

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

ECOА CLEANING CONTRACTORS, INC., and
Charles Aibangbee and Adesuwa Uwuigbe, as officers
and/or shareholders of ECOА CLEANING
CONTRACTORS, INC.,

**DEFAULT REPORT &
RECOMMENDATION**

Prime Contractor,

for a determination pursuant to Article 9 of the Labor Law
as to whether prevailing wages and supplements were
paid to or provided for the building service employees
employed on a public building service project for the
Greenbush Eleven UFSD, in Dobbs Ferry, New York.

Prevailing Wage Rate
PRC No.: 2010900286
Case ID No:PW11 2012002870
Westchester 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 November 7, 2023, a videoconference hearing was held on December 20, 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 ECOА Cleaning Contractors, Inc., and Charles Aibangbee and Adesuwa Uwuigbe, as officers and/or shareholders of ECOА Cleaning Contractors, Inc.; (hereafter all known as: "Respondents" or "ECOА Cleaning"), complied with the requirements of Article 9 of the Labor Law (§§ 230 *et seq.*) to pay or provide the prevailing rates of wages and supplements to building service

employees employed in the performance of a public building service contract they were involved in. The captioned matter involved a building service contract between Respondents and the Greenburgh Eleven Union Free School District, (hereinafter “School District”) in Dobbs Ferry, New York.

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 Respondents.

FINDINGS AND CONCLUSIONS

On November 17, 2023, the Department duly served a copy of the Notice of Hearing on Respondents, via regular and certified mail, return receipt requested (Hearing Officer Exs. 1 and 2). The Notice of Hearing scheduled a hearing on December 20, 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 workers performing janitorial services pursuant to the public building service contract (“Project”) with the named Department of Jurisdiction during the said 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 9; and

Respondents entered into a building service contract with the School District to provide the labor, material and/or services necessary to perform janitorial services on the Project under the terms of that agreement; and

Respondents failed to pay or provide the proper prevailing wages and supplemental benefits to its workers on the Project; and

Respondents willfully underpaid \$4,189.57 in wages and supplemental benefits to its workers for the audit period from week ending August 28, 2010 through week ending July 30, 2011; and

Respondents failed to pay its workers for all hours worked, overtime wages and/or supplemental benefit increases when due.^{1, 2} and

Respondents falsified its payroll records in connection with that willful underpayment on the Project³; and

GENERAL FINDINGS

Charles Aibangbee and Adesuwa Uwuigbe are officers of ECOA Cleaning; and

Charles Aibangbee and Adesuwa Uwuigbe are two of the top five shareholders of ECOA Cleaning; and

¹ The initial 2011 claim was filed with the Division of Labor Standards and later forwarded to the Bureau for the Project intimated that one of the workers was not paid wages for a total of twenty-five hours for week ending December 25, 2010, ten hours for week ending December 31, 2010 and four hours for week ending January 1, 2011.

² The certified payrolls maintained by the Respondents on Project indicate that the Respondents paid straight time for all hours worked rather than paying the overtime rates when required for working more than eight hours in one day, forty hours in one week or working on a sixth consecutive day. Also, the Respondents failed to pay supplemental wage increases due on designated employee's anniversary dates.

³ Respondents certified that all the supplemental benefits provided to its workers were paid into a benefit plan, when in fact they were not according to the record. Additionally, some of the hours listed in the certified payrolls did not match the time listed in the timesheets and sign-in sheets garnered from the School District.

Aibangbee and Adesuwa Uwuigbe owned or controlled at least ten per centum of its outstanding stock of ECOA Cleaning; and

Charles Aibangbee and Adesuwa Uwuigbe knowingly participated in the violation of Labor Law Article 9, and this violation included the falsification of payroll records on the Project; and

Between 2013 and 2019, there was an unreasonable delay in the Bureau's investigation and prosecution of the case⁴.

The Bureau used certified payroll records, a wage statement, a W-2, a LS-223 claim form, interviews with workers, time sheets, sign in sheets, and the bid package to determine the classification of work, the days and hours worked and wage/supplement rates paid to each employee, and the Bureau compared the wages/supplemental rates contained in the certified payrolls 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 the Project; and

The Respondents were an experienced public work contractor, who initially provided some information during the investigation of the Project, however as the investigation progressed failed to offer any evidence that it paid the correct wages and supplemental benefits that were owed to its workers on Project, instead the Bureau had to secure the records necessary to complete their investigation from the School District and the individuals involved in this case. ECOA Cleaning was a medium sized 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 for overtime on the Project. I find the totality of the evidence in the record as a whole sufficient

⁴ The witness testified he took over the matter from a prior investigator in October of 2019, and the last identifiable document evidencing an active investigation prior to that date occurred in 2013 when a Notice of Labor Law Inspection Findings was issued by the original investigator.

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 on the Project as well (carving out the noted period of inactivity of the investigation).

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 Respondents, underpaid prevailing wages and supplemental benefits to its laborers, workers and mechanics in the amount of \$4,189.57 on the Project, for the audit period week ending August 28, 2010 through week ending July 30, 2011; and

DETERMINE that Charles Aibangbee and Adesuwa Uwuigbe are owners and officers of ECOA Cleaning who knowingly participated in the violation of Labor Law Article 9 on the Project at issue; and

DETERMINE that Charles Aibangbee and Adesuwa Uwuigbe are two of the top five shareholders of ECOA Cleaning; and

DETERMINE that Charles Aibangbee and Adesuwa Uwuigbe owned or controlled at least ten per centum of the outstanding stock of ECOA Cleaning; 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 9; and

DETERMINE that the willful violation of Respondents on the Project involved the falsification of payroll records under Labor Law Article 9; and

DETERMINE, that as a result of Respondents' knowing willful participation in the

falsification of payroll records within the meaning of Section 237 (7) of the Labor Law on the Project, that both the entity (ECO Cleaning Contractors, Inc.) as well as the individuals (Charles Aibangbee and Adesuwa Uwuigbe) 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 the Project; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 9, 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, EXCEPT THAT, because of the Department's delay in proceeding with a hearing in a timely manner, interest shall be TOLLED for the period of six years from October 2013 through October 2019; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 9, Respondents are assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due on the Project; and

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

ORDER that if the Department of Jurisdiction is withholding any funds against the Respondents, that they immediately release and 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: The Maple Building, 3 Washington Ctr., 4th Floor, Newburgh, New York 12550; and

ORDER that if no funds are being withheld by the Department of Jurisdiction, or the funds withheld are insufficient to satisfy the total amount due, that upon the Bureau's notification, the Respondents shall immediately remit payment of the total amount calculated by the Bureau to be due. The remittance should be made payable to the Commissioner of Labor, and sent to the Bureau at: Bureau of Public Work, New York State Department of Labor, The Maple Building, 3 Washington Center, 4th Floor Newburgh, NY 12550; 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: February 7, 2023
Albany, New York

Respectfully ECOA Cleaning mitted,

A handwritten signature in blue ink, appearing to read "Marshall H. Day". The signature is written in a cursive style with a large, sweeping initial "M".

Marshall H. Day, Hearing Officer