

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

CALADRI DEVELOPMENT CORP., and LOUIS A. CALICCHIA, as an officer and/or shareholder of CALADRI DEVELOPMENT CORP.; and its successor or substantially owned-affiliated entity, CALI ENTERPRISES, INC.;

Prime Contractor,

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 City of Beacon Housing Authority.

**DEFAULT REPORT &  
RECOMMENDATION**

Prevailing Wage Rate  
PRC No. 2015004034  
Case ID: PW012018001605  
Dutchess County

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To: Honorable Roberta Reardon  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued by the Commissioner of Labor on September 17, 2020, a videoconference hearing was held on February 9, 2021, in Albany, New York with participating parties and/or witnesses participating remotely at various other locations. 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 Caladri Development Corp., and Louis Calicchia, as an officer and/or shareholder of Caladri Development Corp.; and its successor or substantially owned-affiliated entity, Cali Enterprises, Inc., (hereafter all known as "Respondents"), complied with the requirements of Article 8 of the

Labor Law (§§ 220 *et seq.*) to pay or provide the prevailing rates of wages and supplements to laborers, workers or mechanics employed in the performance of a public work contract involving the replacement of exterior windows and siding at the Forrestal Heights Apartment Complex, located in Beacon, New York, Dutchess County (“Project”) for the City of Beacon Housing Authority (“Department of Jurisdiction”).

### **HEARING OFFICER**

Marshall H. Day was designated as Hearing Officer and conducted the hearing in this matter.

### **APPEARANCES**

The Bureau was represented by Department Acting Counsel, Jill Archambault, (Elina Matot, Senior Attorney, of Counsel).

There was no appearance made by, and on behalf of the Respondents<sup>1</sup>.

### **FINDINGS AND CONCLUSIONS**

On November 9, 2020, the Department duly served a copy of the Notice of Hearing on Respondents, via regular and certified mail, return receipt requested (Hearing Officer Exs. 2, 3). The Notice of Hearing scheduled a hearing on February 9, 2021 and required the Respondents to serve an Answer at least fourteen days in advance of the scheduled hearing.

Respondents failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. Consequently, Respondents are in default in this proceeding.

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<sup>1</sup> Although the Respondents did not appear at the hearing, the bankruptcy attorney for Respondents submitted a memorandum in opposition of the administration hearing due to a prior discharge of the individual and corporation in Chapters 7 and 11 of the bankruptcy code, respectively (Hearing Officer Ex. 4). Also, emails were received from counsel and Respondent, Mr. Calicchia, indicating that they did not intend to participate in the proceeding, because they believed that any action against Mr. Calicchia may be a violation of the discharge in his Chapter 7 bankruptcy proceeding (Hearing Officer Exs. 5 and 6). Post hearing and received into evidence, Counsel’s office submitted a memorandum in opposition to the Respondent’s memorandum addressing the discharge in bankruptcy. (Hearing Officer Ex. 7). It also, submitted a full copy of the project manual which will be substituted for Department Exhibit 5, which was a partial copy of that document.

The Notice of Hearing alleges that Respondents willfully failed to pay prevailing wages and supplemental benefits to or for the benefit of its workers employed in the performance of a public work contract with the Department of Jurisdiction during the claim period.

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

The Project was subject to Labor Law Article 8; and

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

The Bureau used certified payrolls, application and certification for payment documents, interviews with workers, representatives of Beacon, and representatives of the Carpenters Union Local 279, and the PW-4 claim form submitted by one the workers to determine the days and hours worked and rates paid for each employee, and compared these rates with the prevailing wage schedule applicable in the county at issue for the rates that should have been paid, to ultimately determine the amount of unpaid prevailing wages and supplements due to the workers; and

Respondents failed to pay supplemental benefits to its union workers as was indicated on the certified payrolls, starting in March of 2016; and

Respondents failed to pay wages and supplemental benefits to one non-union worker for his last four weeks of employment on the Project; and

Respondent, Caladri Development Corp. is an incorporated business owned by Louis Calicchia, who is an officer and shareholder of Caladri Development Corp.; and

Louis Calicchia as an officer knowingly participated in the violation of Labor Law article; and

Cali Enterprises, Inc. is a substantially owned-affiliated entity or successor corporation to Caladri Development Corp.<sup>2</sup>; and.

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<sup>2</sup> Mr. Calicchia, submitted certified payrolls to the Department of Jurisdiction utilizing both entities as named contractors performing services on the Project. Mr. Calicchia executed the certifications as president of both

Default Report & Recommendation Page 3 of 7

On or about October 5, 2018, Darwin National Assurance Company, the surety bonding the Beacon Project, made direct payment to the Carpenters Local 279 in the total amount of \$63,951.68 to cover outstanding supplemental benefits owed to the workers performing work on the Project<sup>3</sup>; and.

