



THE CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD

HEARING LOCATION: Environmental Control Board 350 St. Marks Place Main Floor Staten Island, NY 10301 (212) 361-1400

Method of Appearance Live Hearing

Cohen Hochman & Allen **80 MAIDEN LANE** Suite 507 New York, NY 10038



DECISION AND ORDER

Violation #: 034890352M et al. (4 NOVs)

Hearing Date: May 11, 2011

City of New York v. LEEWOOD GEN

CONTRACTING

Total Civil Penalty: \$0.00

4 Notice(s) of Violation (NOV(s)) was/were issued to the Respondent. On the record before me, and upon the Further Findings of Fact/Conclusions of Law stated below, I find as follows and, where applicable, order payment and compliance

PLACE OF OCCURRENCE: 150 VICTORY BLVD STATEN ISLAND

DATE OF OCCURRENCE: 03/01/2011 ISSUING OFFICER/AGENCY: 2444 DOB

ECB CODE: B110

CHARGE: BC 3304.4 & AC 27-1032

DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED:

\$0.00

NOV: 034890353Y

PLACE OF OCCURRENCE: 150 VICTORY BLVD STATEN ISLAND

DATE OF OCCURRENCE: 03/01/2011 ISSUING OFFICER/AGENCY: 2444 DOB

ECB CODE: B206

CHARGE: AC 27MISCAC28MISCBCMI

DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED:

\$0.00

NOV: 034890354X

PLACE OF OCCURRENCE: 150 VICTORY BLVD STATEN ISLAND

DATE OF OCCURRENCE: 03/01/2011 ISSUING OFFICER/AGENCY: 2444 DOB

ECB CODE: B204 CHARGE: AC 28-302.1 DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED:

\$0.00

NOV: 034890355H

PLACE OF OCCURRENCE: 150 VICTORY BLVD STATEN ISLAND

DATE OF OCCURRENCE: 03/01/2011 ISSUING OFFICER/AGENCY: 2444 DOB

ECB CODE: B282

CHARGE: AC 28-105.12.2 DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED:

\$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034890352M BC 3304.4 & AC 27-1032 NOV: 034890353Y AC 27MISCAC28MISCBCMI

034890354X AC 28-302.1 NOV: 034890355H AC 28-105.12.2

Petitioner by J. Casciano, Esq. & A. Bruschi, DOB Inspector

Respondent by B. Green, Esq., T. Flanagan, General Manager for Leewood Contracting, and P. Fichtner, Leewood's Site Manager at the project at issue.

A full hearing was conducted on the issues presented on the within 4 violations. However, Mr. Green's motion to dismiss for improper service will be addressed first. Shortly after the initial questioning of Inspector Bruschi by Mr. Casciano was completed, Mr. Green began his questioning of Inspector Bruschi. In response to questions by Mr. Green, Inspector Bruschi testified that he was accompanied on his inspection by a small number of DOB engineers. He also testified that present for the whole time was Mr. Fichtner, who accompanied the inspector and his engineers as they inspected this job site.

Inspector Bruschi was asked if he discussed the violations with Mr. Fichtner, to which he stated that he discussed what violations he

New York City Environmental Control Board

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NOV:

expected to issue.

Next, Inspector Bruschi was asked how the violations were written and served on this occasion. He testified clearly that he left the DOB engineers and Mr. Fichtner inside the job site fence, and returned to his car. At that time, he stated that he wrote out the violations. When he was finished writing the violations, he stated that he went to the fence and posted them. He specifically stated that he did not seek out Mr. Fichtner before posting as it was getting late.

This same testimony was repeated at the end of the hearing, and it was again clear that Inspector Bruschi made no attempt to serve Mr. Fichtner or even ask him if he was authorized to accept service, before posting the violations on the fence near the permits.

Service in this instance was purported to be pursuant to the alternative method allowed under 1049(a) of the Charter. That section states clearly that: "Such notice may only be affixed or delivered pursuant to items (i) and (ii) of subparagraph (a) of this paragraph where a reasonable attempt has been made to deliver such notice to a person in such premises upon whom service may be made as provided for by article three of the Civil Practice Law and Rules or article three of of the Business Corporation Law."

In this instance it is clear that Inspector Bruschi made no attempt to serve anyone, prior to posting these violations. I therefore find that service here was defective, and therefore dismiss the within four violations.

TOTAL C	IVIL PENALTY: \$0.	.00
Thu Mary 2011 05/19/W 14:14/to Control 5	MAY 2 0 20)11 05/19/2011
Douglas Baumann, Administrative Law Judge		Date

PAYMENT DUE WITHIN TEN (10) DAYS READ BACK OF THIS ORDER – PROTECT YOUR RIGHTS