

IN THE MATTER OF

GBE CONTRACTING CORP.  
And  
MATSOS CONTRACTING CORPORATION  
as an alter-ego of,  
GBE CONTRACTING CORP.,  
And  
SHINAS CONTRACTING CORP.,  
now known as  
DTM CONSTRUCTION CORP.  
as a substantially-owned affiliated entity and/or alter ego of  
GBE CONSTACTING CORP.  
And  
GEORGE SHINAS,  
as an officer of  
GBE CONTRACTING CORP., GEORGE SHINAS,  
GREGORIOS DEMETRULACOS, JOHN RUSIN  
And  
WILLIAM TZIVELEKIS  
as four of the top five shareholders of  
GBE CONTRACTING CORP.,  
ILIAS MATSOPOULOS  
And  
EMELIA SHINAS  
as two of the top five shareholders of  
MATSOS CONTRACTING CORPORATION,  
  
Prime Contractor

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.

**DEFAULT REPORT  
&  
RECOMMENDATION**

Prevailing Rate Cases  
98-8178 Monroe & Genesee,  
Counties

98-8177 Erie 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 September 16, 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 GBE Contracting Corp. ("GBE"), the Prime Contractor, complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a public work contracts involving blast cleaning and painting six (6) bridges in Monroe, Genesee, and Erie Counties ("Project 1"), and blast cleaning and painting eight (8) bridges in Erie and Chautauqua Counties ("Project 2") for the NYS Thruway Authority ("Department of Jurisdiction").

This matter was initially commenced by the service of a Notice of Hearing dated July 28, 2007 (Hearing Officer Ex. 1) to which GBE, by and through its attorneys, Fox & Kowalewski, LLP (Brendan R. Wolf, Esq.) responded by the service of an Answer dated January 25, 2008 (Hearing Officer Ex. 5). In subsequent correspondence, Attorney Wolf indicated that his firm also represented Matsos Contracting Corporation ("Matsos") (Hearing Officer Ex. 7). Respondent John Rusin responded by letter dated September 9, 2009 that was deemed an Answer for the purpose of the hearing (Hearing Officer Ex. 9).

John W. Scott was designated the Hearing Officer to conduct the hearing in this matter and report to the Commissioner.

The hearing was commenced on September 16, 2009 in Albany, NY. All of the named Respondents were served with the Notice of hearing as evidenced by the Affidavits of Service produced by the department (Hearing Officer Exs. 2, 3, 4). There was no appearance by or on behalf of any of the named Respondents. The attorneys for GBE and Matsos notified counsel for the Department that neither they nor their clients would appear at the scheduled hearing and that the Department could proceed on a default basis. (Dept. Ex. 64; T. 9, 10) Respondent John Rusin indicated in his September 9, 2009 letter that he would not appear at the scheduled hearing. As a consequence, the Respondents were found in default for failing to appear at the hearing and the case proceeded in their absence.

## **APPEARANCES**

The Bureau was represented by Department Counsel, Maria Colavito (Marshall H. Day, Senior Attorney, of Counsel).

Respondents GBE and Matsos were represented by their attorneys, Fox & Kowalewski, LLP (Brendan R. Wolf, Esq.), and Respondent John Rusin was deemed to have represented himself in this matter. None of the named Respondents or their attorneys was present at the hearing to litigate the issues raised in the Notice of Hearing.

## **FINDINGS AND CONCLUSIONS**

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of Bureau of Public Work Senior Investigators Robert Bibbins, supporting the Bureau's charges that GBE underpaid \$189,403.37 in wages and supplements to its workers for the audit period weeks ending April 30, 2000 to July 1, 2001, together with interest at the rate of sixteen percent per annum on Project 1 (Dept. Exs. 24 and 25; T. 40, 41), and that GBE underpaid \$42,911.72 in wages and supplements to its workers for the audit period weeks ending August 13, 2000 to November 22, 2000, together with interest at the rate of sixteen percent per annum on Project 2 (Dept. Exs. 44 and 45; T. 52). Although the Department did not produce any evidence of withholdings at the hearing (See, Dept. Exs. 28, 29, 30, 31, 47, 48), the Department's post-hearing submission identifies that the Department of Jurisdiction has withheld \$64,307.99 on Project 2 (Contract #D258222).

