

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations
of Articles 19 and 71 of the
New York State Environmental
Conservation Law and Part 232
of Title 6 of the Official
Compilation of Codes, Rules
and Regulations of the State
of New York

- by -

ORDER

DEC Case No.
3-20011108-146

**NICHOLAS MORCOS &
WAPPINGERS PLAZA CLEANERS INC.,**

Respondents.

1. Pursuant to a notice of hearing and complaint dated May 19, 2003, staff of the New York State Department of Environmental Conservation ("DEC" or "Department") commenced an administrative enforcement proceeding against Nicholas Morcos and Wappingers Plaza Cleaners Inc. ("respondents"), alleging that respondents violated sections 232.12, 232.15 and 232.16 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") in the operation of a dry cleaning facility at 1271 Route 9, Wappingers Falls, New York ("dry cleaning facility") by failing to comply with operational, reporting, record keeping, permitting and registration, and third-party inspection requirements.
2. Service of process was accomplished in accordance with 6 NYCRR 622.3(a)(3). Department staff mailed (certified mail, return receipt requested) the notice of hearing and complaint on May 19, 2003, which were received by respondents on May 21, 2003.
3. The time for respondents to serve an answer expired June 10, 2003 and respondents failed to serve an answer to Department staff's complaint or to otherwise oppose the relief requested by staff. Respondents also failed to appear at a pre-hearing conference on June 16, 2003, and have not responded to the correspondence that Department staff has sent with respect to this proceeding.

4. Department staff made a motion, dated September 18, 2003, for a default judgment. Accompanying the motion was an affirmation, dated September 16, 2003 and executed by Jonah Treibwasser, Esq., indicating that respondents failed to appear and failed to file an answer in this proceeding. Subsequently, Department staff submitted an affidavit in support of a default judgment, dated July 15, 2004 and sworn to by Robert Stanton, the Regional Air Pollution Control Engineer in DEC Region 3 ("Stanton affidavit"). The Stanton affidavit included justification for the penalty that Department staff was seeking. See Stanton affidavit, ¶¶ 17-22.

5. Department staff also moved to correct the spelling of the names of respondents in the caption and submissions, by substituting "Morcos" for "Marcos" and inserting "Inc." after "Wappingers Plaza Cleaners." Department staff noted that respondents had signed for each motion paper sent to them, had made no protest regarding any discrepancy in the names, and had been given a full and fair opportunity to be heard in this proceeding. See Stanton affidavit, ¶ 15.

6. The matter was assigned to Administrative Law Judge ("ALJ") Molly T. McBride, who prepared the attached default summary report dated August 19, 2004. I adopt the ALJ's default summary report subject to my comments in this order.

NOW THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

I. Pursuant to 6 NYCRR 622.15, Department staff's motion for a default judgment as against respondents is granted. Respondents are adjudged to be in default and have waived their right to a hearing in this proceeding. Accordingly, Department staff's allegations against respondents in the complaint are deemed to have been admitted by respondents. Respondents are found to have violated 6 NYCRR 232.12, 232.15 and 232.16 in the operation of their dry cleaning facility.

II. Department staff's motion to correct the spelling of the names of respondents in the caption and submissions is granted.

III. Respondents are assessed a civil penalty of ten thousand dollars (\$10,000) and such obligation, among and between respondents, shall be joint and several. No later than 30 days after the date of this order, such payment shall be made in the form of a certified or cashiers check or money order payable to the order of "NYSDEC" and delivered to the Department at the following address: New York State Department of Environmental

Conservation, Legal Affairs, Region 3 Office, 21 South Putt Corners Road, New Paltz, New York 12561, Attn: Jonah Treibwasser, Esq.

IV. Respondents shall cease all operations at the dry cleaning facility until such time as respondents, to the satisfaction of Department staff, demonstrate that they are complying with all operating, reporting and record keeping requirements in accordance with 6 NYCRR 232.12, complying with all permitting and registration requirements in accordance with 6 NYCRR 232.15, and complying with third-party inspection requirements in accordance with 6 NYCRR 232.16.

V. All communications between respondents and the Department concerning this order shall be made to Jonah Treibwasser, Esq., New York State Department of Environmental Conservation, Region 3 Office, 21 South Putt Corners Road, New Paltz, New York 12561.

VI. The provisions, terms and conditions of this order shall bind respondents, and their heirs, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Erin M. Crotty, Commissioner

Albany, New York
September 22, 2004

To: Jonah Treibwasser, Esq.
New York State Department of Environmental Conservation
Region 3 Office
21 South Putt Corners Road
New Paltz, New York 12561

Nicholas Morcos
1271 Route 9
Wappingers Falls, New York 12590

Wappingers Plaza Cleaners Inc.
1271 Route 9
Wappingers Falls, New York 12590

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violation of
Articles 19 and 71 of the Environmental Conservation
Law of the State of New York and Title 6 of the
Official Compilation of Codes, Rules and Regulations
of the State of New York (6 NYCRR) Part 232
by

DEFAULT
SUMMARY
REPORT

NICHOLAS MORCOS &
WAPPINGERS PLAZA CLEANERS, INC.

DEC File No.
R3-20000703-68

Respondents

Proceedings

By motion dated September 18, 2003 Staff of the Department of Environmental Conservation (DEC Staff) sought a judgment by default against Nicholas Morcos and Wappingers Plaza Cleaners, Inc. (Respondents) concerning alleged violations of Article 19 of the Environmental Conservation Law (ECL). It is alleged by DEC Staff that Respondent violated Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 232 by failing to comply with operational, reporting and record keeping requirements; failed to have the appropriate permit or registration for the facility; and failed to comply with the required third party inspection for the dry cleaning facility located at 1271 Route 9, Wappingers Falls, NY.

In support of its motion, DEC Staff submitted an affirmation of Deputy Regional Attorney Jonah Treibwasser Esq. dated September 16, 2003 and a proposed Order. DEC Staff mailed a copy of the motion for default to Respondents on September 18, 2003.

Respondents were served with a Notice of Hearing and Complaint dated May 19, 2003. These documents were properly served on May 21, 2003 , as evidenced by the certified mail return receipt card from the US Post Office and the affidavit of service.

As of the date of the default Motion, Respondent has failed to appear or answer the Notice of Hearing and Complaint or otherwise move.

DEFAULT PROCEDURES:

Section 622.15, "Default Procedures" provides, in pertinent part: "b) The motion for a

default judgment must contain: (1) proof of service upon the respondent of the notice of hearing and complaint or such other document which commenced the proceeding; (2) proof of the respondent's failure to appear or failure to file a timely answer; and (3) a proposed order."

FINDINGS

1. On May 21, 2003 DEC Staff served a Notice of Hearing and Complaint on Respondents. The time to Answer or otherwise move expired on June 10, 2003. No Answer has been served to date. The Notice of Hearing and Complaint included a statement that failure to answer constitutes a default.
2. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR section 622.15(b).

RECOMMENDATION

The motion for default judgment should be granted. This Summary Report and the matter can be referred to the Commissioner for final determination.

/s/

Molly T. McBride
Administrative Law Judge

Dated: Albany, New York
August 19, 2004

To: Jonah Treibwasser, Esq.
NYS Department of Environmental Conservation
Region 3 Office
21 South Putt Corners Road
New Paltz, New York 12561

Nicholas Morcos
and Wappingers Plaza Cleaners
1271 Route 9
Wappingers Falls, New York 12590