STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

THE LOSCO GROUP, INC.
and
MICHAEL R. LOSCO,

as one of the five largest shareholders and/or owner of in excess of 10% of the shares of the corporation

Prime Contractor

P&H SUPPLY CO., INC.
and
PAT DECEA

individually as an officer of the corporation, and as one of the five largest shareholders and/or owner of in excess of 10% of the shares of the corporation

Subcontractor

A proceeding pursuant to Article 8 of the Labor Law to determine whether a contractor paid the rates of wages or provided the supplements prevailing in the locality to workers employed on a public work project.

REPORT & RECOMMENDATION

Prevailing Rate Case
9808963 Westchester County

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

Pursuant to a Notice of Hearing issued in this matter, hearings in the above-captioned matter were held on March 31, 2010, in Albany, New York and via videoconference with White Plains, New York, continuing on April 1, 28, 29 and 30, July 12 and 13, August 1, September 1, 2, and 3, October 7, December 15 and December 16, 2010. The purpose of the hearing was to provide the parties with 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 P & H Supply Company, Inc. (“Sub”), a subcontractor of The Losco Group, Inc. (“Prime”), and Pat Decea, an officer and/or shareholder of Sub, complied with the requirements of Article 8 of the labor law (§§ 220 *et seq.*) in the performance of a contract involving the construction of a school (“Project”) for the Board of Education of the Yonkers Public Schools (“Department of Jurisdiction”).

APPEARANCES

The Bureau was represented by former Department Counsel, Maria Colavito, Louise Roback, Senior Attorney, of Counsel.

Prime appeared *pro se* and did not file an Answer to the charges incorporated in the Notice of Hearing.

DOL sent the Notice of Hearing to Sub and Pat Decea individually. Both parties signed for the Notice and executed U. S. Postal Service Domestic Return Receipt cards (HO 2). Sub and Pat Decea, individually, failed to appear at the hearing and did not file an Answer to the charges incorporated in the Notice of Hearing.

ISSUES

1. Did Sub pay the prevailing rate of wages or provide the supplements prevailing in the locality, and, if not, what is the amount of underpayment?
2. Was any failure by Sub to pay the prevailing rate of wages or to provide the supplements prevailing in the locality “willful”?
3. Did any willful underpayment involve the falsification of payroll records?

4. Is Pat Decea one of the five largest shareholders of Sub?

5. Is Pat Decea an officer of Sub who knowingly participated in a willful violation of Article 8 of the Labor Law?

6. Should a civil penalty be assessed and, if so, in what amount?

FINDINGS OF FACT

On or about December 10, 1998, DOL assigned Prevailing Rate Case ("PRC") number 9808963 to the Project (T. p. 22; DOL 5).

On or about August 23, 1999, Prime and the Department Of Jurisdiction entered into a contract for the Project, which consisted of the construction of the Cedar Place Elementary School in Yonkers, New York (DOL 3, 4).

On or about March 19, 2001, Prime and Sub entered into a contract for work on the Project (R. C-1).

Subsequent to the issuance of the PRC number, DOL issued the Prevailing Wage Rate Schedule for Westchester County, for the period July 1, 2000 through June 30, 2001 ("Schedule 1") (T. 23; DOL 6).

Schedule 1 established the prevailing hourly wage for painters at $27.25 per hour and prevailing supplements at $13.01 per hour (DOL 6).

On or about July 1, 2001, DOL issued the Prevailing Wage Rate Schedule for Westchester County, for the period July 1, 2001 through June 30, 2002 ("Schedule 2") (T. 26, 27; DOL 7).

Schedule 2 established the prevailing hourly wage for painters at $29.25 per hour and prevailing supplements at $14.45 per hour (DOL 7).

On or about February 11, 2003, an employee of Sub filed with DOL a complaint alleging underpayments of prevailing wages on the Project (DOL 1; R. V).

On or about May 11, 2005, DOL issued to Sub a request for payroll records, including daily time records, canceled checks and other materials (DOL 2).

