

IN THE MATTER OF
SUBOLO CONTRACTING CORP.

Prime Contractor

and

ALLSTATE ENVIRONMENTAL CORP.;

and

JOSÉ MONTAS,

Individually, and as President and one of the five largest
shareholders of the corporation,

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 George Fischer Middle
School Additions and Alterations, in Carmel, New York.

**DEFAULT
REPORT
&
RECOMMENDATION**

**Prevailing Rate Case
Case No. 2005005544
PW11 2010008781**

Putnam 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 April 19, 2012, by video conference between Albany and White Plains, 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 Allstate Environmental Corp. ("Allstate") a subcontractor of Subolo Contracting Corp. ("Subolo") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the

performance of a public work contract involving additions and alterations at the George Fisher Middle School (“Project”) for Carmel Central School District (“School District”) in Carmel, Putnam County, New York.

APPEARANCES

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz, (Louise Roback, Senior Attorney, of Counsel). There was no appearance made by, or on behalf of, either Allstate or Jose Montas. At the hearing, Subolo appeared by its president, Robert Gangi. At the conclusion of the hearing, Subolo stipulated on the record to resolve its liability under Labor Law § 223 by agreeing to pay the amount of the underpayment the Bureau had determined Allstate owed its workers, with interest, which the Bureau determined that would be sufficient to resolve Subolo’s Article 8 liability. That stipulation was subsequently reduced to writing and received in evidence as Department Exhibit 21.

FINDINGS AND CONCLUSIONS

On March 15, 2012, the Department duly served copies of the Notice of Hearing on Allstate and Jose Montas, by both regular and certified mail, return receipt requested. Signed return receipt cards evidencing receipt of the documents at Jose Montas’s address at 27 Butler Place, Yonkers, New York were entered into evidence as Hearing Officer Exhibit 2. The Notice of Hearing scheduled an April 19, 2012 hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing. The Department also duly served a copy of the Notice of Hearing on Subolo, by regular and certified mail, return receipt requested. A signed return receipt card evidencing receipt of the document by Subolo was entered into evidence as Hearing Officer Exhibit 2.

Allstate and Jose Montas failed to file an Answer 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 Allstate underpaid wages and supplements to its workers and that Sobolo is responsible for Allstate’s underpayment pursuant to Labor

Law § 223. As previously stated, Sobolo has stipulated, *inter alia*, to pay the underpayment of Allstate in full satisfaction of its liability under Labor Law article 8.

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:

- Allstate willfully underpaid \$24,351.36 to its workers for the audit period weeks ending July 1, 2007 to July 8, 2007; and
- Allstate falsified its payroll records in connection with that willful underpayment; and
- Jose Montas is an officer of Allstate who knowingly participated in the violation of Labor Law article 8; and
- Jose Montas is a shareholder of Allstate who owned or controlled at least ten per centum of its outstanding stock.

On or about February 16, 2011, the Department issued a Notice to Withhold Payment to the School District in the amount of \$54,097.03. The School District acknowledged receipt of the Notice and advised that no funds were being withheld as no money was left owing on the contract.

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 Allstate underpaid its workers \$24,351.36 on Project; and

DETERMINE that Allstate 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 Allstate to pay the prevailing wage or supplement rate was a “willful” violation of Labor Law article 8; and

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

DETERMINE that Jose Montas is an officer of Allstate who knowingly participated in the violation of Labor Law article 8; and

DETERMINE that Jose Montas is a shareholder of Allstate who owned or controlled at least ten per centum of its outstanding stock; and

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

DETERMINE that Sobolo stipulated to pay in complete satisfaction of its liability under Labor Law article 8; and

ORDER that the Bureau compute the total amount due (underpayment of \$24,351.36, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that, upon payment of \$29,938.22 and complete performance of the stipulation entered into between Sobolo and the Department, Sobolo will have fully satisfied its liability under Labor Law article 8; and

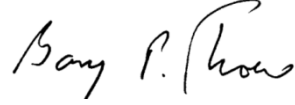
ORDER that Allstate shall receive a credit for the \$29,938.22 paid by Sobolo; and

ORDER that upon the Bureau’s notification of the amount due, Allstate shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at 3 Washington Center, 4th Floor, Newburgh, NY 12550; 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: August 13, 2012
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary P. Troue". The signature is written in black ink and is positioned above the printed name.

Gary P. Troue, Hearing Officer