

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

CARVER CONSTRUCTION, INC., and CARVER
LARAWAY and KENNETH BARTH as officers and/or
shareholders of CARVER CONSTRUCTION, INC.,

Prime Contractor,

and

ISLAND BREEZE MARINE, INC. and DARWIN
PEGUESE as an officer and/or shareholder of ISLAND
BREEZE MARINE, INC.

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 laborers, workers and
mechanics employed on a public work project for the
New York State Canal Corporation located in the County
of Onondaga, State of New York.

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

AMENDED
DEFAULT
REPORT AND
RECOMMENDATION

Prevailing Wage Rate
PRC No. 2018008683
Case ID: PW06 2018009324
Onondaga County

Pursuant to a Notice of Hearing dated November 28, 2023, a videoconference hearing was held on March 27, 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 Island Breeze Marine, Inc. and Darwin Peguese, as an officer and shareholder of Island Breeze, Inc. ("Island Breeze"), a

subcontractor to Carver Construction, Inc., (“Carver”), (all “Respondents”) complied with the requirements of Article 8 of the Labor Law (§§ 220 et seq.) to pay or provide the prevailing rates of wages and supplements to laborers, workers or mechanics employed in the performance of a public work contract it was involved in. The matter involved a contract between Carver and the New York State Canal Corporation (“Canal Corporation” or “Department of Jurisdiction”) to furnish materials, labor, tools and equipment necessary for the dredging of the Syracuse Inner Harbor on the Erie Canal, Onondaga County, in the State of New York, in which Carver subcontracted with Island Breeze to perform the dredging work to be performed under the contract between Carver and Canal Corporation under PRC #: 2018008683 (“Project”).

HEARING OFFICER

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

APPEARANCES

The Bureau was represented by Department General Counsel, Jill Archambault (Rian Vernon, Senior Attorney, of Counsel).

There was no appearance at the hearing by or on behalf of Carver or Island Breeze.

FINDINGS AND CONCLUSIONS

On November 29, 2023, the Department duly served a copy of the Notice of Hearing on all Respondents, via regular and certified mail, return receipt requested (Hearing Officer Exs. 1, 2). The Notice of Hearing scheduled a hearing on March 27, 2024, and March 28, 2024, and required the Respondents to serve an Answer at least fourteen days in advance of the scheduled hearing.

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

Prior to the hearing, Carver entered into a stipulation satisfying all issues relating to Carver’s responsibilities and obligations as outlined in the Notice of Hearing and Designation of Hearing Officer dated November 28, 2023, which recited that Carver had previously made direct payments to Island Breeze’s underpaid workers in the total amount of \$67,840.74, representing a

portion of the underpayment of wages, supplements, and interest and stipulating that Carver would make restitution of the balance of the wages and supplements due and owing in the amount of \$8,217.41 (Dept. Ex. 24).

The Notice of Hearing alleges that Island Breeze 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, and that Carver is responsible for Island Breeze's, underpayment pursuant to Labor Law § 223.

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

Carver 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

Carver entered into a subcontract agreement with Island Breeze to perform work and/or services as requested by Carver on the Project; and

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

Island Breeze willfully underpaid \$72,686.04 in wages and supplemental benefits to its workers (pre-direct payment amounts) and after the wages and supplemental benefits direct payment credit of \$64,468.63, the Department calculated an outstanding balance of supplemental benefits in the amount of \$8,217.41 for the audit period from week ending November 18, 2018, through week ending September 8, 2019 (Dept. Ex. 19); and

Island Breeze falsified its payroll records in connection with that willful underpayment; and

Island Breeze is an incorporated business and Darwin Peguese, is the President of Island Breeze who signed the sub-contract and certified payroll records on behalf of Island Breeze (Dept. Exs. 3, 6); and

Darwin Peguese knowingly participated in the violation of Labor Law article 8, and this violation included the falsification of payroll records on the Project.

The Bureau used employee records and statements, daily work reports, and certified payrolls to determine the days and hours worked, and employee and Island Breeze bank records for wage and supplement rates paid to employee, and compared these rates 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.

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

RECOMMENDATIONS

Based upon the default of Island Breeze 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 Island Breeze, underpaid prevailing wages and supplemental benefits to its laborers, workers, and mechanics in the amount of \$72,686.04 on the Project for the audit period weeks ending November 18, 2018, through week ending September 8, 2019; and

DETERMINE that Darwin Peguese is an officer of Island Breeze who knowingly participated in the violation of Labor Law Article 8 on the Project at issue; and

DETERMINE that the failure of Island Breeze to pay the prevailing wages and supplement rates on the Project was a "willful" violation of Labor Law Article 8 and that Island Breeze and Darwin Peguese falsified the payroll records in connection with the willful underpayment; and

DETERMINE, that as a result of Island Breeze's 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, that both the entity (Island Breeze Marine, Inc.) and the individual (Darwin Peguese) 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 Island Breeze is 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 8, Island Breeze is 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; and

DETERMINE that based on the statutory factors set forth in Labor Law Article 8, Island Breeze is assessed a civil penalty in the amount of 25% of the underpayment and interest due on this Project; and

DETERMINE that Carver, as prime contractor on the Project, is vicariously liable for non-compliance or evasion by Island Breeze of its obligation to properly pay wages and supplemental benefits pursuant to Labor Law Section 223; and

DETERMINE that Carver made direct payments of wages, supplements, and interest to the employees of Island Breeze in the amount of \$67,840.74 and then stipulated to, and has fully paid, the sum of \$8,217.41, which sum represents the total balance of supplemental benefits still due and owing to the workers identified in the audit summary, PW-27 (Dept. Ex. 19) in complete satisfaction of Carver's liability under Labor Law Section 223; and

ORDER that the Bureau compute the total amount due (underpayment of \$8,217.41) with interest at 16% from date of underpayment to the date of payment and 25% civil penalty on the total amount of the underpayment (\$72,686.04); and

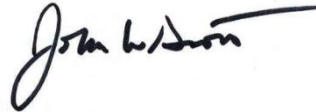
ORDER that Island Breeze shall receive a credit for the \$76,058.15 paid by Carver, however, is responsible for the balance due as recalculated by the Bureau in the prior Ordered paragraph; and

ORDER that the Island Breeze 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, Harriman State Office Campus, Building 12, 1st Floor, Room 130, Albany, New York 12226; 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: October 29, 2024
Albany, New York

John W. Scott, Hearing Officer

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

Office of Administrative Adjudication