

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

BEST ROOFING OF NEW JERSEY, INC.;

and

WILLIAM SCRIVENS,
as a shareholder of
BEST ROOFING OF NEW JERSEY, INC.

Prime Contractor,
and

ACCURATE MECHANICAL, LLC.;

and

JOSHUA DEBOWSKY
as an officer and or managing member of
ACCURATE MECHANICAL, LLC.;

and its successor or substantially owned-affiliated entity

ACCURATE MECHANICAL OF PHILADELPHIA,
LLC.

Subcontractor,

for a determination pursuant to Article 8 of the Labor Law as to whether prevailing wages and supplements were paid to or provided for the workers employed on a public work project known as the Roofing and HVAC Replacement at Riverbank State Park in New York City

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
Case No. 2008003901
PW 09 2009021871
New York County

To: Honorable Peter M. Rivera
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on December 27, 2013 in Albany, New York and by videoconference with New York City New York. The purpose of the hearing was to provide all parties an opportunity to be heard on the issues raised in the Notice of Hearing and to establish a record from which

the Hearing Officer could prepare this Report and Recommendation for the Commissioner of Labor.

The hearing concerned an investigation conducted by the Bureau of Public Work (“Bureau”) of the New York State Department of Labor (“Department”) into whether Accurate Mechanical, LLC (“Accurate”), a subcontractor of Best Roofing of New Jersey, Inc. (“Best Roofing”), complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving roofing and HVAC replacement (“Project”) for the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”).

APPEARANCES

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz, (Elina Matot, Senior Attorney, of counsel). There was no appearance made by, or on behalf of, Accurate. Pursuant to the terms of a written stipulation, Best Roofing paid the amount of the underpayment the Bureau had initially determined Accurate owed, with interest, in advance of the hearing, with the express agreement that Best Roofing would pay any additional underpayment determined to be owed following a hearing in the matter (Dept. Ex. 19).

FINDINGS AND CONCLUSIONS

On September 17, 2013, the Department duly served a copy of the Notice of Hearing on Accurate; its substantially owned-affiliated entity Accurate Mechanical of Philadelphia, LLC; Joshua Debowsky; Best Roofing and William Scrivens, via regular and certified mail, return receipt requested (H.O. Ex. 2). The regular mail envelopes addressed to Best Roofing and William Scrivens were not returned to the Department. As no signed Return Receipt evidencing receipt of the document by any of the Respondents was returned by the post office to the Department, on October 31, 2013, the Department personally served the New York State Secretary of State with the Notice of Hearing for service upon Accurate, Accurate Mechanical of Philadelphia, LLC and Best Roofing (H.O. Exs. 3, 4, 5). The Notice of Hearing scheduled a December 2-3, 2013

hearing, and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

At the Department's request, on November 25, 2013, the hearing was adjourned to December 27, 2013, and a written Notice of Adjournment was mailed to each of the Respondents (H.O. Ex. 6). The first class mailings to Accurate, Accurate Mechanical of Philadelphia, LLC, and Joshua Debowsky, which were addressed to their last known addresses, were returned. The first class mailings to Best Roofing and William Scrivens were not returned.

On December 6, 2013, the Department sent a letter to Mr. Scrivens also advising of the adjournment and further advising Mr. Scrivens that pursuant to the aforesaid stipulation of settlement the Department would be seeking additional restitution for underpayments it had subsequently determined were due (H.O. Ex. 7). The Department received no reply to that letter. The mailing was not returned.

Accurate, Accurate Mechanical of Philadelphia, LLC, and Joshua Debowsky failed to file an Answers to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, they are in default in this proceeding.

The Notice of Hearing alleges that Accurate underpaid wages and supplements to its workers and that Best Roofing is responsible for Sub's underpayment pursuant to Labor Law § 223.

Prior to the hearing, in January 2011, Best Roofing paid \$149,189.17 to the Department, which amount included the full underpayment then alleged by the Department to be owed by Accurate as an underpayment (\$139,150.86), with interest at a rate of 6% per annum (Dept. Exs. 19, 19A).

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator, and documents describing the underpayments, which supported the Bureau's charges that:

The Project was subject to Labor Law article 8; and

Best Roofing entered into a contract for the Project with the OPRHP; and

Accurate entered into a contract with Best Roofing for work on the Project; and

Accurate willfully underpaid \$146,420.96 to its workers for the audit period weeks ending July 3, 2009 to November 6, 2009 (Dept. Ex. 15); and

Accurate falsified its payroll records in connection with that willful underpayment; and

Joshua Debowsky is an officer of Accurate who knowingly participated in the violation of Labor Law article 8.

For the foregoing reasons, the findings, conclusions and determinations of the Bureau should be sustained.

RECOMMENDATIONS

Based upon the default of the Respondents in answering or contesting the charges contained in the Department's Notice of Hearing, and upon the sworn and credible testimonial and documentary evidence adduced at hearing in support of those charges, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Accurate underpaid its workers \$146,420.96 on the Project; and

DETERMINE that Accurate is responsible for interest on the total underpayment at the statutorily mandated rate of 16% per annum from the date of underpayment to the date of payment; and

DETERMINE that the failure of Accurate to pay the prevailing wage or supplement rate was a "willful" violation of Labor Law article 8; and

DETERMINE that the willful violation of Accurate involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that Accurate Mechanical of Philadelphia, LLC is a "substantially owned-affiliated entity" of Accurate; and

DETERMINE that Joshua Debowsky is an officer of Accurate who knowingly participated in the violation of Labor Law article 8; and

DETERMINE that Accurate be assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due; and

DETERMINE that Best Roofing has paid \$149,189.17 in underpayment and interest, and has further stipulated to pay any additional underpayment determined due, which additional amount has now been determined to be \$7,270.10, which, with interest at 6% through the date of the stipulation, totals \$7,799.13, and which when paid will result in a total payment of \$156,988.30 in underpayment and interest, in complete satisfaction of its liability under Labor Law article 8 (Dept. Ex. 19B); and

ORDER that, upon the additional payment of \$7,799.13 in complete performance of the stipulation entered into between Best Roofing and the Department, Best Roofing will have fully satisfied its liability under Labor Law article 8; and

ORDER that the Bureau compute the total amount due (underpayment of \$146,420.96, interest at 16% from date of underpayment and 25% civil penalty); and

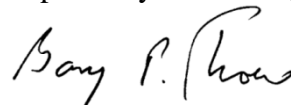
ORDER that Accurate shall receive a credit for the sums paid by Best Roofing; and

ORDER that upon the Bureau's notification, Accurate shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at: 75 Varick Street, 7th Floor, New York City, NY 10013; and

ORDER that the Bureau compute and pay the appropriate amount due for each employee on the Project, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: December 31, 2013
Albany, New York

Respectfully submitted,



Gary P. Troue, Hearing Officer