Sub failed to provide DOL with any of the requested payroll information (T. 19, 888).

Prime provided DOL with certified payroll records prepared by Sub and signed by Pat Decea as president of Sub (DOL 8; T. 28).

In a separate public work case, PRC No. 98004219, DOL obtained payroll registers prepared by a payroll company for Sub, which registers also covered Sub's workers during a portion of the time that they worked on the Project (DOL 9).

For the period of time that Sub's employees worked on the Project and were shown to be working on both the certified payrolls and the payroll registers, the wages and supplements shown in the certified payrolls did not match those shown in the payroll registers (T. 38, 39).

Sub entered into a stipulation with DOL concerning PRC No. 98004219, in which it was agreed that Sub underpaid workers on that project for the period week ending February 7 2000 through week ending April 16, 2001 (DOL 10).

The stipulation regarding PRC No. 98004219 credited Sub with having paid its workers varying amounts of supplemental benefits on that project (DOL 11, 12; T. 62-65).

The time periods for the performance of work on PRC No. 98004219 and the Project overlapped for a period of several months in 2001 (DOL 11, 14).

In October, 2005, the investigator for DOL prepared an audit of the Project showing underpayments by Sub of wages and supplements of $49,086.84 to 19 workers on the Project from week ending March 26, 2001 through week ending August 27, 2001 ("Audit 1") (DOL 13, 14; T. p. 59).

While constructing Audit 1, DOL relied upon the payroll registers for the wages and supplements paid to Sub's workers on the Project (T. 37).

While constructing Audit 1, DOL relied upon the certified payrolls for the hours worked by Sub's employees on the Project (T. 38).

Some of Sub's workers appeared in both the audit prepared for PRC No. 98004219 and Audit 1 (DOL 10, 11, 12, 13, 14).

On Audit 1, DOL credited Sub with having paid some of its workers partial supplemental benefits in the amounts agreed to in the stipulation for PRC No. 98004219 (T. 65, 68-70).

Sub did not provide proof that the supplemental benefits it claimed to have paid its workers on the Project on its certified payrolls were ever paid; furthermore, the payroll registers used to determine the underpayments agreed to by Sub in PRC No. 98004219 show that Sub paid supplemental benefits only to the extent credited by DOL in Audit 1 (T. 39, 54, 62, 72).

On or about February 2, 2008, DOL issued a Notice to Department of Jurisdiction to Withhold Payment; no money remained to be withheld (DOL 15, 16).

On or about April 5, 2010, subsequent to the preparation of Audit 1, and during the course of this proceeding, DOL investigators were contacted by Julio and Jorge Santana, employees of Sub who had worked on the Project (T. 365 – 369).

DOL investigators then met with Jorge and Julio Santana on or about April 6, 2010 (T. 369).

While interviewing the workers, a DOL investigator prepared written statements for Jorge and Julio Santana to sign (T. 370 – 372; 386, 387).

In their signed statements, Jorge and Julio Santana stated that they were employed by Sub on the Project, paid overtime as straight time, and underpaid wages and supplements (DOL 23, 24).

Sub employee Miguel Recabarren testified that he worked for Sub on the Project as a painter (T. 500).

Recabarren never received supplemental benefits or their equivalent in cash, and was never paid an overtime rate when he worked over forty hours in a week or on weekends (T. 517 – 520).

Recabarren provided the DOL investigator with pay stubs from the Project in April, 2010 (DOL 21; T. 516, 517).

Recabarren could not remember with precision the hours worked or the locations painted on the Project (T. 533 – 538).

Julio Santana stated that he was a painter on the Project (T. 575).

Julio Santana worked overtime and weekends on the Project but was not paid an overtime rate; he also did not receive supplemental benefits or their equivalent in cash (T. 579, 580).

DOL first contacted Julio Santana concerning the Project in February 2009 (T. 581).

