



The City of New York
Department of Investigation

MARK G. PETERS
COMMISSIONER

83 MAIDEN LANE, 4TH FLOOR
NEW YORK, NEW YORK 10038
212-825-5900

July 2, 2014

Acting Commissioner Thomas Fariello
New York City Department of Buildings
280 Broadway, 7th Floor
New York, NY 10007

Re: Falsification of Site Safety Records at New York City Construction Sites

Dear Acting Commissioner Fariello:

An investigation by the New York City Department of Investigation ("DOI") with assistance and cooperation from the New York County District Attorney's Office ("DANY") determined that, from 2012 through 2014, Avanti Building Consultants, Inc., also known as Risk Management Agency, Inc. ("Avanti") and NYCB Engineering Group, LLC ("NYCB") falsified over 450 documents at approximately 40 construction sites across the City to cover up their failure to provide licensed Site Safety Managers ("SSM's") to their clients. Avanti's and NYCB's criminal conduct created potentially dangerous conditions for not only workers, but the public. As a result, Avanti, NYCB, their owners and five other individuals are under indictment for felony charges issued by the Grand Jury of New York County.¹

In an attempt to identify whether the scope of these crimes extended to other SSM providers, DOI and the New York City Department of Buildings ("DOB") inspected jointly over 400 construction sites. These inspections resulted in DOB's issuance of approximately 80 violations and over 30 stop work orders. In addition, DOI arrested two workers for the possession of forged Occupational

¹ The following individuals and entities are under indictment: (1) Avanti; (2) NYCB; (3) Richard Marini; (4) Richard Sfraga; (5) Kishowar (Kris) Pervez; (6) George Tattos; (7) Brandon Taylor; (8) Besik Kelly; and (9) Vincent Bruzzese.

Additional arrests and charges are anticipated.

Safety and Health Administration (“OSHA”) training cards.² As a result of the widespread nature of these problems, DOI worked closely with DOB to institute reforms to foster and promote a safer working environment for construction workers and the public.

This report is divided into four parts. First, this report provides background on SSM’s, Avanti and NYCB. Second, it describes briefly this investigation conducted by DOI, DOB and DANY, including a description of Avanti’s fraudulent scheme. Third, it describes the joint DOI-DOB construction site visits. Finally, this report concludes with reforms this Office crafted in conjunction with DOB and which DOB has adopted to help prevent the re-occurrence of a similar scheme.

I. Background

A. The Responsibilities of a Site Safety Manager

An SSM is a DOB licensee³ who performs site safety inspections for the construction and demolition of buildings 15 or more stories in height. Although retained and compensated by either the general contractor or building management, the SSM reports directly to the DOB on matters relevant to the site’s safety conditions for both workers and the public. In this way, the SSM provides an unbiased and objective overall safety assessment.⁴

² An OSHA card is issued to individuals who successfully complete a 10-hour or 20-hour OSHA Outreach Training Program (“OTP”) class in the fields of construction, general industry or maritime, or a 15-hour class in disaster site work. Through the OTP, OSHA ensures that workers are knowledgeable about workplace hazards and safety.

³ There are five different methods of becoming a DOB licensed SSM. In addition to taking various DOB-approved courses, the applicant must:

- be a registered design professional with at least three years of experience supervising major buildings;
- have eight years of construction supervision experience, including five years supervising major buildings;
- complete 18 months of “on-the-job” training on major buildings under the direct supervision of a SSM;
- possess equivalent education and construction experience; or
- have three years of experience as a certified sight safety coordinator.

