

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of  
MARQUISE CONSTRUCTION CORP.; and  
ROSS J. MUSCOLINO, as a shareholder of MARQUISE  
CONSTRUCTION CORPORATION; and RJM CONSTRUCTION  
ASSOCIATES, INC., a substantially owned- affiliated entity  
of MARQUISE CONSTRUCTION CORP.;

Prime Contractor,

and

K.R.F. SITE DEVELOPMENT, INC. and,  
KENNETH FIORENTINO as an owner and/or  
shareholder of K.R.F. SITE DEVELOPMENT, 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  
County of Rockland, New York.

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In the Matter of

MARQUISE CONSTRUCTION CORP.; and  
ROSS J. MUSCOLINO, as a shareholder of MARQUISE  
CONSTRUCTION CORPORATION; and RJM CONSTRUCTION  
ASSOCIATES, INC., a substantially owned- affiliated entity  
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Prime Contractor,

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K.R.F. SITE DEVELOPMENT, INC. and,  
KENNETH FIORENTINO as an owner and/or  
shareholder of K.R.F. SITE DEVELOPMENT, 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 County  
of Orange, New York.

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

Prevailing Wage Rate  
PRC No. 2007001481  
Case ID: PW112010016605  
Rockland County

Prevailing Wage Rate  
PRC No. 2007004850  
Case ID: PW112010016604  
Orange County

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In the Matter of

MARQUISE CONSTRUCTION CORP.; and  
ROSS J. MUSCOLINO, as a shareholder of MARQUISE  
CONSTRUCTION CORPORATION; and RJM CONSTRUCTION  
ASSOCIATES, INC., a substantially owned- affiliated entity  
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Prime Contractor

and

K.R.F. SITE DEVELOPMENT, INC. and,  
KENNETH FIORENTINO as an owner and/or  
shareholder of K.R.F. SITE DEVELOPMENT, 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 Mamaroneck  
Public Library in Mamaroneck, New York.

Prevailing Wage Rate  
PRC No. 2011001573  
Case ID: PW112010031866  
Westchester County

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

Pursuant to an Amended Notice of Hearing issued on December 3, 2015 and a Notice of Adjournment and Rescheduled Hearing dated February 10, 2016, a hearing was held on May 24, 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 K.R.F. Site Development, Inc. ("Sub") a subcontractor of Marquise Construction Corp. ("Prime") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of three public work contracts involving furnishing labor, tools, and equipment necessary for improvements and

alterations to Building F of the Dr. Robert L. Yeager Health Center in Pamona, New York for Rockland County, New York (“Department of Jurisdiction”) (“Project 1”); furnishing labor, tools, and equipment necessary for certain additions and renovations to the Graham M. Skea Parks and Recreation Center in Montgomery, New York for Orange County (“Department of Jurisdiction”) (“Project 2”); and furnishing labor, tools, and equipment necessary for certain additions and renovations to the Library in the Town of Mamaroneck, New York for the Mamaroneck Library District (“Department of Jurisdiction”) (“Project 3”).

### **HEARING OFFICER**

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

### **APPEARANCES**

The Bureau was represented by Department Counsel, Pico Ben-Amotz, (Larissa C. Bates, Senior Attorney, of Counsel).

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

Prime appeared and entered into a Stipulation to pay the amount of the underpayment the Bureau had determined Sub owed with interest in advance of the hearing.

### **FINDINGS AND CONCLUSIONS**

On January 7, 2016, the Department duly served a copy of the Amended Notice of Hearing on Sub, via regular and certified mail, return receipt requested. The regular mail envelope was not returned to the Department. In addition, the Department personally served the Amended Notice of Hearing on all corporate parties by service on the New York State Department of State on January 22, 2016. The Amended Notice of Hearing scheduled February 22 and 24, 2016 as dates for the hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

A Notice of Adjournment and Rescheduled Hearing was served on Sub, via regular and certified mail, return receipt requested. The regular mail envelope was not returned to the Department. The Notice of Adjournment and Rescheduled Hearing scheduled March 24 and 25,

2016 as dates for the hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

In addition, the Department duly served a copy of the Amended Notice of Hearing and Notice of Adjournment and Rescheduled Hearing on Prime, via regular and certified mail, return receipt requested. Prime filed an Answer to the charges contained in the Notice of Hearing.

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

The Amended Notice of Hearing alleges that Sub underpaid wages and supplements to its workers and that Prime is responsible for Sub's underpayment pursuant to Labor Law § 223.

Prior to the hearing, Prime and Department entered into a written stipulation under the terms of which Prime agreed to pay the total wages and supplements owed by Sub to the workers in the three projects, together with interest at the rate of ten (10) percent per annum and twenty (20) percent civil penalties in full satisfaction of Prime's liability under Labor Law article 8 (Dept. Ex. 58).