Jorge Santana worked for Sub on the Project as a painter (T. 645, 663, 664).

Jorge Santana worked overtime and weekends on the Project but was not paid an overtime rate; he also did not receive supplemental benefits or their equivalent in cash (T. 646).

Based upon information received from Miguel Recabarren and Jorge and Julio Santana, DOL prepared a revised audit in April, 2010, showing underpayments by Sub of wages and supplements of $73,880.03 to 19 workers on the Project from week ending March 26, 2001 through week ending August 27, 2001 ("Audit 2") (DOL 25, 26; T. 399, 401).

The change in underpayments from Audit 1 to Audit 2 was the result of a decrease in the hours on the Project attributed to Miguel Recabarren and an increase in the hours on the Project attributed to Jorge and Julio Santana, as reflected in their statements, the certified payrolls and the payroll registers (T. 400 – 410).

During the hearing, Prime introduced into evidence a series of daily construction reports prepared by Prime's field superintendent for the Project for the period March 13, 2001 through August 17, 2001 (R. O; T. 1392 – 1404).

Prime's records showed that Sub began work on the Project on March 19, 2001 (T. 1436).

Based upon an examination of the daily construction reports submitted by Prime and a discussion with Michael Losco, owner of Prime, DOL prepared a second revised audit in October 2010, showing underpayments by Sub of wages and supplements in the amount of $56,920.17 to 17 workers on the Project from week ending March 26, 2001 through week ending August 13, 2001 ("Audit 3") (DOL 28, 29).

The DOL investigator removed from Audit 3 two workers who had been included in Audit 1 and Audit 2 after establishing that they had belonged to the painters union and that they had received the prevailing rate of wages and supplements while working on the Project (T. 1549 – 1551).

To prepare Audit 3, the DOL investigator examined worker statements, payroll registers, certified payrolls and Prime's daily construction reports (T. 1564).

When there were inconsistencies among the documents, the DOL investigator used the daily construction reports to confirm or reject information found on the other documents (T. 1566, 1567).

Sub is a business incorporated in the State of New York (DOL 19).

Pat Decea was president and chief executive officer of Sub during the course of the Project (DOL 8, 19).

The Losco Group, Inc. is a business incorporated in the State of New York (DOL 20).

CONCLUSIONS OF LAW

JURISDICTION OF ARTICLE 8

Section 17 of Article 1 of the New York State Constitution mandates the payment of prevailing wages and supplements to workers employed on public work. This constitutional mandate is implemented through Labor Law Article 8. Labor Law §§ 220, *et seq*. "Labor Law § 220 was enacted to ensure that employees on public works projects

are paid wages equivalent to the prevailing rate of similarly employed workers in the locality where the contract is to be performed and authorizes the [Commissioner of Labor] to ascertain said prevailing wage rate, as well as the prevailing 'supplements' paid in the locality." *Matter of Beltrone Constr. Co. v McGowan*, 260 A.D.2d 870, 871-872 (3d Dept. 1999). Labor Law §§ 220 (7) and (8), and 220-b (2) (c), authorize an investigation and hearing to determine whether prevailing wages or supplements were paid to workers on a public work project.

Since the Department Of Jurisdiction, a public entity, is a party to the instant public work contract, Article 8 of the Labor Law applies. Labor Law § 220 (2); and *see, Matter of Erie County Industrial Development Agency v Roberts*, 94 A.D.2d 532 (4th Dept. 1983), *affd* 63 N.Y.2d 810 (1984).

