such project.
  - a. Respondent's probation shall terminate when the monitor reports to the Department that respondent has successfully completed the five projects described above.
- 4. The respondent shall bear all costs associated with its compliance with this Order.
  - 5. The civil penalty, and all notices and reports shall be sent to:
 

Ronald Skomro  
 State of Connecticut Department of Public Health  
 450 Capitol Avenue, MS #51AIR  
 P.O. Box 34038  
 Hartford, Connecticut 06134-0308
  - 6. This Order shall be effective thirty days from the date of signature.

  
 \_\_\_\_\_  
 Donald H. Levenson, Esq.  
 Hearing Officer

8-26-03  
 \_\_\_\_\_  
 Date



# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

March 3, 2004

Cando Jovanov, President  
Stobi Contracting, Inc.  
45 Grant Street  
Elmwood Park, NJ 07407

Subject: Stobi Contracting, Inc.  
Petition No. 2002-0419-053-009

Dear Mr. Jovanov:

This letter is to advise you that Stobi Contracting, Inc. has completed the terms of the suspension detailed in the Memorandum of Decision rendered by Hearing Officer Donald H. Levenson in the above-referenced case. Please be advised that the asbestos abatement contractor license of Stobi Contracting, Inc. remains on probation at this time under the terms of that Memorandum of Decision.

Please contact me should you have any questions regarding this matter.

Sincerely,

Ronald Skomro  
Supervising Environmental Sanitarian  
Asbestos Program  
Division of Environmental Health

cc: Nancy Prevost, DPH



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