

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

Casa Builders, Inc. d/b/a Friedlander Construction; and David Friedlander and Dina Taylor, as officers and/or shareholders of Casa Builders, Inc. d/b/a Friedlander Construction;

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 Town of Beekman.

**DEFAULT REPORT &
RECOMMENDATION**

Prevailing Wage Rate
PRC No. 2020004680
Case ID: PW012021000144
Dutchess County

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In the Matter of

Casa Builders, Inc. d/b/a Friedlander Construction; and David Friedlander and Dina Taylor, as officers and/or shareholders of Casa Builders, Inc. d/b/a Friedlander Construction;

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 Dutchess BOCES.

Prevailing Wage Rate
PRC No. 2020003142
Case ID: PW012020003963
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 February 3, 2023, a videoconference hearing was held on March 13, 2023, in Albany, New York with participating parties and/or witnesses appearing 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 Casa Builders, Inc. d/b/a Friedlander Construction; and David Friedlander and Dina Taylor, as officers and/or shareholders of Casa Builders, Inc. d/b/a Friedlander Construction; (hereafter all known as: "Respondents" or "Casa Builders"), complied with the requirements of Article 8 of the Labor Law (§§ 220 et seq.) in the performance of two separate public work contracts they were involved in, the two projects being: the furnishing of labor, materials, and/or services necessary in furtherance of the accessibility improvements to the front and rear of Beekman Town Hall, located at Beekman, New York, Dutchess County (PRC No.: 2020004680) ("Project 1") for the Town of Beekman ("Department of Jurisdiction 1"); and the furnishing of labor, materials, and/or services necessary in furtherance of the new construction of the Facilities Building at the Salt Point Campus, located at 5 BOCES Road, Poughkeepsie, New York, Dutchess County (PRC No.: 2020003142) ("Project 2") for the Dutchess County BOCES ("Department of Jurisdiction 2").

HEARING OFFICER

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

APPEARANCES

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

There was no appearance made by, and on behalf of the Respondents¹.

FINDINGS AND CONCLUSIONS

On February 3, 2023, the Department duly served a copy of the Notice of Hearing on all Respondents, via regular and certified mail, return receipt requested (Hearing Officer Exs. 2, 3). The Notice of Hearing scheduled a hearing on March 13, 2023 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.

The Notice of Hearing alleges that Respondents willfully failed to pay prevailing wages and supplemental benefits to its laborers, workers and mechanics employed in the performance of the two public work contracts with the respective named Department of Jurisdictions during the said claim periods.

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:

Both projects were subject to Labor Law Article 8; and

¹ Although the Respondents did not appear at the hearing, the attorney for Respondent, Dina Lea Taylor, did submit a letter in opposition to the collection of any sums from the debtor or the entering of a judgment with regard to the same due to the automatic stay provisions associated with her client's Chapter 7 Bankruptcy filing commenced on August 16, 2021. (Hearing Officer Ex. 5). Counsel's office replied to that letter outlining that 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", and that administrative proceedings under §220, fall within that exception. Going on to state that one of the purposes of the administrative hearing was the establishment of the underlying liability, not the collection thereof, so the automatic stay provisions did not apply to this proceeding and the matter would go forward to establish that liability and address other issues at hand. Counsel for Ms. Taylor followed up with a subsequent email acknowledging that the matter could go forward to establish the debt as long as the Department did not seek to collect the same from her client without relief from the stay. (Hearing Officer Exs. 6 and 7).

Project No. 1

Respondents entered into a public work contract with the Department of Jurisdiction 1 to provide the labor, material and/or services necessary to complete Project 1 under the terms of that agreement; and

Respondents failed to pay wages and supplemental benefits to its workers on Project 1; and

Respondents willfully underpaid \$34,079.58 in wages and supplemental benefits to its workers for the audit period from week ending September 6, 2020 through week ending November 8, 2020; and

Respondents failed to list all hours worked for at least three of its' workers (excluding two of those workers completely) on the certified payrolls maintained by the Respondents on Project 1²; and

Respondents falsified its payroll records in connection with that willful underpayment on Project 1; and

Project No. 2

Respondents entered into a public work contract with the Department of Jurisdiction 2 to provide the labor, material and/or services necessary to complete Project 2 under the terms of that agreement; and

Respondents failed to pay the correct wages and supplemental benefits to its workers on Project 2³; and

² Since the investigator could not confirm that payments were made to any of the workers who performed services on Project 1, the contractor was given zero credit for wages and supplements paid to its workers in the Bureau's audit. There was also one worker listed on the certified payrolls who stated he never worked on Project 1, so a John Doe was created and entered in the Bureau's audit to cover the hours worked and rates paid for that incorrectly named worker.

³ The investigator was able to verify that Respondents paid wages and supplemental benefits to its workers on Project 2, however Respondents failed to take into effect the yearly wage and supplement rate increases which occurred in July of 2020, not adjusting for that change in rates until September of that same year, and once that error was discovered never going back to pay its workers for the resulting underpayment that created on Project 2.

Respondents willfully underpaid \$24,780.11 in wages and supplemental benefits to its workers for the audit period from week ending January 3, 2020, through week ending July 12, 2022; and

On or about March 14, April 8, 2022, and July 12, 2022, United States Fire Insurance Company, the surety who bonded Project 2 on behalf of the Respondents, made direct payment to the workers in the total amount of \$24,780.11, covering all wages and supplemental benefits due, as well as accrued interest through the date of payment⁴.