CLASSIFICATION OF WORK

Labor Law § 220 (3) requires that the wages to be paid and the supplements to be provided to laborers, workers or mechanics working on a public work project be not less than the prevailing rate of wages and supplements for the same trade or occupation in the locality where the work is performed. The trade or occupation is determined in a process referred to as "classification." *Matter of Armco Drainage & Metal Products, Inc. v State of New York*, 285 App. Div. 236, 241 (1st Dept. 1954). Classification of workers is within the expertise of the Department. *Matter of Lantry v State of New York*, 6 N.Y.3d 49, 55 (2005); *Matter of Nash v New York State Dept of Labor*, 34 A.D.3 905, 906 (3d Dept. 2006), *lv denied*, 8 N.Y.3d 803 (2007); *Matter of CNP Mechanical, Inc. v Angello*, 31 A.D.3d 925, 927 (3d Dept. 2006), *lv denied*, 8 N.Y.3d 802 (2007). The Department's classification will not be disturbed "absent a clear showing that a classification does not reflect 'the nature of the work actually performed.' " *Matter of Nash v New York State Dept of Labor*, 34 A.D.3 905, 906, *quoting Matter of General Electric, Co. v New York State Department of Labor*, 154 A.D.2d 117, 120 (3d Dept. 1990), *affd* 76 N.Y.2d 946 (1990), *quoting Matter of Kelly v Beame*, 15 N.Y. 103, 109 (1965). Workers are to be classified according to the work they perform, not their qualifications and skills. *See, Matter of D. A. Elia Constr. Corp v State of New York*, 289 A.D.2d 665 (3d Dept. 1992), *lv denied*, 80 N.Y.2d 752 (1992).

Sub performed work on the Project pursuant to a subcontract for painting services. Prime and Sub did not dispute DOL's classification of workers on the Project as painters and Sub did not appear at the hearing. Accordingly, the classification of painter was correctly applied.

UNDERPAYMENT METHODOLOGY

"When an employer fails to keep accurate records as required by statute, the Commissioner is permitted to calculate back wages due employees by using the best available evidence and to shift the burden of negating the reasonableness of the Commissioner's calculations to the employer…." *Matter of Mid Hudson Pam Corp. v Hartnett*, 156 A.D.2d 818, 821 (3d Dept. 1989) (citation omitted). "The remedial nature of the enforcement of the prevailing wage statutes … and its public purpose of protecting workmen … entitle the Commissioner to make just and reasonable inferences in awarding damages to employees even while the results may be approximate…." *Id*. at 820 (citations omitted). Methodologies employed that may be imperfect are permissible when necessitated by the absence of comprehensive payroll records or the presence of inadequate or inaccurate records. *Matter of TPK Constr. Co. v Dillon*, 266 A.D.2d 82 (1st Dept. 1999); *Matter of Alphonse Hotel Corp. v Sweeney*, 251 A.D.2d 169, 169-170 (1st Dept. 1998).

Inexplicably, DOL did not begin its investigation into this matter until several years after receiving a complaint. As can be seen by the introduction into evidence of multiple audits, DOL's investigation continued until the hearing concluded, almost ten years after the alleged Article 8 violations. The testimony of Sub's former workers was vague and even contradictory at times, but such inconsistencies are understandable given the passage of almost a decade since their work on the Project, and I find the workers' testimony to be credible. There were also several kinds of written materials, including Prime's own daily construction reports, that DOL used in conjunction with worker statements to arrive at the underpayments on the Project. The weight of the testimony and documentary evidence at the hearing showed Sub's certified payrolls to be inaccurate, so the DOL investigator was obligated to use additional materials to

determine underpayments. As the DOL investigator explained, the relevant documents were used in concert with the worker's statements, and work was only included in the audits when several sources could be reconciled. This method ultimately led to a reduction in the underpayments calculated for some workers in Audit 3, but established a fair and rational methodology for calculating underpaid wages and supplements.

Prime argues that it was placed in an untenable position by this extended investigation because it was unaware of the complaint that initiated the investigation for several years, which hindered its ability to establish a defense. While the length of time that passed was excessive, Prime appeared at the hearing, conducted extensive cross-examination of all DOL witnesses, and introduced into evidence documents that resulted in a significant reduction in DOL's ultimate audit; it's claim that it could not adequately defend itself is belied by the facts.

