

STATE OF NEW YORK      DEPARTMENT OF LABOR

IN THE MATTER OF

THE LANDTEK GROUP, INC., MICHAEL RYAN,  
and  
GREGORY SHARP, Individually as among the five largest  
shareholders of the corporation

Prime Contractor,

and

DANT CLAYTON CORPORATION, BRUCE MERRICK,  
KEITH WILLIAMS, TATE HUTTON,

and

SANDY GUTKNECHT,

Individually as among the five largest shareholders of the  
corporation Subcontractor,

and

JAMES ROUGH d/b/a JAMES ROUGH BLEACHERS  
Sub-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 Reconstruction of the  
Parking Lot and Athletic Field at Lido Complex in  
Lido Beach

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Prevailing Rate Case  
Case No. 2009010926  
PW 11 2010028133  
Nassau County

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

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on April 3, 2014 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 James Rough, d/b/a James Rough Bleachers, ("James Rough"), a sub-subcontractor on the public work project, complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*). The work involved the reconstruction of the parking lot and athletic field of the Lido Complex ("the project") for the Long Beach Central School District. ("Department of Jurisdiction")

### **APPEARANCES**

The Bureau was represented by Department Counsel, Pico Ben-Amotz, (Elana Matot, Esq., of counsel).

Little Mendelson, P.C. (Lauren Marcus, Esq., of counsel), represented The Landtek Group, Inc., Michael Ryan, and Gregory Sharp ("Landtek"), prime contractor in the project.

Dant Clayton Corporation, Bruce Merrick, Keith Williams, Tate Hutton, and Sandy Gutknecht ("Dant Clayton"), a subcontractor in the project were named as parties to the within proceeding although there is no allegation in the Notice of Hearing that Dant Clayton is liable for any underpayment of James Rough and there is no basis for liability as against Dant Clayton pursuant to Labor Law article 8. Dant Clayton sent a letter to the Hearing Officer dated January 21, 2013 that was deemed an Answer (Hearing Officer Ex. 4). There was no appearance made at the hearing by, or on behalf of Dant Clayton.

There was no appearance made by, or on behalf of James Rough.

### **FINDINGS AND CONCLUSIONS**

On January 8, 2013, the Department duly served a copy of the Notice of Hearing (Hearing Officer Ex.1) on all named parties, via regular and certified mail, return receipt requested (Hearing Officer Ex. 2). The record does not indicate that the certified mailing to James Rough was claimed but the record also does not indicate that the regular mail envelope addressed to James Rough was returned to the Department. The Notice of Hearing scheduled a February 21, 2013, hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing. In consultation with all parties, including James Rough, the

original hearing date was adjourned and rescheduled to be heard on February 25, 2013 (HO Ex. 7) and then again rescheduled to be heard on April 3 and 4, 2014 (Hearing Officer Ex. 9).

Landtek and Dant Clayton filed Answers to the charges contained in the Notice of Hearing (Hearing Officer Exs. 3, 4). James Rough failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. Dant Clayton also failed to appear at the hearing. As a consequence, Dant Clayton and James Rough are in default in this proceeding.

The Notice of Hearing alleges that James Rough underpaid wages and supplements to its workers on the public work project, and that Landtek, as the prime contractor, is responsible for James Rough's underpayment pursuant to Labor Law § 223.

At the hearing, Landtek stipulated on the record to pay the underpayments of James Rough in full satisfaction of its liability under Labor Law article 8 as follows:

Landtek agreed to pay underpayments to the workers on the project of \$15,361.04, together with interest at 16% running from the date of underpayment through June 15, 2013 in the amount of \$6,842.30, and, based upon an affidavit from Michael Ryan, President of Landtek, (Hearing Officer Ex. 11) satisfying the requirements of 12 NYCRR section 221.1, a civil penalty of 15% in the amount of \$3,330.50, for a total agreed upon payment of \$25,533.84. The payment of the amount stipulated shall be paid out of funds withheld pursuant to a cross-withholding filed against Landtek (DOL Exs. 21, 22). Any sum still withheld after the payment of the amount stipulated shall be returned to Landtek and Landktek shall be liable for the payment of any of the stipulated sum remaining if the amount withheld is insufficient to pay the full amount stipulated (T. 9-11).

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:

On the project James Rough willfully underpaid \$15,361.04 to its workers for the audit period weeks ending August 21, 2010 to September 18, 2010; and

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

## RECOMMENDATIONS

Based upon the default of the James Rough 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, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that James Rough underpaid its workers \$15,361.04 on the project, PRC No. 2009010926; and

DETERMINE that James Rough 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 James Rough to pay the prevailing wage or supplement rate was a "willful" violation of Labor Law article 8; and

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

DETERMINE that, pursuant to the stipulation between prime contractor Landtek and the Department, Landtek will be responsible for the underpayments determined due, but the interest on the underpayments Landtek is liable for shall be at 16% from the date of underpayment through June 13, 2013, and a civil penalty of 15% pursuant to 12 NYCRR section 221.1; and

ORDER that the Bureau compute the total amount due (underpayment of on the project, interest at 16% from the date of underpayment and 25% civil penalty); and

ORDER that, upon receipt of payment of the underpayments, interest and penalty as set forth in their stipulation above, Landtek will have fully satisfied its liability under Labor Law article 8; and

ORDER that James Rough shall receive a credit for the amounts paid by Landtek; and

ORDER that the Department of Jurisdiction shall remit payment of any withheld funds pursuant to a cross-withholding to the Commissioner of Labor, up to the amounts directed by the Bureau consistent with its computation of the total amounts due and the said stipulation, by

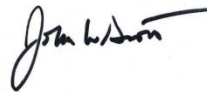
forwarding the same to the Bureau and any excess amount withheld shall be remitted to Landtek;  
and

ORDER that if the withheld amount is insufficient to satisfy the amount due pursuant to the said stipulation Landtek, 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: 160 South Ocean Avenue, Second Floor, Patchogue, New York; 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: June 19, 2014  
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Scott", with a stylized flourish at the end.

John W. Scott  
Hearing Officer