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:

### **GENERAL**

Kenneth Fiorentino is an officer of Sub; and

Kenneth Fiorentino is a shareholder of Sub who owned or controlled at least ten per centum of its outstanding stock.

### **PROJECT 1**

The Project was subject to Labor Law article 8; and

Prime entered into a contract for the Project with the Department of Jurisdiction; and

Sub entered into a contract with Prime for work on the Project; and

Sub willfully underpaid \$17,243.33 to its workers for the audit period weeks ending 8/24/2007 to 12/20/2007; and

Sub falsified its payroll records in connection with that willful underpayment; and  
Kenneth Fiorentino knowingly participated in the violation of Labor Law article 8.

On 11/18/2010 and 5/14/2012, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in the amount of \$35,500.06 and on 5/14/2012 the Department issued a Notice to Withhold Payment to the Newburgh Enlarged City School District (a different Department of Jurisdiction for a cross-withholding) in the amount of \$40,337.64.

## **PROJECT 2**

The Project was subject to Labor Law article 8; and

Prime entered into a contract for the Project with the Department of Jurisdiction; and

Sub entered into a contract with Prime for work on the Project; and

Sub willfully underpaid \$20,840.10 to its workers for the audit period weeks ending 11/15//2007 to 6/12/2008; and

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

Kenneth Fiorentino knowingly participated in the violation of Labor Law article 8.

On 11/16/2010, the Department issued a Notice to Withhold Payment to the Village of Wappingers Falls Water Department (a different Department of Jurisdiction for a cross-withholding) in the amount of \$30,193.13 and on 8/1/2011; the Department issued a second Notice to Withhold Payment to the Village of Wappingers Falls Water Department in the amount of \$44,573.31.

## **PROJECT 3**

The Project was subject to Labor Law article 8; and

Prime entered into a contract for the Project with the Department of Jurisdiction; and

Sub entered into a contract with Prime for work on the Project; and

Sub willfully underpaid \$14,207.95 to its workers for the audit period weeks ending 4/30/2009 to 9/17/2010; and

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

Kenneth Fiorentino knowingly participated in the violation of Labor Law article 8.

On 3/4/2011 and 8/4/2011, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in the amount of \$25,327.91 and on 3/30/2012 the Department issued a Notice to Withhold Payment to the Village of Wappingers Falls (a different Department of Jurisdiction for a cross-withholding) in the amount of \$1,815.77.

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

### **RECOMMENDATIONS**

Based upon the default of the Sub 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 Sub underpaid its workers \$17,243.33 on Project 1, PRC No.2007001481; and

DETERMINE that Sub underpaid its workers \$20,840.10 on Project 2, PRC No.2007004850; and

DETERMINE that Sub underpaid its workers \$14,207.95 on Project 3, PRC No. 2011001573; and

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

DETERMINE that the willful violation of Sub involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that Kenneth Fiorentino is an officer of Sub; and

DETERMINE that Kenneth Fiorentino is a shareholder of Sub who owned or controlled at least ten per centum of its outstanding stock; and

DETERMINE that Kenneth Fiorentino knowingly participated in the violation of Labor Law article 8; and

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

DETERMINE that Prime stipulated to pay the total wages and supplements owed by Sub to the workers in the three projects, together with interest at the rate of ten (10) percent per annum and twenty (20) percent civil penalties in full satisfaction of Prime's liability under Labor Law article 8; and

ORDER that the Bureau compute the total amount due (underpayment of \$17,243.33 on Project 1, PRC No.2007001481, underpayment of \$20,840.10 on Project 2, PRC No.2007004850, and underpayment of \$14,207.95 on Project 3, PRC No. 2011001573, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that, upon payment of \$112,182.11 in total wages, supplements, interest at ten (10) percent per annum, and twenty (20) percent civil penalties, and complete performance of the stipulation entered into between the Prime and the Department, Prime will have fully satisfied its liability under Labor Law article 8;

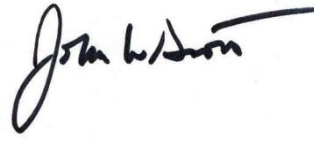
ORDER that Sub shall receive a credit for the \$112,182.11 paid by Prime; and

ORDER that upon the Bureau's notification, Sub shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at: The Department of Labor, Bureau of Public Work, State Office Campus, Building 12, Room 134A, Albany, NY 12240; 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: January 17, 2017  
Albany, New York

Respectfully submitted,

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

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John W. Scott, Hearing Officer  
Administrative Adjudication