

In the Matter of

FRESH START PAINTING CORP. and GREGORY A. FUCCI, GREGORY FUCCI, JR., and EFTHIMIA AHLADIS a/k/a EFFIE AHLADIS, Individually and as officers and shareholders of the corporation; G. FUCCI PAINTING, INC. as a successor or substantially owned-affiliated entity, and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; PAF PAINTING CORP. as a successor or substantially owned-affiliated entity; PROFESSIONAL ESTIMATING & BUSINESS CORP. as a successor or substantially owned-affiliated entity, and GREGORY FUCCI, JR., Individually and as an officer and shareholder of the corporation; APOLLO PAINTING CORP., as a successor or substantially owned-affiliated entity, and GREGORY A. FUCCI, and GREGORY FUCCI, JR., Individually and as officers and shareholders of the corporation; APOLLO CONSTRUCTION SERVICES CORP., as a substantially-owned affiliated entity, and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; G. FUCCI PAINTING, INC., as a substantially-owned affiliated entity, and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; G FUCCI CONSTRUCTION SERVICES CORP., as a substantially-owned affiliated entity, and GREGORY FUCCI, JR., Individually and as an officer and shareholder of the corporation; PAF PAINTING SERVICES INC. d/b/a GARDEN STATE PAINTING, as a substantially-owned affiliated entity, and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; PAF PAINTING CORP., as a substantially-owned affiliated entity; P.A.F. PAINTING SERVICES OF WESTCHESTER, INC., as a substantially owned-affiliated entity; and GAF PAINTING, LLC, as a substantially owned-affiliated entity, and GREGORY A. FUCCI, Individually as an officer and member of the corporation;

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 workers employed on a public work project known as the Painting of the Crompond Intermediate School, in the Town of Yorktown Heights

**REPORT
&
RECOMMENDATION**

Prevailing Rate Case
Case No. 2011009055
PW 08 2011012101

In the Matter of

WORTH CONSTRUCTION CO., INC. and
WILLIAM S. DIZENZO, Individually as one of the five largest
shareholders of the corporation

Prime Contractor;
And

G. FUCCI PAINTING, INC., and GREGORY FUCCI, Individually,
and as President and one of the five largest shareholders of the
corporation; PAF PAINTING CORP., as a substantially-owned
affiliated entity; PROFESSIONAL ESTIMATING & BUSINESS
CORP. as a successor or substantially owned-affiliated entity, and
GREGORY FUCCI, JR., Individually and as an officer and
shareholder of the corporation; APOLLO PAINTING CORP., as a
successor or substantially owned-affiliated entity, and GREGORY
A. FUCCI, and GREGORY FUCCI, JR., Individually and as
officers and shareholders of the corporation; APOLLO
CONSTRUCTION SERVICES CORP., as a substantially-owned
affiliated entity, and GREGORY A. FUCCI, Individually and as an
officer and shareholder of the corporation; G FUCCI
CONSTRUCTION SERVICES CORP., as a substantially-owned
affiliated entity, and GREGORY FUCCI, JR., Individually and as an
officer and shareholder of the corporation; PAF PAINTING
SERVICES INC. d/b/a GARDEN STATE PAINTING, as a
substantially-owned affiliated entity, and GREGORY A. FUCCI,
Individually and as an officer and shareholder of the corporation;
PAF PAINTING CORP., as a substantially-owned affiliated entity;
and P.A.F. PAINTING SERVICES OF WESTCHESTER, INC., as a
substantially owned-affiliated entity; FRESH START PAINTING
CORP., as a substantially owned-affiliated entity, and GREGORY
A. FUCCI, GREGORY FUCCI, JR., and EFTHIMIA AHLADIS
a/k/a EFFIE AHLADIS, Individually and as officers and
shareholders of the corporation; and GAF PAINTING, LLC, as a
substantially owned-affiliated entity, and GREGORY A. FUCCI,
Individually as an officer and member of the 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 workers employed on a public work project known as the
Construction of Kaplan Hall, at SUNY Orange Washington Center,
in Newburgh.

