

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

MILESTONE ENVIRONMENTAL CORPORATION,
and GABRIEL FRASSETTI, as an officer and/or
shareholder of MILESTONE ENVIRONMENTAL
CORPORATION,

RECOMMENDATION ON
MOTION TO REOPEN
HEARING

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 Dormitory
Authority – State of New York.

Prevailing Rate Case
PRC No. 2008001524
Case ID: PW01 2010018080
Bronx County

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In the Matter of

MILESTONE ENVIRONMENTAL CORPORATION,
and GABRIEL FRASSETTI, as an officer and/or
shareholder of MILESTONE ENVIRONMENTAL
CORPORATION,

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 Rondout Valley
High School.

Prevailing Rate Case
PRC No. 2008008505
Case ID: PW01 2012004529
Ulster County

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Respondent moves to reopen the hearing in this matter which a Default Determination and Order was signed by the Commissioner of Labor on November 30, 2017, and filed with the Department on December 8, 2017 (“Default Order”). The Default Order was based on the Respondents’ failure to answer the allegations contained in the Department’s Notice of Hearing or appear at the June 28 or November 30, 2017 hearings to contest those allegations.

Respondent sets forth the following bases for its request:

1. Respondent did not receive actual notice of the hearing and therefore has a reasonable excuse for failing to appear at the hearings;
2. Respondent has a meritorious defense to the charges against them because of the extensive delay between the investigation which resulted in the underlying allegations against Respondent and the actual hearing dates, as well as having challenges to the charges which resulted in a finding of willfulness, penalties and interest;

Respondent submitted a supporting affidavit to support its position that:

1. At the time the Department served the corporation it was no longer in existence; no United States Postal Service Return Receipt cards were ever signed and returned from the certified mailings; one regular mail Notice of Hearing was sent to Respondent's home address, which he never used for business mail but no resident of that address has any recollection of it ever arriving;
2. Respondent alleges that the underpaid supplements found due by the Department were in fact paid to union benefit plans;
3. Respondent's failure to adjust wage payments was an inadvertent oversight and not willful;
4. The interest assessment on actual underpayments should be tolled due to the Department's delays in prosecuting this matter;
5. Imposition of the maximum civil penalty of 25% is unwarranted.

In its Opposition Letter, the Department argues that service was proper if for no other reason than the regular mailing to Respondent's home address was sufficient notice. The Department also alleges that the hearing was timely, and the findings supported by substantial

evidence.¹ Finally, the Department alleges that the imposition of interest and penalty as set forth in the Determination and Order was appropriate.

Based upon the facts set forth in the affidavit and supporting materials in Respondent's Motion, it appears that Respondent could in fact have failed to receive notice of the hearings. Furthermore, the facts set forth in the affidavit support Respondent's argument that it has meritorious defenses to the charges against it. It appears therefore that the Respondents have established a reasonable excuse for their default and meritorious defenses sufficient to warrant a reopening of the hearing for a final determination on the merits.

On that basis, I RECOMMEND that the Commissioner:

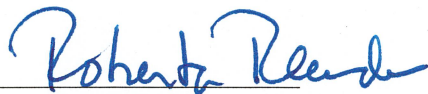
- (1) Grant the Respondent's request to reopen the hearing in this matter;
- (2) Vacate the prior Default Order;
- (3) Direct that any debarment based on either the finding of willfulness or the falsification of payroll records in the vacated Default Order be rescinded; and
- (4) Direct that any and all effort to collect the sums determined due pursuant to the vacated Default Order cease.

Dated: September 11, 2018
Albany, New York



Jerome A. Tracy, Hearing Officer
Office of Administrative Adjudication

SO ORDERED



Roberta Reardon
Commissioner of Labor

¹ However, this being a Motion to Reopen rather than an appeal, the standard is not whether the Determination and Order is supported by substantial evidence.