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Construction Company Owner Indicted for Manslaughter

*Ignored Workers' Safety Concerns and Industry Protocols
Prior to Wall Collapse that Killed One Man and Seriously Injured Two Others*

Acting Brooklyn District Attorney Eric Gonzalez, together with New York City Department of Investigation Commissioner Mark G. Peters, New York City Department of Buildings Commissioner Rick Chandler and Occupational Safety and Health Administration Regional Administrator Robert Kulick, today announced that the owner of a Bedford-Stuyvesant construction company and his businesses have been indicted on manslaughter and other charges after a wall collapsed at an excavation site, killing one construction worker and injuring two others.

Acting District Attorney Gonzalez said, "Fernando Vanegaz should be alive today. Construction site deaths such as his are becoming all too common as builders ignore safety protocols and hire untrained workers to maximize profits. Even worse, we allege, is that in this case the builder went ahead with this illicit excavation even after the Department of Buildings explicitly prohibited it. I vow to continue investigating and prosecuting these unscrupulous builders whose practices endanger their workers and anyone near their sites."

Commissioner Peters said, "We have seen the tragic results on construction sites too many times when contractors ignore repeated warnings of danger and put the lives of workers at risk. In this case the warnings were clear, but the defendant disregarded them at a deadly cost. The City expects construction companies and general contractors to follow the laws that protect worker safety. When they do not, DOI and its partners, like the Brooklyn District Attorney, will hold them criminally accountable."

Commissioner Chandler said, "Fernando Vanegaz lost his life in a tragic and completely preventable accident. Our hearts go out to this young man's loved ones, friends and co-workers. The criminal charges against this contractor are a warning to other bad actors in the construction industry that no building is worth a life, that cutting corners on the job site has very real consequences and that if you fail to protect your workers, the city will come after you. I thank DA Gonzalez and his team and our partners at DOI for their great work on this case."

Regional Administrator Kulick said, “Mr. Vanegaz’s death and the injuries to the other workers were needless and avoidable. All workers have a right to a safe and healthful workplace and all employers have a responsibility to provide a safe and healthful workplace for their employees. When employers abandon their responsibility the consequences can be devastating and irreversible. We remind employers and workers that implementing effective safety and health programs, including training, and adherence to OSHA standards are critical to identifying and eliminating hazards that can harm workers.”

The District Attorney identified the defendants as Michael Weiss, 47, of Throop Avenue in Williamsburg and his companies, RSBY NY Builders Inc. and Park Ave Builders Inc., both in Bedford-Stuyvesant, Brooklyn. He was arraigned today before Brooklyn Supreme Court Justice Danny Chun on a 14-count indictment in which Weiss is charged with second-degree manslaughter, criminally negligent homicide, second-degree reckless endangerment, third-degree assault, third-degree grand larceny, fourth-degree criminal tax fraud, first-degree falsifying business records, offering a false instrument for filing, fraudulent practices under the workers’ compensation law, and failing to secure workers’ compensation insurance. An indicted co-conspirator is charged with two counts of second-degree reckless endangerment and will be arraigned at a later date.

Weiss was ordered held on bail of \$250,000 bond or \$100,000 cash and to return to court on August 9, 2017. He faces up to 15 years in prison if convicted of the top count. His co-defendant faces up to one year in prison if convicted.

The District Attorney said that, according to the indictment, on September 3, 2015, employees of Weiss and his companies were working at a construction site at 656 Myrtle Avenue in Bedford-Stuyvesant, where they were replacing a one-story building with a five-story building. Weiss ordered several of his employees to excavate in the rear of the lot in an area not permitted by the approved Department of Buildings plans and without knowledge of other professionals involved in the project.

Furthermore, it is alleged, despite repeated requests from his workers in the months, and even just hours before the collapse, Weiss refused to provide any material for shoring or underpinning of the excavation and adjacent exposed walls – despite OSHA regulations requiring him to do so – and refused to listen to the safety concerns of his workers, insisting they continue working in an unsafe area. At approximately 11:30 a.m., the wall of the adjacent building collapsed, and masonry blocks and other debris fell on three of the workers, killing one man and severely injuring two others.

The deceased worker, Fernando Vanegaz, 18, suffered severe head trauma, lacerations to his head, broken legs and cardiac arrest and was pronounced dead at the scene. A second worker suffered a fracture of the lumbar vertebra, a fractured hip and injury to his spine. He has undergone multiple surgeries and continues to have difficulty walking or engaging in physical activity. A third worker also suffered a lumbar vertebra fracture, a fractured nose and skull and orbital area, a crushed face and scalp, a fractured rib and other facial bone fractures. He had back surgery and continues to have difficulty with physical activity and suffers constant back pain.