INTEREST RATE

Labor Law §§ 220 (8) and 220 b (2) (c) require that, after a hearing, interest be paid from the date of underpayment to the date of payment at the rate of 16% per annum as prescribed by section 14-a of the Banking Law. *Matter of CNP Mechanical, Inc. v Angello*, 31 A.D.3d 925, 927 (3d Dept. 2006), *lv denied*, 8 N.Y.3d 802 (2007). Consequently, Sub is responsible for the interest on the aforesaid underpayments at the 16% per annum rate from the date of underpayment to the date of payment.

However, as noted above, the length of time it took DOL to complete its audit was clearly excessive. In fact, DOL, in its opening at the hearing, conceded that the delay in prosecuting this matter warranted a waiver of two years' worth of interest. In light of the evidence now before me, I find a waiver of interest for two years to be insufficient, and I recommend that the Commissioner waive interest in this matter for a period of five years.

WILLFULNESS OF VIOLATION

Pursuant to Labor Law §§ 220 (7-a) and 220-b (2-a), the Commissioner of Labor is required to inquire as to the willfulness of an alleged violation, and in the event of a hearing, must make a final determination as to the willfulness of the violation.

This inquiry is significant because Labor Law § 220-b (3) (b) (1) [1] provides, among other things, that when two final determinations of a "willful" failure to pay the prevailing rate have been rendered against a contractor within any consecutive six-year period, such contractor shall be ineligible to submit a bid on or be awarded any public work contract for a period of five years from the second final determination.

For the purpose of Article 8 of the Labor Law, willfulness "does not imply a criminal intent to defraud, but rather requires that [the contractor] acted knowingly, intentionally or deliberately" – it requires something more than an accidental or inadvertent underpayment. *Matter of Cam-Ful Industries, Inc. v Roberts,* 128 A.D.2d 1006, 1006-1007 (3d Dept. 1987). "Moreover, violations are considered willful if the contractor is experienced and 'should have known' that the conduct engaged in is illegal (citations omitted)." *Matter of Fast Trak Structures, Inc. v Hartnett,* 181 A.D.2d 1013, 1013 (4th Dept. 1992). *See also, Matter of Otis Eastern Services, Inc. v Hudacs,* 185 A.D.2d 483, 485 (3d Dept. 1992). The violator's knowledge may be actual or, where he should have known of the violation, implied. *Matter of Roze Assocs. v Department of Labor,* 143 A.D.2d 510; *Matter of Cam-Ful Industries, supra.* An inadvertent violation may be insufficient to support a finding of willfulness; the mere presence of an

[1] "When two final determinations have been rendered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the five largest shareholders of the contractor or subcontractor or any successor within any consecutive six-year period determining that such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article has wilfully failed to pay the prevailing rate of wages or to provide supplements in accordance with this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from the second final determination, provided, however, that where any such final determination involves the falsification of payroll records or the kickback of wages or supplements, the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years from the first final determination." Labor Law § 220-b (3) (b) (1), prior to amendment effective November 1, 2002.

underpayment does not establish willfulness even in the case of a contractor who has performed 50 or so public works projects and is admittedly familiar with the prevailing wage law requirement. *Matter of Scharf Plumbing & Heating, Inc. v Hartnett*, 175 A.D.2d 421.

Sub failed to appear at the hearing. The Project was a public work, the underpayments were substantial, Sub's certified payrolls were inaccurate, and Sub provided no excuse for its actions. Accordingly, a finding of willfulness is appropriate.

FALSIFICATION OF PAYROLL RECORDS

Labor Law § 220-b (3) (b) (1) further provides that if a contractor is determined to have willfully failed to pay the prevailing rates of pay, and that willful failure involves a falsification of payroll records, the contractor shall be ineligible to bid on, or be awarded any public work contract for a period of five (5) years from the first final determination. For this section of the law to be meaningful, the term "falsification of payroll records" must mean more than a mere arithmetic error; if it did not, in any case where the certified payrolls did not perfectly match the payments to workers such payrolls could be deemed falsified, and the contractor debarred. The definition of the word falsify generally involves the intent to misrepresent or deceive ("falsify." *Merriam-Webster*, 2011, http://www.merriam-webster.com/dictionary/falsify).

