

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

CASTLE GOLF, INC.
Prime Contractor

and

MAX THORNTON,
Individually as an officer and as one who owns or controls
ten percent of the shares of

CASTLE GOLF, INC.

for a determination, pursuant to Article 8 of the Labor Law,
whether prevailing wages and supplements were paid to or
provided for the laborers, workers, and mechanics employed
on a public work project for the Eldridge Park Carousel
Preservation Society, Inc.

DEFAULT REPORT
&
RECOMMENDATION

**Prevailing Rate Case
Case No. 2010004169
Chemung County**

To: Honorable Colleen Gardner
 Commissioner of Labor
 State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on March 22, 2011. 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 Castle Golf, Inc., Max Thornton, President ("Prime"), complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a public work contract involving construction of a miniature golf course ("Project") for the City of Elmira ("Department of Jurisdiction").

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito Richard Cucolo, Senior Attorney, of Counsel.

The Department provided proof of service of the Notice of Hearing on Prime via regular and certified mail through an affidavit of service and a signed United States Postal Service Domestic Return Receipt (HO Ex. 1). The Notice of Hearing scheduled a March 22, 2011, hearing and required the Respondent to serve an Answer at least 14 days in advance of the scheduled hearing. There were no appearances made by, or on behalf of Prime, nor did Prime file an Answer. Accordingly, Prime is in default.

FINDINGS AND CONCLUSIONS

The Notice of Hearing alleges that the Prime underpaid wages and supplements to its workers on the Project. At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents describing the underpayments, supporting the Bureau's charges that Prime willfully underpaid \$46,830.92 to four workers for the audit period weeks ending April 10, 2010 to June 5, 2010.

The Department also proved that Max Thornton is an officer of Prime and a shareholder of Prime who owned or controlled at least ten per centum of the outstanding stock of Prime.

Although the Department issued a Notice to Withhold Payment to the Department of Jurisdiction, there is no money withheld for the Project.

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 Prime underpaid four of its workers \$46,830.92 on the Project; and

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

DETERMINE that Max Thornton is an officer of Prime; and

DETERMINE that Max Thornton is a shareholder of Prime who owned or controlled at least ten per centum of the outstanding stock of Prime; and

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

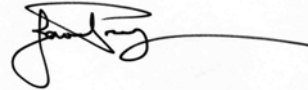
ORDER that the Bureau compute the total amount due (underpayment of \$46,820.92, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that upon the Bureau’s notification, Prime shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau office at the following address: SOB 44 Hawley Street Room 908, Binghamton, NY 13901; 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: April 18, 2011
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerome Tracy", with a long horizontal flourish extending to the right.

Jerome Tracy, Hearing Officer