The Department produced sufficient credible evidence indicating that the fifty-eight (58) employees on the Project 1 and twenty-two (22) employees on Project 2 worked as painters (Dept. Exs. 24, 44). Senior Investigator Robert Bibbins testified that the employees were classified as painters based upon the nature of the work performed, the classification listed in the prevailing wage rate schedules, and the contract specifications (T. 32). Senior Investigator Bibbins testified that he considered a combination of the NYS Thruway Authority Inspector's reports (Dept. Ex. 23), the certified payroll records, time sheets, cancelled checks (Dept. Exs. 14, 15, 16, 40, 41, and 42), and the employee complaints (Dept. Exs. 1, 2, 3, 4) as the basis for the hours and

days worked that were imputed to the employees in the audit (T. 28). Mr. Bibbins further testified that the actual wages and supplemental benefits received by the employees that were used as a credit for GBE were determined by looking at the certified payroll records and the employees' cancelled checks (Dept. Ex. 20; T. 30, 46). The underpayments in wages and supplements were calculated by multiplying the hours worked by the employees by the prevailing wage and supplement rates contained in the applicable Prevailing Wage Rate Schedule, and giving GBE credit for the actual wages and supplements paid to the employees as reflected on the certified payroll records and employees' checks. (T. 30, 31).

The Department also produced sufficient credible evidence to support the finding that the underpayments in wages and supplements were willful. Senior Investigator Bibbins testified that GBE was an experienced public work contractor that should have known that the employees should have been paid prevailing wages on these two projects. (T. 53)

The Department further produced sufficient credible evidence to support the finding that GBE falsified its payroll records in connection with the willful underpayments of wages and supplements. The certified payroll records (Dept. Exs. 14, 15, 16, 40, 41, and 42) were falsified in that they were inaccurate regarding the number hours and days worked as evidenced by a comparison of these documents with the daily inspection report, the employees' logs, and the employees' cancelled checks (Dept. Exs. 1, 2, 3, 4, 23, 24; T. 28, 29). Additionally, the certified payroll records did not indicate the supplemental benefits actually paid to the employees (T. 30, 31). Mr. Bibbin testified that the daily inspection reports were consistent with the employees' records, and that neither of these documents was consistent with the certified payroll records (T. 28).

The record also contains sufficient credible evidence that George Shinas was either the President or Vice-President of GBE, as evidenced by the GBE corporate capacity in which he certified the GBE payroll records (Dept. Exs. 14, 15, 16, 40, 41, and 42; T. 24, 25, 44). Additionally, George Shinas represented himself to be the President of GBE when he completed and signed the Uniform Contracting Questionnaire (Dept. Ex. 49, 60) and the contracts for Projects 1 and 2 (Dept. Exs. 7, 35). George Shinas

knowingly participated in the violation of Article 8 of the Labor Law, since the GBE payroll records were false and inaccurate at the time they were certified by George Shinas in his corporate capacity as aforesaid.

The record also contains sufficient credible evidence that Matsos is an alter ego of GBE as alleged in the Notice of Hearing. Matsos and GBE shared the same address as indicated on Matsos' business stationary, insurance documents, and bank records. (Dept. Ex. 62. See, also, the exhibits attached to the Notice of Hearing) Additionally, Matsos paid employees who were listed as GBE employees on the GBE certified payroll records for work performed on Project 1. (Dept. Exs. 15, 60) This evidence, which has not been controverted by any of Respondents, is sufficient to establish that Matsos is an alter ego of GBE as that term is used in connection with the New York Labor Law.

The record does not contain sufficient credible evidence to establish liability for the underpayments on the part of the other individuals and corporations named in this proceeding, to wit: Shinas Contracting Corp., DTM Construction Corp., Gregorios Demetrulacos, John Rusin, William Tzivelekis, or Ilias Matsopoulos.

As a result of the time required to complete the investigation, the Department determined to have the calculation of interest stop as of December 31, 2005 (T. 15, 40-41; Dept Exs. 24, 25, 44, and 45).

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

### **RECOMMENDATIONS**

Based upon the default of the Respondents, GBE and George Shinas in appearing at the hearing to contest 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 GBE underpaid its workers \$189,403.37 on Project 1, and \$42,911.72 on Project 2; and

DETERMINE that GBE is responsible for interest on the total underpayment at the statutorily mandated rate of 16% per annum from the date of underpayments to December 31, 2005; and

DETERMINE that the GBE's failure to pay the prevailing wage or supplement rate was a "willful" violation of Article 8 of the Labor Law; and

DETERMINE that GBE's willful violation involved the falsification of payroll records under Article 8 of the Labor Law; and

DETERMINE that George Shinas is an officer of GBE; and

DETERMINE that George Shinas knowingly participated in the violation of Article 8 of the Labor Law; and

DETERMINE that Matsos is an alter ego of GBE as that term is used in connection with the New York Labor Law; and

DETERMINE that GBE be assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due; and

ORDER that the Bureau compute the total amount due (underpayment, interest and civil penalty); and

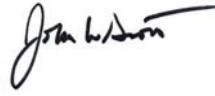
ORDER that the Department of Jurisdiction remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau at SOB Campus Bldg 12 Room 130, Albany, NY 12240); and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, GBE, 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: February 1, 2010  
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Scott", with a long horizontal flourish extending to the right.

John Scott, Hearing Officer