New York City Administrative Code (“NYCAC”) § 28-402.2(1) – (5). Performing the functions of an SSM without being licensed by the DOB is a misdemeanor punishable by a fine of not more than \$25,000.00 and/or imprisonment of not more than one year. *Id.* § 28-402.1 (“It shall be unlawful to perform the duties and responsibilities of a site safety manager . . . unless such work is performed by a person certified as a site safety manager.”). *See also id.* § 28-203.1(1) (“Every person convicted of violating a provision of this code . . . that is classified . . . as an immediately hazardous violation shall be guilty of a misdemeanor punishable by a fine of not more than twenty-five thousand dollars or by imprisonment of not more than one year or by both such fine and imprisonment.”); *id.* § 28-201.2.1(13) (defining as an “immediately hazardous violation” engaging as an SSM without the required license).

⁴ Recognizing the importance the presence of a credentialed safety monitoring individual on site at all times, DOB is presently proposing an emergency rule requiring the full-time presence of a “competent person” on all projects involving the alteration, maintenance, repair or recladding of façades. Under existing rules and regulations, an SSM’s presence is required for such projects for only two hours of the working day.

This individual must possess, among other things, 30 hours of OSHA training, 40 hours of Site Safety Manager training and supported and suspended scaffold training. As well, this individual will be responsible for performing all required safety inspections at the site, completing daily logs and reporting any safety concerns to both the licensed SSM on the project and DOB. This rule, however, does not relieve general contractors from designating a licensed

There are two key documents an SSM must execute. First, the SSM, among other parties involved in the construction project, must complete a permit for a work application, referred to as the “PW2” form, which is then filed with the DOB. On the PW2, the SSM must disclose, among other things, his identity, DOB issued license number and notarized signature.

Second, the SSM must complete a daily log, which the SSM utilizes to document his safety inspections (the “SSM Log”). These inspections include matters related to the safety of both the workers, such as ensuring the availability and accessibility of standpipes for use by the Fire Department, and the public, such as protecting pedestrians from falling debris. As a document produced on a daily basis, the SSM Log provides a present and contemporaneous accounting of the safety conditions of the site at the time the licensed SSM executes the SSM Log.

Importantly, DOB relies upon these SSM Logs, which are maintained at the site during the pendency of construction, to gauge the site’s overall compliance with safety rules and regulations.

B. Avanti and NYCB

Avanti is a Staten Island based construction services firm. On its website, it advertises itself as providing SSM’s for property managers, developers, construction companies and Fortune 500 companies and being effective in reducing workplace injuries and stop work orders.

NYCB is a Queens based construction services firm. On its website, it advertises itself as a full service, “one stop” engineering and safety management consulting firm that provides SSM’s throughout the five boroughs for its clients.⁵

If properly administered, Avanti and NYCB would have retained SSM’s licensed by the DOB. It would have had those licensed SSM’s identify their licensing information on the PW2 and execute and notarize the PW2. It would have dispatched those licensed SSM’s to perform the DOB required site safety inspections and complete the SSM Log on a daily basis. And, where appropriate, it would have reported safety-related concerns to DOB.

This investigation revealed otherwise.

II. The Investigation

This investigation, conducted with DANY’s assistance, was commenced after DOB discovered that Avanti was using the name of a deceased SSM.⁶ It revealed that Avanti forged the signatures of approximately 10 licensed SSM’s on both PW2’s filed with the DOB and well over 400 SSM

SSM, who must be on site during “critical events” of such façade work, such as the erection, relocation and dismantling of supported and suspended scaffolds and hoisting equipment.

⁵ NYCB and Avanti had a business relationship that terminated in the Fall of 2013 whereby NYCB subcontracted some of its site safety management service contracts to Avanti. These subcontracts, however, were executed without the consent of NYCB’s clients. In addition to these subcontracts, Avanti was retained directly by its own clients to provide such site safety management services.

⁶ This investigation included the execution of a search warrant at Avanti’s business, which led to the recovery of, among other things, this deceased SSM’s identification card.