Prevailing Rate Case
Case No. 2009004232
PW 11 2010028035

Orange County

STATE OF NEW YORK DEPARTMENT OF LABOR

In the Matter of

ROK-BUILT CONSTRUCTION INC., STEPHEN FERRI, and ANGELO FERRI, Individually, and as officers and among the five largest shareholders of the corporation

Prime Contractor;
and

GAF PAINTING, LLC, and GREGORY A. FUCCI, Individually as an officer and member of the corporation; APOLLO CONSTRUCTION SERVICES CORP., d/b/a APOLLO PAINTING CO., and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; APOLLO PAINTING CORP., as a substantially owned-affiliated entity, and GREGORY A. FUCCI, and GREGORY FUCCI, JR., Individually and as officers and shareholders of the corporation; G. FUCCI PAINTING, INC., as a successor or substantially owned-affiliated entity, and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; G FUCCI CONSTRUCTION SERVICES CORP., as a successor or substantially owned-affiliated entity, and GREGORY FUCCI, JR., Individually and as an officer and shareholder of the corporation; PAF PAINTING SERVICES INC. d/b/a GARDEN STATE PAINTING, as a successor or substantially owned-affiliated entity, and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; PAF PAINTING CORP., as a successor or substantially owned affiliated-entity; P.A.F. PAINTING SERVICES OF WESTCHESTER, INC., as a successor or substantially owned-affiliated entity; FRESH START PAINTING CORP., as a successor or substantially owned-affiliated entity, and GREGORY A. FUCCI, GREGORY FUCCI, JR., and EFTHIMIA AHLADIS a/k/a EFFIE AHLADIS, Individually and as officers and shareholders of the 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 workers employed on a public work project known as the renovation of the Pearls Hawthorne School, in Yonkers

Prevailing Wage Rate
Case No. 2008008397
PW 08 2010021890

Westchester County

In the Matter of

MASTERCRAFT MASONRY I, INC., and
LOUIS TANTILLO, Individually, and as an officer and
one of the five largest shareholders of the corporation

Prime Contractor;
And

GAF PAINTING, LLC d/b/a PAF PAINTING, and GREGORY A. FUCCI, Individually as an officer and member of the corporation; APOLLO CONSTRUCTION SERVICES CORP., d/b/a APOLLO PAINTING CO., and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; APOLLO PAINTING CORP., as a substantially owned-affiliated entity, and GREGORY A. FUCCI, and GREGORY FUCCI, JR., Individually and as officers and shareholders of the corporation; G. FUCCI PAINTING, INC., as a successor or substantially owned-affiliated entity, and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; G FUCCI CONSTRUCTION SERVICES CORP., as a successor or substantially owned-affiliated entity, and GREGORY FUCCI, JR., Individually and as an officer and shareholder of the corporation; PAF PAINTING SERVICES INC. d/b/a GARDEN STATE PAINTING, as a successor or substantially owned-affiliated entity, and GREGORY A. FUCCI, Individually and as an officer and shareholder of the corporation; PAF PAINTING CORP., as a successor or substantially owned affiliated-entity; and P.A.F. PAINTING SERVICES OF WESTCHESTER, INC., as a successor or substantially owned-affiliated entity; FRESH START PAINTING CORP., as a successor or substantially owned-affiliated entity, and GREGORY A. FUCCI, GREGORY FUCCI, JR., and EFTHIMIA AHLADIS a/k/a EFFIE AHLADIS, Individually and as officers and shareholders of the 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 workers employed on a public work project known as the additions and alterations to the Rondout Valley Middle and High Schools, in Accord