The indicted co-conspirator was the owner of a construction company that had a safety registration with the DOB, with endorsements in concrete, construction and demolition, allowing his company to obtain permits from DOB to perform construction work in New York City. It is alleged that since Weiss did not have the appropriate licenses with DOB to apply for the necessary permits to perform the work he paid the co-defendant \$10,000 to sign the work permit applications and insurance certificates as general contractor.

The Acting District Attorney said that, according to the indictment, Weiss began working on the site in June 2015 after being hired by the building owners to replace a one-story fruit store with a five-story mixed use building that would house a shoe store and residential apartments. Weiss hired seven workers with little to no training and without OSHA safety certifications to do the demolition.

In late July 2015, the next phase of construction began in which the untrained workers dug trenches around the perimeter of the existing cellar for foundation structures in accordance with DOB-approved plans, though DOB was not notified of this excavation prior to the work beginning as required by the building code, nor was the necessary shoring, bracing or underpinning provided. Furthermore, after the work began, Weiss instructed the workers to excavate beyond the approved area and in direct contradiction to the DOB-approved plans.

Throughout the excavation, it is alleged, several of the workers complained to Weiss that the excavation was unsafe because the adjacent walls were unstable, especially the rear concrete masonry wall because it had a crack. Weiss repeatedly refused to provide any materials to shore up the wall and refused a request to hire experienced workers.

By September 2, 2015, the excavation in the rear of the lot was more than six feet below the foundation of the adjacent building to the rear. This undermined the concrete masonry wall of the adjacent building. On that day, two of the workers again asked Weiss for lumber, according to the indictment, to shore up the wall. Finally, on September 3, 2015 at 8:00 a.m., Weiss' employees reported for work. One worker, concerned about the crack, asked Weiss and his supervisor for 2 x 4s to shore up the wall, and informed Weiss that the wall could collapse.

Weiss stated that the materials were coming, and shortly thereafter lumber arrived. However, Weiss refused to allow them to shore up the wall with it, instead saying it was for formwork for the upcoming concrete pour and that he would bring lumber to shore up the wall the following day. He also allegedly told the workers they were working too slowly and ordered three workers, including the deceased, to work in the rear excavated pit. The wall of the rear adjacent building then collapsed onto the workers.

Furthermore, according to the indictment, Weiss failed to maintain workers' compensation insurance coverage while employing seven construction workers at the site, then applied for coverage hours after the collapse. He also allegedly committed tax fraud by failing to report \$75,000 in income on his state tax returns. Based on this unreported income he owed state taxes of \$4,310 and unlawfully received a refund of \$3,686. He thereby stole \$7,996 from the NYS Department of Taxation and Finance.

The case was investigated by Chief of Investigations with the DOI Buildings Special Investigations Unit Barry Romm and Chief Investigator James McElligott, under the supervision of Inspector General Gregory Cho, Associate Commissioner James Flaherty, Deputy Commissioner/Chief of Investigations Michael Carroll and First Deputy Commissioner Lesley Brovner.

The case was additionally investigated by Detective Investigator Ismael Zayas, under the supervision of Supervising Detective Investigator Robert Addonizio and Deputy Chief Edwin Murphy, of the District Attorney's Investigations Bureau.

The Acting District Attorney thanked the New York State Department of Taxation and Finance, specifically, Tax Auditor I Shumaila Qureshi and Tax Auditor III Ronald Chan, under the supervision of Deputy Commissioner John Harford, Director of the Criminal Investigations Division.

The Acting District Attorney further thanked the investigators and supervisors of the Manhattan Area Office of the Occupational Safety and Health Administration of the United States Department of Labor.

The Acting District Attorney further thanked the New York City Department of Buildings, specifically, Geoff Eisele, PE, LEED, AP, Executive Engineer, Construction Safety; Inspector Burt Thomas and Matthew Burdge, Director of the Special Enforcement Team.

Finally, the Acting District Attorney thanked New York State Insurance Fund Underwriter Maribel Docal and Senior Investigator and Jacqueline Waters; and New York State Workers' Compensation Fund Investigator Sherard John.

KCDA Investigative Analyst Megan Carroll and Digital Forensic Analyst Mirsada Bogdanovic assisted in the investigation.

The case is being prosecuted by Senior Assistant District Attorney Samantha Magnani, of the District Attorney's Frauds Bureau and Assistant District Attorney Meredith McGowan, Deputy Chief of the District Attorney's Labor Frauds Unit, under the supervision of Assistant District Attorney Patricia McNeill, Deputy Chief of the District Attorney's Investigations Division.

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An indictment is merely an accusation and not proof of a defendant's guilt