Logs. It further revealed that Avanti hired unlicensed individuals, referred to as “Runners,” to impersonate licensed SSM’s. In addition to the arrests and indictment, this investigation also resulted in the voluntary surrender of two SSM licenses, although additional surrenders and revocations are expected.⁷

Text messages provide contemporaneous accounts of Avanti’s criminal activity. At least one exchange evidences that Avanti’s SSM Logs were not daily accounts of the site’s actual safety conditions executed by licensed SSM’s; rather, Avanti’s SSM Logs were fictitious historical revisions of the site’s supposed safety conditions executed by persons impersonating licensed SSM’s. As set forth below, Avanti’s owner, Richard Marini (“Marini”), directed a “Runner” to a construction site to complete two days of SSM Logs for \$220.00 utilizing the SSM registration number of a legitimate SSM:

<u>Date</u>	<u>From</u>	<u>To</u>	<u>Message</u>
21 Mar 14 07:27:06	Marini	“Runner”	two inspections for same location = \$220 and all has stay is 2 hours ; must complete log for yesterday and today
21 Mar 14 09:20:51	“Runner”	Marini	Nobody wants to do it as one shot deal for yesterday and today. And \$ 55.00 an hour does not sound for them good too.
21 Mar 14 10:59:26	Marini	“Runner”	It’s not \$55 an hour they are gettin \$220 for one hours work
21 Mar 14 11:00:36	Marini	“Runner”	Ok then can u do it under SSM [NAME REDACTED FOR PRVACY PURPOSES]
21 Mar 14 11:01:08	“Runner”	Marini	Are you talking about \$ 220.00 an hour?
21 Mar 14 11:02:31	Marini	“Runner”	I said they would get \$220 for today for an hour if they would complete a log for yesterday and a log for today.
21 Mar 14 11:02:42	“Runner”	Marini	Yes, I can do it. When you want me to be there? If I be there at 14:00 is it ok with you?

Text messages manifest Avanti’s attempts to cover-up their fraud. After DOB issued violations for using the credentials of a deceased SSM (SSM Hearty), Avanti attempted to conceal additional instances where it used that deceased SSM’s credentials on its SSM Logs by replacing those with yet another set of phony SSM Logs:

<u>Date</u>	<u>From</u>	<u>To</u>	<u>Message</u>
26 Aug 13 06:57:35	Marini	“Runner”	Tomrw go to 20 west st replaced hearty log; then go to 119 w 40 st and rewrite all 5 missing logs I removed then go to 75 Columbia and make sure ure at west st by 8 am

⁷ This investigation also resulted in the surrender of a Concrete Safety Manager’s license, a DOB licensee responsible for the safety during concrete operations. 1 Rules of the City of New York § 3310-02(e). Specifically, this individual obtained this license by submitting forged employment verification letters and a 30 Hour Concrete Safety Manager Certification without having completed the requisite 30 hours of training. This matter continues to be under active investigation.

In addition to texts providing contemporaneous accounts of Avanti's scheme, text messages reveal concomitant concerns of the discovery of their crimes by the DOB. Watchful of DOB inspectors arriving at the site, who frequently drive white Priuses, the following transpired between one such "Runner" and Marini:

<u>Date</u>	<u>From</u>	<u>To</u>	<u>Message</u>
11 Mar 14 08:51:08	"Runner"	Marini	This job has made me petrified of white Priuses
11 Mar 14 08:51:42	Marini	"Runner"	Lol
11 Mar 14 08:53:28	"Runner"	Marini	Its like if I see 1 my heart drops until i walk up and confirm that its not dob

Indeed, these concerns over DOB detecting their fraud appeared to have even trumped business concerns, to such an extent that Marini preferred "Runners" remaining idle than "working":

<u>Date</u>	<u>From</u>	<u>To</u>	<u>Message</u>
18 Aug 13 11:32:15	Marini	"Runner"	Ok ure back at Central Park west tomrw ill stop and visit please be extra careful looking for DOB I rather u spend 85% of ure time on bench across street than I'm building

Even after Marini was made well aware of not only the existence of this investigation, but that he was its target, from the execution of a search warrant at his business to interviews with DOI investigators and DOI's confiscation of Avanti's falsified SSM Logs, Marini continued his scheme. One day after DOI investigators confiscated Avanti's phony SSM Logs at John Street in Manhattan, Marini sent the following text message to his business partner:

<u>Date</u>	<u>From</u>	<u>To</u>	<u>Message</u>
19 Apr 14 07:53:20	Marini	Sfraga	We lost John st thanks to DOI but no loss that's Mionian and they don't pay any way... I'm more concerned about lenahan but at this point I guess it's all futile....