Prevailing Rate Case
Case No. 2008008505
PW 08 2010027624

Ulster County

To: Honorable Peter M. Rivera
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing a hearing was held in the above-captioned matters in Albany, New York and by videoconference in White Plains, New York. The hearing commenced on November 29, 2012, and continued on November 30, December 14, January 29, 2013, February 7, May 16 and 17, July 9 and 16, and concluded on July 29, 2013. The purpose of the hearing was to provide the parties with 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 Fresh Start Painting Corp. and Gregory A. Fucci, Gregory Fucci, Jr.¹, individually and as officers and shareholders of the corporation; G. Fucci Painting, Inc., as a successor or substantially owned-affiliated entity, and Gregory A. Fucci, individually and as an officer and shareholder of the corporation; PAF Painting Corp., as a successor or substantially owned-affiliated entity; Professional Estimating & Business Corp., as a successor or substantially owned-affiliated entity, and Gregory Fucci, Jr., individually and as an officer and shareholder of the corporation; Apollo Painting Corp., as a successor or substantially owned-affiliated entity, and Gregory A. Fucci , and Gregory Fucci, Jr., individually and as officers and shareholders of the corporation; Apollo Construction Services Corp., as a substantially-owned affiliated entity, and Gregory A. Fucci, individually and as an officer and shareholder of the corporation; G. Fucci Painting, Inc., as a substantially-owned affiliated entity, and Gregory A. Fucci, individually and as an officer and shareholder of the corporation; G Fucci Construction Services Corp., as a substantially-owned affiliated entity, and Gregory Fucci, Jr., individually and as an officer and shareholder of the corporation; PAF Painting Services Inc. d/b/a Garden State Painting, as a substantially-owned affiliated entity, and Gregory A. Fucci, individually and as an officer and shareholder of the corporation; PAF Painting Corp, as a substantially-owned affiliated entity; P.A.F. Painting

¹ The Department, in the original Notice of Hearing, included Efthimia Ahladis a/k/a Effie Ahladis individually and as an officer and shareholder of Fresh Start Painting Corp; on the opening day of the hearing, Department counsel stated that the Department withdrew and discontinued any claims against this individual (T. 6).

Services of Westchester, Inc., as a substantially owned-affiliated entity; and GAF Painting, LLC, as a substantially owned-affiliated entity, and Gregory A. Fucci, individually and as an officer and member of the corporation (“Sub”) a subcontractor or prime contractor on four public work projects, complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*). The projects in questions are a contract with Sub for the painting of the Crompond Intermediate School (“Project 1”) for the Yorktown Central School District in the Town of Yorktown Heights, New York (“Yorktown”); a contract between Worth Construction Co., Inc. (“Worth”) as prime contractor, and Sub for construction of Kaplan Hall at the State University of New York (“SUNY”) in Newburgh, New York (“Project 2”); a contract between Rok-Built Construction Inc. (“Rok-Built”) as prime contractor and Sub for the renovation of the Pearls Hawthorne School for the Yonkers Central School District (“Yonkers”), in Yonkers, New York (“Project 3”), and, a contract between Mastercraft Masonry I Inc. (“Mastercraft”) as prime contractor and Sub for additions and alterations to the Rondout Valley Middle and High Schools, in Accord, New York (Project 4”).

APPEARANCES

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz with Louise Roback, Senior Attorney, of counsel. During the course of the hearing Ms. Roback left her position with the Department and, beginning with hearing date May 16, 2013, Louis Renzi, Senior Attorney, appeared of counsel.

Sub appeared with its attorney, Christopher Smith, Esq.,² and filed an Answer to the charges incorporated in the Notice of Hearing (HO 6).

Worth appeared with its attorney, Allan M. Bahn, Esq. and filed an Answer to the charges incorporated in the Notice of Hearing (HO 9).

Rok-Built appeared with its attorney, Alexander A. Miuccio, Esq., and filed an Answer to the charges incorporated in the Notice of Hearing (HO 10).

Mastercraft appeared with its attorney, Faga Savino, LLP, Daniel S. Szalkiewicz, Esq., and Robert Siano, Esq., of Counsel, and filed an Answer to the charges incorporated in the Notice of Hearing (HO 7, 8).

