

STATE OF NEW YORK: DEPARTMENT OF LABOR  
-----X

In the Matter of

KEY MAINTENANCE CORP. d/b/a KEY  
MAINTENANCE, and JOAN AUDET BERKOWITZ,  
MARCELLA DE LOOSE, and GEORGE BERKOWITZ  
as officers and/or shareholders of KEY MAINTENANCE  
CORP.;

Prime Contractor,

for a determination pursuant to Article 9 of the Labor Law  
as to whether prevailing wages and supplements were  
paid to or provided for the building service employees  
employed on a public work project for the Nyack Union  
Free School District, County of Rockland.

-----X

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

Prevailing Wage Rate  
PRC No. 2006900439  
Case ID: PW11 080004  
Rockland County

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

Pursuant to a Notice of Hearing issued by the Commissioner of Labor on May 15, 2019, a hearing was held on June 17, 2019, in Albany, New York, to determine whether Key Maintenance Corp. (“Prime”), complied with the requirements of Labor Law article 9 (§§ 230 *et seq.*) in the performance of building service work (“Project”) at the Nyack Union Free School District (“Department of Jurisdiction”) in Rockland County.

**APPEARANCES**

The Bureau of Public Work (“Bureau”) of the New York State Department of Labor (“Department”) was represented by Department Counsel, Pico Ben-Amotz, (Elina Matot, Senior Attorney, of Counsel).

There were no appearances made by, or on behalf of, Prime.

**FINDINGS AND CONCLUSIONS**

The Department duly served a copy of the Notice of Hearing on Prime, which signed a United States Postal Service Return Receipt card, evidencing its receipt of the

Notice. The Notice of Hearing scheduled a June 17, 2019, hearing and required Prime to serve an Answer at least 14 days in advance of the scheduled hearing. The Notice also required any Party to submit an adjournment request no later than fourteen days prior to the hearing.

Prime failed to either answer the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, Prime is in default in this proceeding.<sup>1</sup>

At the hearing, the Department produced substantial and credible evidence supporting the Department's charges that Prime willfully underpaid its workers in the amount of \$117,325.44. However, testimony elicited from Department witness Julio C. Lopez demonstrated that Mr. Lopez worked more hours than the Department credited him with in its audit. Accordingly, the underpayment amount for Mr. Lopez must be recalculated to correspond with his testimony, and the total amount of underpayments must be adjusted..

The claim that began the Bureau's investigation was received on September 17, 2007. (DOL 1) The Bureau issued the Notice of Labor Law Investigation Findings (DOL 10) on September 2, 2015, a full eight years after the investigation began. The Department's witness from the Bureau testified that the delay in completing the investigation was the result of personnel changes in the Bureau, and not the result of Prime's failure to cooperate with the investigation.

Prime had no Labor Law violations prior to the investigation. Prime cooperated at least partially during the investigation. Prime was a small employer. The gravity of Prime's violations was severe, as the unpaid wages and supplements calculated by the Bureau almost equal the total amount of the contract for work between prime and the Department of Jurisdiction.

Marcella DeLoose is an officer of Prime;

Marcella DeLoose knowingly participated in the violation of Labor Law article 9;

---

<sup>1</sup> On the morning of the Hearing the Hearing Officer received a telephone call from a woman who stated that she was Marcella DeLoose, one of the named Respondents, and that she was unable to attend the hearing. The Hearing Officer informed the caller that he would not adjourn the hearing, as the caller had not provided good cause or submitted the adjournment request at least fourteen days prior to the hearing.

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 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 wages and supplements due the workers in the amount of \$117,325.44, EXCEPT THAT to the extent that the Bureau's recalculation of the wages and supplements due to Julio C. Lopez alters this amount, the altered amount shall be the amount incorporated within the Commissioner's Determination and Order; and

DETERMINE that, based upon the statutory factors set forth in Labor Law article 9, Prime is responsible for interest on the total underpayment at the rate of 10% per annum from the date of underpayment to the date of payment EXCEPT THAT, because of the Department's delay in proceeding with a hearing in this matter, interest shall be TOLLED for the period of September 2007 through September 2015; and

DETERMINE that the failure of Prime to pay the prevailing wage or supplement rate was a "willful" violation of Labor Law article 9; and

DETERMINE that Marcella DeLoose is an officer of Sub; and

DETERMINE that Marcella DeLoose knowingly participated in the violation of Labor Law article 9; and

DETERMINE that, based upon the statutory factors set forth in Labor Law article 9, Prime be assessed a civil penalty in the amount of 10% of the underpayment and interest due; and

ORDER that the Bureau compute the total amount due (underpayment – including the recalculated amount for Julio C. Lopez, interest and civil penalty); and

ORDER that upon the Bureau's notification, Prime shall immediately remit payment, made payable to the Commissioner of Labor of the total amount due, to the Bureau at: Bureau of Public Work, New York State Department of Labor, The Maple Building, 3 Washington Center, 4th Floor Newburgh, NY 12550; 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 28, 2019  
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