

In the Matter of

CAMBRIA CONTRACTING INC., and  
FRANCIS V. BARONE, JR. and TRICIA L. BARONE  
as officers and/or shareholders of  
CAMBRIA CONTRACTING INC.,

**DEFAULT**  
**REPORT**  
**&**  
**RECOMMENDATION**

Prime Contractor,

and

CJ-HEARNE CONSTRUCTION CO.;  
THE DALRYMPLE CORPORATION;  
CHRISTINE J. HEARNE, and  
HENRY VAN DALRYMPLE, as officers and/or  
shareholders of either CJ-HEARNE CONSTRUCTION CO.  
and THE DALRYMPLE CORPORATION; and THE  
DALRYMPLE GROUP, LLC, a substantially owned-  
affiliated entity of THE DALRYMPLE 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 laborers, workers and mechanics  
employed on a public work project known as the renovation  
of the Midtown Plaza Complex, in Rochester,  
New York.

Prevailing Wage Rate  
PRC No. 009000439  
Case ID: PW05 -2010014439  
Monroe County

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To: Honorable Mario J. Musolino  
Acting Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued on August 25, 2015, a hearing was held on October 20, 2015, in Albany, New York and by videoconference with Rochester 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 CJ Hearne Construction Co., and the Dalrymple Corporation ("Sub"), joint subcontractors of Cambria Contracting, Inc. ("Prime") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving renovation of the Midtown Plaza Complex in Rochester, New York ("Project") for the New York State Urban Development Corporation, doing business as Empire State Development Corporation ("Department of Jurisdiction").

### **APPEARANCES**

The Bureau was represented by Department Counsel, Pico Ben-Amotz, (Elina Matot, Senior Attorney, of Counsel)

There was no appearance made by, or on behalf of Sub.

Prime did not appear at the hearing; however, Prime and the Department entered into a Stipulation (HO 5), the terms and conditions of which are set forth below.

### **FINDINGS AND CONCLUSIONS**

On October 2, 2015, the Department personally served a copy of the Notice of Hearing on Sub's designated agent of service (HO 3). The Notice of Hearing scheduled a hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

Sub failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, Sub is in default in this proceeding.

The Notice of Hearing alleges that Sub underpaid wages and supplements to its workers and that Prime is responsible for Sub's underpayment pursuant to Labor Law § 223.

Prior to the hearing, Prime paid \$8,037.14 of the amount alleged by the Department to be owed by Sub as an underpayment to Sub's workers, which amount represented the wages, supplements and a portion of the interest determined by the Bureau to be owed to Sub's workers. Prime stipulated to pay to the Commissioner of Labor an additional amount of \$760.98 in interest and \$2,080.70 in civil penalty, which the Department agreed would result in the full satisfaction of Prime's liability under Labor Law article 8 (HO 5)

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:

The Project was subject to Labor Law article 8; and

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

Sub – meaning both CJ Hearne Construction Co., and the Dalrymple Corporation – jointly entered into a contract with Prime for work on the Project; and

Sub willfully underpaid \$7,889.40 to its workers for the audit period weeks ending 11/15/2009 to 2/14/2010; and

Sub falsified its payroll records in connection with that willful underpayment; and

Henry Dalrymple is the Chief Executive Officer, Chief Financial Officer, Secretary, and Agent of Sub The Dalrymple Corporation; Henry Dalrymple is also the Member Manager of The Dalrymple Group, LLC; and

For the foregoing reasons, the findings, conclusions and determinations of the Bureau should be sustained.

## **RECOMMENDATIONS**

Based upon the default of the Sub 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 the 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 Sub underpaid \$7,889.40 to its workers for the audit period weeks ending 11/15/2009 to 2/14/2010; and

DETERMINE that Sub 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 Sub is responsible for a civil penalty of 15% of the total underpayment plus interest; and

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

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

DETERMINE that The Dalrymple Group, LLC is a “substantially owned-affiliated entity” of Sub;

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

ORDER that upon complete performance of the Stipulation entered into between Prime and the Department, Prime will have fully satisfied its liability under Labor Law article 8; and

ORDER that Sub shall receive a credit for the amounts paid by Prime.

Dated: December 1, 2015  
Albany, New York

Respectfully submitted,

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

Jerome Tracy, Hearing Officer