² Towards the end of the proceeding, Mr. Smith’s colleague Elizabeth Mondschein, Esq., appeared on his behalf.

ISSUES

Subsequent to the conclusion of the hearing and prior to the issuance of this Report and Recommendation, the Department, Sub, Worth, Rok-Built, and Mastercraft entered into a stipulation which incorporated an Order of the Commissioner and was filed on January 22, 2014 (“the Agreement”) (a copy of the Agreement, comprising a Stipulation and Order of the Commissioner and Notice of Filing, is attached to this Report and Recommendation). In the Agreement, the parties stipulated that they “have agreed to settle the issues in this matter, excepting only the issue of whether or not [Sub] 'willfully' failed to pay the prevailing rate of wages and supplements within the meaning of Section 220-b (3)(b) of the Labor Law.” (Agreement p.6). The parties further stated that “having been represented by competent legal counsel, and having had a full and fair opportunity to be heard and otherwise participate [the parties] have requested that the Hearing Officer make an inquiry as to the willfulness of the alleged violations which are the subject of said compliance investigations, based on the testimony and evidence produced at the administrative proceeding, and that the Hearing Officer make a recommendation on the willfulness issue as it relates to each of the four projects named above. It is the expectation of the parties that a future Order and Determination by the Commissioner of Labor ... will resolve that sole issue.” (Agreement 6, 7).

On several occasions during the course of the hearing, Counsel for Sub moved to dismiss the Department’s case on grounds including the introduction of hearsay evidence concerning underpayments to workers rather than direct worker testimony; the introduction of documentary evidence without certification as to the documents’ truth and accuracy, and federal ERISA preemption of that portion of the Department’s case which deals with the underpayment of supplemental benefits (see, e.g., T. 175,176, 230, 339, 566). The Agreement makes no reference to the motion, and at this stage of the proceeding the only matter that could be dismissed is the determination as to the willfulness of the violations, which determination is requested by all of the parties to the Agreement. The Agreement having come subsequent to the hearing at which the original motion to dismiss was made, it is clear that such motion must now be deemed withdrawn.

Accordingly, the only issue for this Report and Recommendation is whether the failure by Sub to pay the prevailing rate of wages or to provide the supplements prevailing in the

locality to workers on each of the four projects was “willful” within the meaning of the Labor Law.

FINDINGS OF FACT

The hearing concerned four separate investigations made by the Bureau on four projects involving public work performed by Sub:

Project 1 involved a public work contract between Sub and the Yorktown Central School District in the Town of Yorktown Heights in Westchester County to undertake painting of the Crompond Intermediate School (PRC No. 2011009055).

Project 2 involved a public work contract between the County of Orange and Worth and a subcontract between Worth and Sub to furnish labor, material and equipment necessary to perform general construction work to construct Kaplan Hall at the SUNY Orange Newburgh campus, in the City of Newburgh, County of Orange (PRC No. 2009004232).

Project 3 involved a public work contract between the Yonkers Board of Education ("Yonkers") and Rok-Built, and a subcontract between Rok-Built and Sub, to furnish labor, material and equipment necessary to perform renovations of the Pearls Hawthorne School, in the City of Yonkers, County of Westchester (PRC No. 2008008397).

Project 4 involved a public work contract between the Rondout Valley Central School District ("Rondout CSD") and Mastercraft, and a subcontract between Mastercraft and Sub, to furnish labor, material and equipment necessary to perform additions and alterations to the Rondout Valley Middle and High Schools, in the Hamlet of Accord, County of Ulster (PRC No. 2008008505).

PROJECT 1

Sub entered into an agreement with the Yorktown Central School District (“YCSD”) to paint and finish various locations at the YCSD Crompond Intermediate School (DOL 4, 5, 6). The Department issued a Prevailing Wage Rate Schedule (“Schedule 1”) which listed the required hourly wages and supplements for painters as wages of \$35.00 per hour, and supplements of \$25.12 per hour (DOL 7). Sub’s certified payroll records for Project 1 show that it paid its workers as painters, at a rate of \$35.00 per hour in wages and \$25.12 per hour in supplements, but did not pay overtime rates as required (DOL 7, 8). Sub was an experienced

painting contractor that had worked on public work projects in the past, and was aware of the overtime payment requirements on such projects (T. 526, 527). Sub underpaid wages on Project 1 to five workers in the amount of \$685.50 (Agreement Exhibit 1).