The DOL requests a finding that Sub falsified its certified payrolls. While it is clear from the record that Sub failed to meet its obligation to maintain true and accurate payroll records, I do not find, in the absence of any evidence to show deliberate or intentional falsification, that such failure rises to the level of falsification as contemplated by this section of the Labor Law.

PARTNERS, SHAREHOLDERS OR OFFICERS

Labor Law § 220-b (3) (b) (1) further provides that any such contractor, subcontractor, successor, or any substantially owned-affiliated entity of the contractor or subcontractor, or any of the partners or any of the five largest shareholders of the contractor or subcontractor, or any officer of the contractor or subcontractor who knowingly participated in the willful violation of Article 8 of the Labor Law shall

likewise be ineligible to bid on, or be awarded public work contracts for the same time period as the corporate entity.

DOL failed to produce any evidence concerning the shareholders of Sub. However, evidence shows that Pat Decea was an officer of Sub. Decea signed each of the certified payrolls, which have been shown by overwhelming evidence to be inaccurate. Such action must be seen as "knowing" given the totality of the circumstances, and the effect of this statute must, perforce, apply also to Pat Decea individually.

CIVIL PENALTY

Labor Law §§ 220 (8) and 220-b (2) (d) provide for the imposition of a civil penalty in an amount not to exceed twenty-five per cent (25%) of the total amount due (underpayment and interest). In assessing the penalty amount, consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations, and the failure to comply with record-keeping and other non-wage requirements.

The gravity of the violations found in this matter is significant, as are the record-keeping violations. Therefore, a penalty of twenty-five per cent should be imposed.

LIABILITY UNDER LABOR LAW § 223

Under Article 8 of the Labor Law, a prime contractor is responsible for its subcontractor's failure to comply with or evasion of the provisions of this Article. Labor Law § 223. *Konski Engineers PC v Commissioner of Labor*, 229 A.D.2d 950 (1996), *lv denied* 89 N.Y.2d 802 (1996). Such contractor's responsibility not only includes the underpayment and interest thereon, but also includes liability for any civil penalty assessed against the subcontractor, regardless of whether the contractor knew of the subcontractor's violation. *Canarsie Plumbing and Heating Corp. v Goldin*, 151 A.D.2d 331 (1989). Sub performed work on the Project as a subcontractor of Prime. Consequently, Prime, in its capacity as the prime contractor, is responsible for the total amount found due from its subcontractor on this Project.

RECOMMENDATIONS

I RECOMMEND that the Commissioner of Labor adopt the within findings of fact and conclusions of law as the Commissioner's determination of the issues raised in this case, and based on those findings and conclusions, the Commissioner should:

DETERMINE that Sub underpaid wages and supplements due the identified employees in the amount of $56,920.17; and

DETERMINE that Sub is responsible for interest on the total underpayment at the rate of 16% per annum from the date of underpayment to the date of payment less five years; and

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

DETERMINE that the willful violation of Sub did not involve the falsification of payroll records under Article 8 of the Labor Law; and

DETERMINE that Pat Decea is an officer of Sub; and

DETERMINE that Pat Decea knowingly participated in the violation of Article 8 of the Labor Law; 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 is responsible for the underpayment, interest and civil penalty due pursuant to its liability under Article 8 of the Labor Law; and

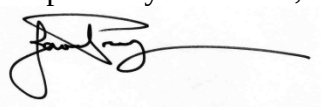
ORDER that the Bureau compute the total amount due (underpayment, interest less five years, and civil penalty); and

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 3 Washington Center, Fourth Floor, Newburgh, new York 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: October 31, 2011
Albany, New York

Respectfully submitted,



Jerome Tracy, Hearing Officer