GENERAL FINDINGS

David Friedlander and Dina Taylor are officers of Casa Builders; and

David Friedlander and Dina Taylor are two of the top five shareholders of Casa Builders⁵; and

David Friedlander owned or controlled at least ten per centum of its outstanding stock of Casa Builders; and

David Friedlander and Dina Taylor knowingly participated in the violation of Labor Law article 8, and this violation included the falsification of payroll records on Project 1; and

The Bureau used payroll records, certified payrolls, canceled checks, direct deposit slips, spreadsheets, PW-5 claim forms, application and certification for payment documents, interviews with workers, and worker logs to determine the classification of work, the days and hours worked and wage/supplement rates paid to each employee⁶, and the Bureau compared the

⁴ As a result of this direct payment, the Department is now only seeking to recover the civil penalty assessed against the Respondents on Project 2.

⁵ Although Ms. Taylor is considered one of the top five shareholders of the corporate entity, Casa Builders, Inc., the evidence submitted during the hearing established that she holds only one percent of the outstanding shares of that entity. While noted herein, the financial impact of the ownership holdings of the parties is outside the purview of this proceeding, and the percentage of ownership of the parties, which may ultimately affect her overall financial liability found herein and her Chapter 7 bankruptcy filing, does not alter her knowing participation and willfulness of the violations also found herein.

⁶ The initial claim on Project 1 intimated that three of the workers were not paid any wages for days they worked from September 3, 2020 to September 15, 2020.

wages/supplemental rates acknowledged received by the workers 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 on both projects; and

The Respondents were an experienced public work contractor, who initially provided some payroll information during the investigation of the two projects, however as the investigation progressed failed to offer any evidence of payment of the supplemental benefits or wages that were owed to its workers on Project 1. Casa Builders was a large employer who had prior interactions with the Bureau and were educated by the Bureau on what was required of them as a public work contractor, how the prevailing wage rate schedules applied to the work performed by them and how the rates listed in those schedules changed each year. Although instructed on how rates changed on a yearly basis, Respondents still neglected to make the rate adjustments and failed to pay their workers correctly on Project 2. I find the totality of the evidence in the record as a whole sufficient enough to support the Department's request that the Commissioner assess a 25% civil penalty on the underpayments and interest assessed in these two cases, and based on the same totality of evidence, that 16% interest per annum be assessed on all underpayment of wages and supplemental benefits due on Project 1 as well.

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 upon the record as a whole, I recommend that the Commissioner of Labor adopt the within findings of fact and conclusions of law, and make the following determinations and orders in connection with the issues raised in this case:

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) on the projects at issue; and

DETERMINE that Respondents, underpaid prevailing wages and supplemental benefits to its laborers, workers and mechanics in the amount of \$34,079.85 on the Project 1, PRC No.: 2020004680, for the audit period weeks ending September 6, 2020, through week ending November 8, 2020; and

DETERMINE that Respondents, underpaid prevailing wages and supplemental benefits to its laborers, workers and mechanics in the amount of \$24,780.11 on the Project 2, PRC No.: 2020003142, for the audit period weeks ending January 3, 2020, through week ending July 12, 2022; and

DETERMINE that David Friedlander and Dina Taylor are owners and officers of Casa Builders who knowingly participated in the violation of Labor Law Article 8 on the two Projects at issue; and

DETERMINE that David Friedlander and Dina Taylor are two of the top five shareholders of Casa Builders; and

DETERMINE that David Friedlander owned or controlled at least ten per centum of the outstanding stock of Casa Builders; and

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

DETERMINE that the willful violation of Respondents on Project 1 involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that the failure of the Respondents to pay the prevailing wage or supplement rates on each project was a separate and distinct “willful” violation of Labor Law article 8; and

DETERMINE that Friedlander Construction is a “substantially owned-affiliated entity, subsidiary and/or successor corporation” of Casa Builders Construction, LLC. as defined in Section 220 (5)(g, j and k) of the Labor Law.; and

DETERMINE, that as a result of Respondents knowing willful participation in the falsification of payroll records within the meaning of Section 220-b(3)(b) of the Labor Law on Project 1, and the separate and distinct willful violations that occurred on both projects, both of the entities (Casa Builders Construction LLC and Friedlander Construction) as well as the individuals (David Friedlander and Dina Taylor) are 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 from the issuance of the Order & Determination associated with this report; and

DETERMINE that Respondents are responsible for any underpayment of wages or supplemental benefits determined to be owed on both of the projects; 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 both projects 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 are assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due on both projects; and

ORDER that the Bureau compute the total amount due on Project 1, (interest accrued at 16% interest from date of underpayment to the date of payment and 25% civil penalty); and

ORDER that Respondents receive a credit of \$24,780.11, as well any interest applied, pursuant to the direct payment made by the bonding company, United States Fire Insurance Company, to the workers performing work on the Project 2; and

ORDER that the Bureau compute the total amount due on Project 2 and assess the amount of civil penalty that should be applied to that project at the Department's requested amount of 25% of the underpayment and interest calculated to be due; and

ORDER that if either of the Department of Jurisdictions are withholding any additional funds against the Respondents, that they remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation

of the total amount due, by forwarding the same to the Bureau at: State Office Building Campus, Bldg. 12, Room 130, Albany, NY 12240; and

ORDER that if the withheld amount is insufficient to satisfy the total amount due Respondents upon the Bureau's notification of the deficit amount, shall immediately remit the outstanding balance, made payable to the Commissioner of Labor, to the Bureau at the aforesaid address; and

ORDER that the Bureau compute and pay the appropriate amount due for each employee on Project 1, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: May 10, 2023
Albany, New York

Respectfully Casa Builders mitted,



Marshall H. Day, Hearing Officer