PROJECT 2

Worth entered into a contract with the County of Orange for a public work project consisting of the Orange County Community College SUNY Newburgh Campus Expansion in or about June, 2009 (“Project 2 Prime Contract”) (DOL 84). The Project 2 Prime Contract bound Worth and all subcontractors to pay the prevailing rate of wages and supplements to all workers employed on Project 2 as set forth in the prevailing wage rate schedule included in the Contract (DOL 84 pp. 7 – 10 and unnumbered pages). Worth then entered into a subcontract with Sub to furnish labor, material and equipment necessary to perform painting at the SUNY Orange Newburgh Kaplan Hall (“Project 2 Subcontract”) (DOL 85). Pursuant to the Project 2 Subcontract, Sub agreed to comply with all terms and conditions of the Project 2 Prime Contract (DOL 85 p. 1). Sub underpaid prevailing wages and supplements in the amount of \$60,071.32 to twenty workers on Project 2 (Agreement Exhibit 2)³. Sub paid a penalty of twenty-five per cent of the underpayments and interest in the amount of \$17,670.03 (Agreement page 9).

PROJECT 3

Rok-Built entered into a contract with the Board of Education of the Yonkers Public Schools for a public work project consisting of the interior and exterior renovation of the Pearls Hawthorne School in or about January, 2009 (“Project 3 Prime Contract”) (DOL 59, 60). The Project 3 Prime Contract contained a prevailing wage rate schedule that set forth the rate of wages and supplements required to be paid to workers on Project 3 (DOL 60). Rok-Built entered into a subcontract with Sub to paint the Pearls Hawthorne School in or about April, 2009 (“Project 3 Subcontract”) (DOL 61). Pursuant to the Project 3 Subcontract, Sub agreed to comply with all terms and conditions of the Project 3 Prime Contract and to comply with all applicable codes, regulations, laws and ordinances of all agencies having jurisdiction over Project 3 (DOL 61 p. 1). Sub underpaid prevailing wages and supplements in the amount of \$107,263.30 to thirty-nine workers on Project 3 (Agreement Exhibit 3)⁴. Sub paid a penalty of

³ Worth agreed to make payment of the underpaid amount and interest (Agreement p. 9).

⁴ Rok-Built agreed to make payment of the underpaid amount and interest (Agreement p. 10).

twenty-five per cent of the underpayments and interest in the amount of \$32,178.90 (Agreement page 11).

PROJECT 4

Mastercraft entered into a contract with the Rondout Valley Central School District for a public work project consisting of additions and alterations to the Rondout Valley Middle School in or about June, 2009 (“Project 4 Prime Contract”) (DOL 21, 22, 23). The Project Prime Contract contained a prevailing wage rate schedule that set forth the rate of wages and supplements required to be paid to workers on Project 4 (DOL 21). Mastercraft entered into a subcontract with Sub to perform work on Project 4 in or about August, 2009 (“Project 4 Subcontract”) (DOL 24). Pursuant to the Project 4 Subcontract, Sub was aware of the terms and conditions of the Project 4 Prime Contract and was obligated to comply with all applicable codes, regulations, laws and ordinances of all public authorities having jurisdiction over Project (DOL 24 p. 1). Sub underpaid prevailing wages and supplements in the amount of \$28,284.55 to twenty-two workers on Project 4 (Agreement Exhibit 3)⁵. Sub paid a penalty of twenty-five per cent of the underpayments and interest in the amount of \$8433.89 (Agreement page 12).