The current outstanding balance of wages and supplemental benefits due on the Project, as presently calculated, is \$8,699.68<sup>4</sup>; and

The Respondents were an experienced public work contractor, who starting in March of 2016 ceased to pay supplemental benefits to its unionized workers and failed to pay its sole non-union painter for his last four weeks of work. Although he may not have been a large contractor, he was running two businesses at the same time, both a union and non-union shop and clearly understood that prevailing wages and supplements needed to be paid to his workers, yet failed to do so. I find the totality of the evidence sufficient enough to support the Department's request that the Commissioner assess a 25% civil penalty on the underpayments and interest assessed in this case, and based on the same totality of evidence, that 16% interest per annum be assessed on all underpayment of wages and supplemental benefits due as well; and

Finally, although Respondents allege they believe that any action brought against Mr. Calicchia or the corporation may be a violation of their discharge in prior bankruptcy proceedings; a discharge in bankruptcy is not a bar to the Department holding an administrative proceeding pursuant to Labor Law Section 220 to determine whether the contractor failed to pay prevailing wages and/or supplements to its workers on the public work project at issue (if found, the amounts thereof), and whether this failure contained willful conduct, falsification of payroll

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corporations, and checked off the box contained on those payrolls indicating that Cali Enterprises, Inc. was a subcontractor performing carpenter and laborer work on the Project (union) and Caladri Development Corp. was the prime contractor performing painter work on the Project (non-union). According to the certified payrolls, the supplemental benefits for the union employees were paid to their respective benefit funds, and the supplemental benefits for the non-union employee was paid directly to the worker in the form of wages.

<sup>3</sup> None of the union building laborers on the Project were included in that recovery, and they are still owed supplemental benefits for the time period included in the audit.

<sup>4</sup> This amount contains supplements for the union laborers, and wages and supplements for the non-union painter. Contractor used the District 11 wage and supplemental rates for its laborer workers in its certified payrolls, while the Bureau used the District 8 wage and supplemental rates in its audit. The District 11 rates are higher than the District 8 rates for a Building Laborer in Dutchess county and the investigator should review those rates and adjust the audit if necessary.

records and/or address other issues that may be raised at the hearing. The Department can determine both financial (liquidate the liability, ie., fix the amount owed) and non-financial liability under the governmental regulatory exemption to the bankruptcy code. Section 362(b)(4) of the Bankruptcy Code excludes from its automatic stay provisions any “proceeding by a governmental unit...to enforce such governmental unit’s police and regulatory power.” Administrative proceedings under New York Labor law §220, fall within this exception. Litigation by governmental units to enforce Federal and State labor laws uniformly has been excepted from the stay under 11 USCS Section 362(b)(4). Actions to collect back wages and related fines are meant to curb certain behavior, and the acts of the Department to enforce New York Labor Law section 220 are excepted from the automatic stay by the police power exception. The government is acting within its police or regulatory power up to the moment that liability is “definitively fixed by entry of judgment”. *In re Fiber Optek Interconnect Corp.*, Debtor, 2009 Bankr. LEXIS 3040. Thus, moving forward with the administrative proceeding and the establishment of the liquidation of the liability was proper under the governmental unit’s police and regulatory powers.

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, and based on the record as a whole, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Louis Calicchia is an officer (president) and shareholder of Caladri Development Corp.; and

DETERMINE that Louis Calicchia was the owner and officer of Caladri Development Corp. who knowingly participated in the violation of Labor Law Article 8 on the Project; and

DETERMINE that Cali Enterprises, Inc, is a “substantially owned-affiliated entity” of Caladri Development Corp.; and

DETERMINE that Respondents underpaid prevailing wages and supplemental benefits its workers in the amount of \$72,651.36 on the Project; and

DETERMINE that the failure of Respondents to pay the prevailing wages and supplement rates on the Project was a “willful” violation of Labor Law Article 8; and

DETERMINE Respondents knowingly participated in the falsification of payroll records within the meaning of Section 220-b(3)(b) of the Labor Law on the Project, and should be ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years; and

DETERMINE that Respondents are responsible for any underpayment of wages or supplemental benefits determined to be owed on the Project; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 8, Respondents are responsible for interest on the total underpayments on the Project at the statutorily mandated rate of 16% per annum from the date of underpayment to the date of payment; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 8, Respondents be assessed a civil penalty in the Department’s requested amount of 25% of the underpayment and interest due on this Project; and

DETERMINE that Department’s initiating and pursuing the within proceeding upon receiving information that Respondents violated Section 220 of New York Labor Law by not paying prevailing wages and supplements to its workers falls within the police and regulatory power exception to the automatic stay pursuant to 11 U.S.C. 362(b)(4) (See, In re Pollock, 402 B.R. at 537); and

ORDER that the Bureau compute the total amount due on the balance of underpayments of \$8,699.68 (interest at 16% from date of underpayment to date of this filing and 25% civil penalty); and

ORDER that the Bureau compute the total amount due on the pre-direct payment amount of \$63,951.68 (interest at 16% from date of underpayment to date of direct payment and 25% civil penalty on balance of interest only); and

ORDER that Respondents receive a credit of \$63,951.68 pursuant to the direct payment made by the bonding company, Darwin National Assurance Company, to the Carpenters Local 279 on behalf of the workers performing work on the Project; and

ORDER that upon the Bureau's notification, Respondents shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at: State Office Building Campus, Bldg. 12, Room 130, Albany, NY 12240; 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: May 12, 2021  
Albany, New York

Respectfully submitted,



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Marshall H. Day, Hearing Officer