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In the Matter of

HAMAX CONSTRUCTION CORP., and  
THOMAS HANLON and WILLIAM VALENTINE, as  
shareholders of HAMAX 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 Scarsdale Unified  
School System.

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

Prevailing Wage Rate  
PRC No. 9902175  
Case ID: PW11020037  
Westchester County

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

Pursuant to a Notice of Hearing issued on December 2, 2015, a hearing was held on January 28, 2016, in Albany, New York and by videoconference with White Plains, 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 a Hamax Construction Corp., and Thomas Hanlon and William Valentine as shareholders of Hamax Construction Corp. ("Prime") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving renovations and additions of classrooms to the Green Acres Elementary School, located on Huntington Road, Scarsdale, New York, Westchester County ("Project") for the Scarsdale Union Free School District ("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 Prime.

### **FINDINGS AND CONCLUSIONS**

On January 12, 2016, the Department duly served a copy of the Notice of Hearing on the Secretary of State, the entity designated for receipt of service upon Prime. In addition, the Department served multiple copies of the Notice of Hearing on Prime via regular and certified mail, and only two mailings were returned.

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

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

Prime willfully underpaid \$101,866.96 to its workers for the audit period weeks ending 8/11/200 to 6/8/2001; and

Thomas Hanlon and William Valentine are officers of Prime; and

Thomas Hanlon and William Valentine knowingly participated in the violation of Labor Law article 8.

On July 15, 2002, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in the amount of \$105,133.05; the Department received confirmation that the Department of Jurisdiction actually withheld \$60,941.88.

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

### **RECOMMENDATIONS**

Based upon the default of the Respondent 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 Prime underpaid its workers \$101,866.96 on the Project; and

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

DETERMINE that Thomas Hanlon and William Valentine are officers of Prime; and

DETERMINE that Thomas Hanlon and William Valentine knowingly participated in the violation of Labor Law article 8; and

DETERMINE that Prime 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 of \$101,866.96, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that 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: 120 Bloomingdale Road, Room 204, White Plains, NY 10605; and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Prime, 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: March 2, 2016  
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