

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

EASTLAND CONSTRUCTION, INC.

Prime Contractor

and

CHEROMIN CONSTRUCTION, INC.

and/or its substantially owned-affiliated entity,

CHEROMINO CONTROL GROUP LLC ,

MINNIE RADOJEVIC, and DRAGOGUB RADOJEVIC,

as officers and shareholders,

RESPONDENTS

A proceeding pursuant to Article 8 of the Labor Law to determine whether a contractor paid the rates of wages or provided the supplements prevailing in the locality to workers employed on a public work project.

**REPORT &  
RECOMMENDATION  
ON STIPULATION**

Prevailing Rate Case  
05-03122 Rockland County

To: Honorable M. Patricia Smith  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on November 12, 2009. 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 Cheromin Construction, Inc. ("Cheromin") and/or its alleged substantially owned-affiliated entity Cheromin Control Group LLC, a subcontractor of Eastland Construction, Inc. ("Eastland") complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a public work contract involving the addition to and renovation of the South Orangetown Middle School ("Project") for the South Orangetown Central School District ("School District").

## **APPEARANCES**

The Bureau was represented by Department Counsel, Maria Colavito (Marshall H. Day, Senior Attorney, of Counsel). There was no appearance made by, or on behalf of the prime contractor, Eastland. Cheromin appeared by its vice-president, Dragogub Radojevic.

## **FINDINGS AND CONCLUSIONS**

On July 27, 2007, the Department duly served a copy of the Notice of Hearing on Cheromin, Dragogub Radojevic, Minnie Radojevic, and Eastland. After a number of adjournments, the matter was scheduled for a November 12, 2009 hearing pursuant to a Notice of Rescheduled Hearing duly served on Cheromin, Dragogub Radojevic, Minnie Radojevic, and Eastland. Eastland signed a U.S. Postal Domestic Return Receipt Card evidencing its receipt of the aforesaid rescheduling notice. Eastland also signed a U.S. Postal Domestic Return Receipt Card evidencing its receipt of the aforesaid Notice of Hearing. The Notice of Hearing required that the Respondents serve an Answer at least 14 days in advance of the scheduled hearing. The Notice of Hearing alleges that the Cheromin underpaid wages and supplements to its workers and that Eastland is responsible for its subcontractor's underpayment pursuant to Labor Law § 223. Eastland failed to file an Answer to the charges contained in the Notice of Hearing and did not appear at the hearing to contest its contractual relationship with Cheromin or the existence or extent of its subcontractor's underpayments. As a consequence, Eastland is in default in this proceeding.

At the hearing the Department produced an executed written stipulation of settlement between the Department and Cheromin, Dragogub Radojevic and Minnie Radojevic, stipulating that Cheromin willfully underpaid \$8,352.02 to its workers for the audit period weeks-ending August 14, 2005 to September 4, 2005, which sum it paid directly to its workers prior to the execution of the stipulation. That left a stipulated balance due for interest on the underpayment of \$244.11 (computed at a rate of 10% through December 5, 2005) and a civil penalty of \$1,719.23 (20% of the total amount

due), for a total outstanding amount due of \$1,963.34. That stipulation further provided that the actions of Minnie and Dragogub Radojevic constituted a willful violation of Article 8 of the Labor Law. The stipulation made no findings concerning the alleged substantially owned-affiliated entity Cheromin Control Group LLC. A copy of that stipulation is annexed hereto as Exhibit "A." Dragogub Radojevic also testified at the hearing that Cheromin performed work on the project pursuant to a subcontract with Eastland.

During the course of its investigation, the Bureau served a notice to withhold payment to the School District but was advised that no funds were withheld pursuant to that notice. As a result, the Bureau then served a cross-withholding notice on the Hartsdale Fire District, where Eastland had another contract, and was advised by the Fire District that \$20,012.83 is being withheld pursuant to that notice.

### **RECOMMENDATIONS**

Based upon the stipulation between the Department and Cheromin, Dragogub Radojevic and Minnie Radojevic, and the default of the Respondent Eastland 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 Cheromin underpaid its workers \$8,352.02 on the Project;

DETERMINE that Cheromin paid its workers directly the sum of \$8,352.02 on account of the aforesaid underpayment;

DETERMINE that Cheromin is responsible for interest on the total underpayment at the stipulated rate of 10% per annum in the amount of \$244.11;

DETERMINE that the failure of Cheromin to pay the prevailing wage or supplement rate, and the actions of Dragogub Radojevic and Minnie Radojevic in connection therewith, constitute a "willful" violation of Article 8 of the Labor Law on each of their parts;

DETERMINE that Cheromin be assessed a civil penalty in the stipulated amount of 20% of the underpayment and interest due totaling \$1,719.23;

DETERMINE that, pursuant to Labor Law § 223, Eastland is responsible for the outstanding interest and civil penalty due in the total amount of \$1,963.34; and

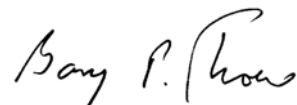
ORDER that Hartsdale Fire District remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau at 120 Bloomingdale Road, Room 204, White Plains, NY 10605;

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Eastland, 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 the Project, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: November 20, 2009  
Albany, New York

Respectfully submitted,

A handwritten signature in black ink that reads "Gary P. Troue". The signature is written in a cursive style with a large, looping initial "G".

Gary P. Troue, Hearing Officer