

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

EMJACK CONSTRUCTION LLC, and  
EMIL KISZKO and WILLIAM SCRIVENS as officers  
and or members of EMJACK CONSTRUCTION LLC,  
and its successor or substantially owned-affiliated entity,  
EMJACK CONSTRUCTION CORP.,

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  
Reroof EPDM & Government Center Project for the  
County of Sullivan in Monticello, New York.

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To: Honorable Roberta Reardon  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Adjournment and Rescheduled Hearing issued by the  
Administrative Adjudication Unit on March 19, 2024, a videoconference hearing was held on  
July 9, 2024, 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 Emjack  
Construction LLC, Emil Kiszko and William Scrivens, as officers and/or members of Emjack

**DEFAULT REPORT &**

**RECOMMENDATION**

Prevailing Wage Rate  
PRC No. 2018007642  
Case ID: PW02 2019007851  
Sullivan County

Construction LLC, and its successor or substantially owned-affiliated entity, Emjack Construction Corp.; (hereafter all known as: “Respondent” or “Respondents”), complied with the requirements of Article 8 of the Labor Law (§§ 220 et seq.) in the performance of a public work contract it was involved in, the project being: the furnishing of materials, labor, tools and equipment necessary for the re-roof at the EPDM & Government Center in the Village of Monticello, County of Sullivan, State of New York under PRC #: 2018007642 (“Project”).

### **HEARING OFFICER**

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

### **APPEARANCES**

The Bureau was represented by (Larissa C. Justin, Associate Attorney, of Counsel), Department General Counsel, Jill Archambault.

Respondent, Emil Kiszko, appeared through its attorneys, Sabaj Law Firm (Donald Pitofsy, Esq., of counsel).

There was no appearance made by, and on behalf of the Respondent, William Scrivens “Scrivens”).

### **FINDINGS AND CONCLUSIONS**

On November 27, 2023, the Department duly served a copy of the Notice of Hearing on the Respondents, via regular and certified mail, return receipt requested (Hearing Officer Exs. 1, 2). On February 12, 2024, the Department then duly served a copy of an Amended Notice of Hearing on all Respondents, via regular and certified mail, return receipt, adding the Respondent, William Scrivens, as one of the responsible parties in the proceeding (Hearing Officer Exs. 4, 5). The Amended Notice of Hearing scheduled a hearing on April 3, 2024, April 4, 2024, and April 5, 2024, and required the Respondents to serve an Answer at least fourteen days in advance of the scheduled hearing. At the request of the participating parties that hearing was later adjourned until July 9, 2024, July 10, 2024 and July 11, 2024.

Respondent, Emil Kiszko, by and through its attorney, filed an Answer, on behalf of himself and Emjack, to the charges contained in the Notice of Hearing and counsel appeared on their behalf at the hearing. (Hearing Officer Ex. 7)

Respondent, Scrivens, failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. Consequently, Respondent, Scrivens, is in default in this proceeding.

The Notice of Hearings allege that Respondents willfully failed to pay prevailing wages and supplemental benefits to its laborers, workers and mechanics employed in the performance of the public work contract with the Department of Jurisdiction during the said claim period.

Prior to the hearing, Respondent Kiszko, entered into a stipulation with the Department wherein it agreed to make restitution of the full amount of underpaid wages and supplements to its' workers, together with interest in the amount of ten (10) percent per annum and a twenty (20) percent civil penalty, which payment the Bureau deemed would be sufficient to resolve the Respondent Kiszko's Article 8 liability. Respondent also acknowledged the willful nature of the underpayment and the falsification of payroll records associated with the project<sup>1</sup>.

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 8; and

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

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

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<sup>1</sup> The terms of the agreement were read into the record, and were later reduced to writing and So Ordered and Determined by the Commissioner of Labor. After reaching a resolution of Mr. Kiszko's obligation under Labor Law Article 8, the Department moved to advance the hearing to assess the liability of the second member of the LLC, Mr. Scrivens.

Respondents willfully underpaid \$116,359.66 in wages and supplemental benefits to its workers for the audit period from week ending September 29, 2019 through week ending January 5, 2020; and

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

Emil Kiszko and William Scrivens are members of Emjack Construction LLC; and

Emil Kiszko and William Scrivens are officers who knowingly participated in the violation of Labor Law Article 8 on the Project, and this violation included the falsification of payroll records on the Project; and

Emjack Construction Corp. is a substantially owned-affiliated entity or successor corporation to Emjack Construction LLC.

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

## **RECOMMENDATIONS**

Based upon the stipulation read into the hearing record, and the default of the Respondent, William Scrivens, 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 weight of the evidence set forth in 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 \$116,359.66 on the Project for the audit period weeks ending September 29, 2019, through week ending January 5, 2020; and

DETERMINE that Emil Kisko and William Scrivens are members and officers of Emjack who knowingly participated in the violation of Labor Law Article 8 on the Project at issue; 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 8; and

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

DETERMINE that Emjack Construction Corp. is a substantially owned-affiliated entity or successor corporation to Emjack Construction LLC, as defined in Section 220 (5)(g 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 the Project at issue, both of the entities (Emjack Construction LLC and Emjack Construction Corp.) and the individuals (Emil Kiszko and William Scrivens) 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, both of the entities (Emjack Construction LLC and Emjack Construction Corp.) and the individuals (Emil Kiszko and William Scrivens), are responsible for any underpayment of wages or supplemental benefits determined to be owed on the Project; and

DETERMINE that Respondents are responsible for interest on the total underpayments on the Project at the agreed stipulated rate of 10% per annum from the date of underpayment to the date of payment; and

DETERMINE that based on the agreed stipulated rate, Respondents are assessed a civil penalty of 20% of the underpayment and interest due on the Project; and

DETERMINE that based on the agreed stipulated **non-default** rate, the total wages, supplements, interest and civil penalty due by Respondents for the Project totals \$205,673.68; and

ORDER that the terms of the So Ordered and Determined Stipulation entered into by the parties and executed by the Commissioner of Labor on July 18, 2024 be incorporated by

reference and made part of the subsequent final Determination and Order made by the Commissioner in this matter; and

ORDER that the Respondents shall remit payment of the total amount calculated by the Bureau to be due by the terms outlined in the So Ordered and Determined Stipulation mentioned above. The remittance should be made payable to the Commissioner of Labor, and sent to the Bureau at: Stephen Barber, Supervising Public Work Investigator, Bureau of Public Work, New York State Department of Labor, State Office Building, 44 Hawley Street, Room 908, Binghamton, New York 13901; and

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

Dated: September 6, 2024  
Albany, New York

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marshall H. Day".

Marshall H. Day, Hearing Officer