

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

NCLN20, INC.;
and
STEPHEN JONES and SIHAYA JONES,
Individually as officers, owners and shareholders of the
corporation

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 workers employed on a building service
contract under the Capital District Transportation Authority
Service Agreement for the provision of guard services at the
Rensselaer train station and Albany bus garage, in Rensselaer
and Albany, respectively

IN THE MATTER OF

NCLN20, INC.;
AND
STEPHEN JONES AND SIHAYA JONES,
Individually as officers, owners and shareholders of the
corporation

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 workers employed on a building
service contract under the Adirondack Community College
Service Agreement for the provision of guard services at the
Adirondack Community College, in Queensbury

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
Case No. 2006900436
PW01 2008014300

Rensselaer County and
Albany County

Prevailing Rate Case
Case No. 2006900573
PW01 2008014512

Warren County

To: Honorable Colleen Gardner
Commissioner of Labor
State of New York

A hearing was held on September 29, 2011 at Albany, New York to establish
whether NCLN20, Inc. (“Respondent”), and Stephen Jones and Sihaya Jones,
individually and as officers, owners or shareholders of Respondent, complied with the
requirements of article 9 of the Labor Law (§§ 230 *et seq.*) in the performance of building
service work at the Capital District Transportation Authority (“CDTA”) Rensselaer train

station and Albany bus garage (“CDTA Project”), and at the Adirondack Community College (“ACC”) in Queensbury, New York (“ACC Project”).

APPEARANCES

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

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

FINDINGS AND CONCLUSIONS

On August 9, 2011, the Department duly served a copy of the Notice of Hearing on Respondent, by sending copies of the Notice by regular and certified mail to the address listed with the New York State Department of State as the address for service of process. The Notice of Hearing was returned to the Department.

Respondent failed to either answer the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, Respondent is in default in this proceeding.

At the hearing, the Department produced substantial and credible evidence supporting the Department’s charges that Respondent willfully underpaid its workers on the two projects at issue.

At the hearing, the Department produced substantial and credible evidence supporting the Bureau’s charges that Respondent willfully underpaid its workers on the CDTA Project in the amount of \$12,533.64.

At the hearing, the Department produced substantial and credible evidence supporting the Bureau’s charges that Respondent willfully underpaid its workers on the ACC Project in the amount of \$5,394.98.

The Department further produced substantial and credible evidence and that Stephen Jones and Sihaya Jones are officers of Respondent who knowingly participated in the violation of article 9 of the Labor Law;

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 Respondent underpaid wages and supplements due the workers in the amount of \$12,533.64 on the CDTA Project and \$5,394.98 on the ACC Project;

DETERMINE that Respondent 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;

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

DETERMINE that Stephen Jones and Sihaya Jones are officers of Sub who knowingly participated in the violation of article 9 of the Labor Law;

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

ORDER that the Bureau compute the total amount due (underpayment, interest and civil penalty);

ORDER that Adirondack Community College remit payment of the withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau ALBANY (SOB Campus Bldg 12 Room 130, Albany, NY 12240); and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Respondent, 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 the aforesaid address; 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: May 23, 2013
Albany, New York

Respectfully submitted,

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

Jerome Tracy, Hearing Officer