III. DOI-DOB Construction Site Visits

A. Background

In an attempt to determine whether the falsification of SSM Logs by impersonators of licensed SSM's was systemic throughout the City's construction industry, DOB and DOI conducted over 400 site visits where SSM's were required. These sites were selected where it appeared in part

that, based upon a review of PW2's, SSM's intended to engage in more work than was reasonably feasible.⁸ These site visits are continuing and will continue on a rolling-basis.

B. Impact of the Sweeps on the Avanti Investigation

At present, this joint initiative culminated in two arrests of individuals possessing false OSHA cards and the issuance of approximately 80 violations and over 30 stop work orders. DOB issued these violations for numerous reasons, the majority of which were the failure to designate an SSM and the SSM's absence from the construction site.⁹

These site visits also revealed the existence of NYCB's scheme. Similar to Avanti, NYCB and its owner, Kishowar 'Kris' Pervez ("Pervez") utilized the credentials of licensed SSM's on PW2's without their knowledge. However, unlike Avanti, NYCB and Pervez retained licensed SSM's. In turn, these licensed SSM's permitted NYCB to utilize their credentials on SSM Logs on sites they never inspected.

Specifically, Pervez assigned one licensed SSM to perform site safety services on as many as 14 sites, each of which required his continuous presence for at least a two-hour period. These duties supplemented his responsibilities on sites that required his continuous presence for an eight-hour period, all in one day. This humanly impossible feat of dexterity required of one individual to bill well over 28 hours of work in a 24 hour period, was made possible by delegating the tasks of one to many: Pervez hired "Runners." These "Runners", Pervez's childhood friend and family members, were hired to assist licensed SSM's in executing and delivering SSM Logs to their respective sites utilizing the credentials of licensed SSM's, some of whom were unaware their credentials were being utilized in this manner. As a result, Pervez was able to claim a single SSM had completed well over 28 hours of work in a 24 hour period and is now under indictment for a scheme to defraud and other related crimes.

IV. Reforms Addressing Vulnerabilities Uncovered During This Investigation

Avanti's and NYCB's criminal activity was made possible in part by various vulnerabilities in rules and regulations governing SSM's that Avanti capitalized upon in every step of this fraud scheme, from its inception with the reproduction of PW2's to its terminus with the falsification of the SSM Logs. Reforming these vulnerabilities will help prevent the occurrence of a similar scheme.

Specifically, these reforms address (1) the relative ease in reusing and refiling previously filed PW2's; (2) DOB's lack of internal controls in the assignment of SSM's; (3) a lack of verification of SSM's identified on PW2's; and (4) a lack of inspection protocols.

⁸ DOI and DOB selected a site for a visit if it was represented that an SSM would work on at least seven sites requiring his continuous presence for at least a two-hour period, all in one day. Mathematically, it would be extremely unlikely for an SSM to work 14 hours, exclusive of any commute times between construction sites.

⁹ See 28 NYCAC § 28-3310.6 ("It shall be the responsibility of the builder/owner, agent, construction manager, or general contractor (the 'Contractor') to designate a site safety manager . . . who must be present on a construction or demolition site when required.").

A. Reusing and Refiling Prior PW2's

Previously filed PW2's are readily available on DOB's website and these multipage documents lack sufficient unique identifiers.

