

IN THE MATTER OF

PIAZZA BROTHERS, INC.
Prime Contractor

and

PRECISION DEVELOPMENT CORPORATION
and
DARREN MAYDWELL

as an officer and shareholder of

PRECISION DEVELOPMENT CORPORATION
and

PRECISION DEVELOPMENT CORPORATION INC.

and

PRECISION DEVELOPMENT INTERIORS, INC.

as substantially owned-affiliated entities of

PRECISION DEVELOPMENT CORPORATION
Subcontractor

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
99-003043 B Orange County

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.

To: Honorable M. Patricia Smith
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on December 23, 2008. 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 Precision Development Corporation ("Precision"), a subcontractor of Piazza Brothers, Inc. ("Piazza"), and Darren Maydwell, an officer and shareholder of Precision, and

Precision Development Corporation Inc. and Precision Development Interiors Inc., their substantially owned-affiliated entities, complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a public work contract involving the alteration, renovation, addition and interior completion of the Scotchtown Elementary School and the CJ Hooker Middle School in Goshen, New York (“Project”) for Goshen Central School District (“School District”).

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Marshall H. Day, Senior Attorney, of Counsel). There were no appearances made by, or on behalf of Precision, Darren Maydwell or their affiliated entities. Piazza paid the amount of the underpayment the Bureau had determined Precision owed with interest, which payment the Bureau deemed sufficient to resolve Piazza’s Article 8 liability.

FINDINGS AND CONCLUSIONS

On September 19, 2008, the Department duly served a copy of the Notice of Hearing on Precision, Darren Maydwell and their affiliated entities via regular first class mail and certified mail, return receipt requested. Precision Development Interiors Inc. and Precision Development Construction Inc. were also served by delivery of the Notice to the New York State Department of State for service upon those corporate entities. The Notice of Hearing scheduled a November 14, 2008 hearing and required that the Respondents serve an Answer at least 14 days in advance of the scheduled hearing. On or about October 29, 2008, Piazza, by its attorneys, served an Answer to the Notice. No Answer was served by Precision, Darren Maydwell or their affiliated entities. On October 22, 2008, Precision’s and Mr. Maydwell’s former attorney, who was also served with the Notice, wrote to the Hearing Officer and advised that he had not represented Precision or Maydwell for approximately four years. He requested that he be removed from the Department’s mailing list and provided an additional address for Mr. Maydwell that his files indicated was Mr. Maydwell’s last known address.

Pursuant to a Notice of Adjournment and Rescheduled Hearing dated October 15, 2008, the November 14 hearing date was adjourned and rescheduled to December 23, 2008. That Notice was served by first class mail and certified mail to each of the corporate entities' last known addresses. The certified mailings were returned with the statement that the addressee had moved and the mailing was not forwardable. Pursuant to a Notice of Adjournment and Rescheduled Hearing dated and served October 30, 2008, Darren Maydwell was notified that the November 14 hearing date was adjourned and rescheduled to December 23, 2008. That Notice was served by first class mail and certified mail to Mr. Maydwell at the address set forth in the original Notice of Hearing and at the address provided by his former attorney. Both of those mailings were returned with the notation that the addressee had moved and the mailing was not forwardable.

The Notice of Hearing alleges that Precision underpaid wages and supplements to its workers and that Piazza is responsible for its subcontractor's underpayment pursuant to Labor Law § 223. Prior to the hearing, when this matter was first brought to Piazza's attention, it paid the underpayment the Department determined Precision's workers were underpaid, with interest at a rate of 10% per annum, in the amount of \$32,221.39. The Department subsequently determined that one worker was not a registered apprentice and should have been paid at a journeyman rate. Piazza stipulated, *inter alia*, to pay the additional underpayment of its subcontractor, with interest at a rate of 10%, in the amount of \$1,924.18, in full satisfaction of its Article 8 liability. After the hearing, Department counsel reported in writing that Piazza paid \$34,145.57, including interest, on account of Precision's underpayment.

Precision, Darren Maydwell and their affiliated entities failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, they are in default in this proceeding.

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents describing the underpayments, supporting the Bureau's charges that Precision willfully underpaid \$15,013.52 to its workers for the audit period weeks ending April 25, 2000 through May 9, 2000; that Precision falsified its payroll records in connection with that willful

underpayment; that Darren Maydwell is an officer of Precision; and that Darren Maydwell knowingly participated in the violation of Article 8 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 Respondents 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 Precision underpaid its workers \$15,013.52 on the Project;

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

DETERMINE that the willful violation of Precision involved the falsification of payroll records under Article 8 of the Labor Law;

DETERMINE that Precision Development Corporation Inc. and Precision Development Interiors Inc. are "substantially owned-affiliated entities";

DETERMINE that Darren Maydwell is an officer of Precision;

DETERMINE that Darren Maydwell knowingly participated in the violation of Article 8 of the Labor Law;

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

DETERMINE that Piazza has paid \$34,145.57 in underpayment and interest required to fully satisfy its vicarious liability under Article 8 of the Labor Law; and

ORDER that the Bureau compute the total amount due (underpayment of 15,013.52, interest at 16% per annum, and 25% civil penalty);

ORDER that Piazza has fully satisfied its liability under Article 8 of the Labor Law;

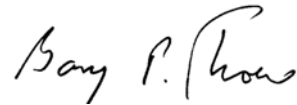
ORDER that Precision shall receive a credit for the \$34,145.57 paid by Piazza;

ORDER that upon the Bureau's notification, Precision shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at 120 Bloomingdale Road, Room 204, White Plains, NY 10605; 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: April 30, 2009
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary P. Troue".

Gary P. Troue, Hearing Officer