CONCLUSIONS OF LAW

WILLFULNESS OF VIOLATION

Pursuant to Labor Law §§ 220 (7-a) and 220-b (2-a), the Commissioner of Labor is required to inquire as to the willfulness of an alleged violation, and in the event of a hearing, must make a final determination as to the willfulness of the violation.

⁵ Mastercraft agreed to make payment of the underpaid amount and interest (Agreement p.11).

This inquiry is significant because Labor Law § 220-b (3) (b) (1) ⁶ provides, among other things, that when two final determinations of a “willful” failure to pay the prevailing rate have been rendered against a contractor within any consecutive six-year period, such contractor shall be ineligible to submit a bid on or be awarded any public work contract for a period of five years from the second final determination.

For the purpose of Labor Law article 8, willfulness “does not imply a criminal intent to defraud, but rather requires that [the contractor] acted knowingly, intentionally or deliberately” – it requires something more than an accidental or inadvertent underpayment. (*Matter of Cam-Ful Industries, Inc. v Roberts*, 128 AD2d 1006, 1006-1007 [1987]). “Moreover, violations are considered willful if the contractor is experienced and ‘should have known’ that the conduct engaged in is illegal (citations omitted).” (*Matter of Fast Trak Structures, Inc. v Hartnett*, 181 AD2d 1013, 1013 [1992]; see also, *Matter of Otis Eastern Services, Inc. v Hudacs*, 185 AD2d 483, 485 [1992]). The violator’s knowledge may be actual or, where he should have known of the violation, implied. (*Matter of Roze Assocs. v Department of Labor*, 143 AD2d 510 [1988]; *Matter of Cam-Ful Industries, supra*) An inadvertent violation may be insufficient to support a finding of willfulness; the mere presence of an underpayment does not establish willfulness even in the case of a contractor who has performed 50 or so public works projects and is admittedly

⁶ “When two final determinations have been rendered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor or any successor within any consecutive six-year period determining that such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article has wilfully failed to pay the prevailing rate of wages or to provide supplements in accordance with this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be 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 second final determination, provided, however, that where any such final determination involves the falsification of payroll records or the kickback of wages or supplements, the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be 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 first final determination.” Labor Law § 220-b (3) (b) (1), as amended effective November 1, 2002.

familiar with the prevailing wage law requirement. (*Matter of Scharf Plumbing & Heating, Inc. v Hartnett*, 175 AD2d 421 [1991]).

In the four Projects that were the subject of the hearing, Sub was the subcontractor of a prime contractor in three of them, Projects 2, 3, and 4. In each of these Projects, the prime contractor entered into a contract with a public owner; the prime contracts all contained explicit requirements for the contractor and its subcontractors to pay the prevailing rate of wages and supplements required under the law, pursuant to the applicable prevailing wage rate schedule. In each subcontract, Sub agreed to abide by the terms of each prime contract and to comply with all applicable laws.

In the fourth project, Sub acted as the prime contractor. Sub paid the exact hourly wage and supplemental benefit amount set forth in the applicable prevailing wage rate schedule, but failed to pay the overtime rates as required by the law.

Sub was a contractor with prior experience with public work projects. Sub did not set forth a defense that it was unaware of its obligations under the Labor Law.

Sub agreed to the underpaid amounts found by the Department in each of the four projects and also agreed to pay penalties associated with the violations.

Sub's actions in the face of such clear and unambiguous evidence make clear that Sub knew or should have known of the requirements to pay or provide the prevailing rate of wages and supplements on each of the four projects, and that its failure to do so on each project can only be considered to be a willful violation of the Labor Law.


RECOMMENDATIONS

I RECOMMEND that the Commissioner of Labor adopt the within findings of fact and conclusions of law as the Commissioner's determination of the issues raised in this case, and based on those findings and conclusions, the Commissioner should:

DETERMINE that the failure of Sub to pay the prevailing wage or supplement rate on each of the four projects was a "willful" violation of Labor Law article 8, resulting in four separate findings of willfulness.

Dated: March 3, 2014
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