This fraud exposed the possibility of reusing previously filed PW2's, which are readily available on DOB's website. These previously filed PW2's, which contain the identifying information of, among other contracting parties, the SSM, are downloadable and printable. Although this PW2 has a bar code and job identification number, these unique identifiers, which associate the PW2 with that particular project, appear on only the first page of this multi-page document: these identifiers do not appear on the page of the PW2 disclosing the identity of the SSM. As a result, an SSM provider can readily download those pages of the PW2 relevant to the SSM and reuse those pages on the currently pending PW2.

Therefore, DOB has agreed to implement the following reform with respect to their PW2's:

- DOB will make their PW2's more resistant to fraud by placing unique identifiers, a "COPY" watermark, or some other fraud resistant measure on all pages of the PW2.

B. Internal Limits to the Assignment of SSM's

Nothing prevents an SSM provider from claiming its intent to utilize an SSM on more construction sites than is reasonably possible for that SSM to provide legitimate SSM services.

NYCB represented on its PW2's its intent to utilize an SSM on more construction sites in a given time period than this SSM could reasonably perform such site safety services. For instance, NYCB designated an SSM at over 30 construction sites, two of which each required the SSM's continuous presence for a total of eight hours. Mathematically and logistically, this is an impossibility.

Therefore, DOB has agreed to implement the following reform with respect to the filing of their PW2's:

- DOB will institute an automatic limit on PW2's preventing an SSM from being assigned to more sites than the SSM can reasonably provide site safety managerial services.

Acting as a further internal check on the filing of PW2's, this system block will automatically prevent an SSM provider from allocating its SSM's on more sites than that SSM can reasonably work.

C. Verification of SSM's

Unlike other licensed DOB professionals, such as plumbers, SSM's are unable to research whether their credentials are being utilized on PW2's.

There is no mechanism for an SSM to identify whether his or her credentials have been utilized in a PW2. Indeed, when presented with reports identifying sites SSM's were registered to work,

these SSM's denied having any involvement or even knowledge of those sites and concerns that this places in jeopardy their reputations as SSM's.

As a result, DOB has agreed to the following policy changes:

- Through the use of a new program being developed by DOB, SSM's will be notified via email whenever their license is utilized on a DOB filing, including the PW2.
- DOB will make available a report on its website identifying PW2's filed under an SSM, which would allow the SSM to check on PW2's filed under his or her license and to notify DOB of any anomalies.
- DOB will require that SSM's, in addition to general contractors, notify DOB of any changes in the designated SSM at the worksite.

These self-policing reforms guided by the SSM's interest in ensuring the integrity of their respective credentials in conjunction with the other proactive reforms discussed in this report are integral to remedying the corruption vulnerabilities raised during this investigation.

D. Protocol's for Random Construction Site Visits

Conducting an "after action review" of this exercise, this Office in conjunction with DOB identified a series of protocols, reforms and "best practices" for these continuous and on-going site visits. Coupled with additional training for inspectors on matters relevant to SSM's, DOB has agreed to implement the following protocol as standard operating procedure for all inspectors performing such visits:

- DOB will conduct regular audits of construction sites involving SSM's. These audits will include verifications of the identity of the SSM's on site by requesting his DOB issued SSM identification card and reviews of the SSM Log Book for consistency with the PW2.

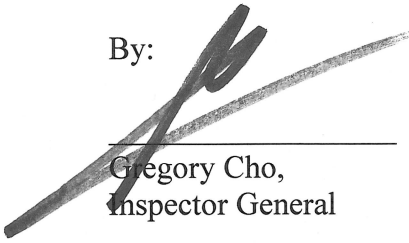
These protocols and reforms will assist in preventing future similar schemes by ensuring the integrity of the laws, rules and regulations governing SSM's. Most significantly, these measures will help protect the safety of workers and the public from the inherent dangers of construction.

If you require further information, please contact me at (212) 825-3335, or Assistant Inspector General Laura Bowman at (212) 825-2469.

Very Truly Yours,

Mark G. Peters

By:



Gregory Cho,
Inspector General