

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

V.M.K. Corp.; and RICHARD MACONE, as a
shareholder of V.M.K. Corp.;

Prime Contractor,

ALL CATASTROPHE CONSTRUCTION TEAM, INC.
D/B/A ACT, INC., and MARK MIONIS, E.C. WEBB, and
BARRY KINNEY, as officers and/or shareholders of
ALL CATASTROPHE CONSTRUCTION TEAM, INC.
D/B/A ACT, Inc.;

Subcontractor,

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Wage Rate
PRC No. 2008001862-A
Case ID: PW04 2010013040

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 laborers, workers, and mechanics
employed on a public work project for the Elmont Union
Free School District.

Nassau County

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To: Honorable Mario J. Musolino
Acting Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued on August 17, 2015, a hearing was held on
September 25, 2015 in Albany, New York and by videoconference with Garden 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 All
Catastrophe Construction Team, Inc., d/b/a ACT, Inc. ("ACT, Inc.") complied with the

requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving the roof renovation to the Clara Carlson Elementary School (“Project”) for Elmont Union Free School District (“Department of Jurisdiction”).

HEARING OFFICER DESIGNATION

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz, Larissa C. Bates, of Counsel.

There was no appearance made by, or on behalf of V.M.K. Corp. (“Prime”) or ACT, Inc..

FINDINGS AND CONCLUSIONS

On August 19, 2015, the Department duly served a copy of the Notice of Hearing on Prime and ACT, Inc., via regular and certified mail, return receipt requested. Signed Return Receipts evidencing receipt of the document by ACT, Inc, were entered into evidence as Hearing Officer Exhibit 3. While the Department did not produce evidence indicating that the certified mailing of the Notice of Hearing to Prime was received, Department Counsel represented that the first class mailing to 8617 3rd Avenue, Brooklyn, New York, an address where Prime had received service of a Notice of Hearing in a prior, unrelated action was not returned (T. 9).

Mark Mionis, an individual identified by the Department as an officer and/or shareholder of ACT, Inc. was served with the Notice of Hearing by certified mail and a receipt was entered into the record (HO Ex. 3). Counsel for the Department and I received correspondence from Mark Mionis wherein he represented that he is the president of ACT, Inc., d/b/a All Star Awards and not the ACT, Inc. named as a party in the within proceeding. Counsel for the Department investigated these allegations and determined that Mark Mionis was incorrectly named in the Notice of Hearing (HO Ex. 4).

The Notice of Hearing scheduled a September 25, 2015 hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

Prime failed to file an Answer to the charges contained in the Notice of Hearing or appear at the hearing. As a consequence, Prime is in default in this proceeding.

ACT, Inc. failed to file an Answer to the charges contained in the Notice of Hearing or appear at the hearing. As a consequence, ACT, Inc. is in default in this proceeding.

The Notice of Hearing alleges that ACT, Inc. underpaid wages and supplements to its workers in Project and that Prime is responsible for ACT, Inc.'s underpayment pursuant to Labor Law § 223.

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

Prime entered into a contract for the Project with the Department of Jurisdiction; and

ACT, Inc. entered into a contract with Prime for work on the Project; and

ACT, Inc. willfully underpaid \$36,699.71 to its workers for the audit period weeks ending 07/11/2008 to 08/01/2008; and

ACT, Inc. falsified its payroll records in connection with that willful underpayment; and

Elton C. Webb, aka E. C. Webb is an officer of Prime (See, DOL Ex. 20); and

On October 26, 2011, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in the amount of \$71,334.25. No funds were withheld pursuant to this notice (DOL Exs. 17, 18).

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

RECOMMENDATIONS

Based upon the default of Prime and ACT, Inc. 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 ACT, Inc. underpaid its workers \$36,699.71 on Project PW04 2010013040, PRC No. 2008001862; and

DETERMINE that ACT, Inc. 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 ACT, Inc. to pay the prevailing wage or supplement rate was a "willful" violation of Labor Law article 8; and

DETERMINE that the willful violation of ACT, Inc. involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that Elton C. Webb, aka E. C. Webb is an officer of ACT, Inc.; and

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

DETERMINE that Prime is responsible for the underpayment, interest and civil penalty due pursuant to its liability under Labor Law article 8; and

DETERMINE that Mark Mionis is not a proper party to the within proceeding; and

ORDER that this matter be dismissed as to Mark Mionis; and

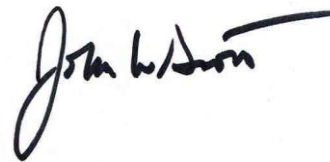
ORDER that the Bureau compute the total amount due (underpayment of \$36,699.71, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that upon the Bureau's notification, ACT, Inc. shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at: 400 Oak Street, Suite 101, Garden City, NY 11530-6551 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: November 10, 2015
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott". The signature is written in a cursive style with a long horizontal stroke extending to the right.

John W. Scott, Hearing Officer