

STATE OF NEW YORK: DEPARTMENT OF LABOR
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In the Matter of

S C MARTIN GROUP INC., and JOY MARTIN and
STEVEN MARTIN as officers and/or shareholders of
S C MARTIN GROUP INC;

**DEFAULT REPORT &
RECOMMENDATION**

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 City of Buffalo,
New York.

Prevailing Rate Case
No. 2008005677
Case ID: PW03 2014001967
Erie County

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

Pursuant to a Notice of Hearing issued on July 9, 2018, a hearing was held on August 23, 2018 in Albany, 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 S C Martin Group Inc., and Joy Martin and Steven Martin (“Respondents”) complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving general demolition and removal of various condemned and unfit residential properties (“Project”) in and for the City of Buffalo (“Department of Jurisdiction”).

APPEARANCES

The Bureau was represented by Department Counsel Pico Ben-Amotz, Larissa Bates, of Counsel.

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

FINDINGS AND CONCLUSIONS

On July 10, 2018, the Department duly served a copy of the Notice of Hearing on Respondents via regular and certified mail, return receipt requested, on the last known addresses of Respondents. One of the certified mailings was returned signed by a representative of the Respondents (Hearing Officer Ex. 2). The regular mail envelope was not returned to the Department. Since there was no response by any of the Respondents to the original service of the Notice of Hearing, on August 17, 2018, an additional Notice of Hearing was also served on the Department of State. The Notice of Hearing scheduled an August 23, 2018 hearing date and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

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

The Notice of Hearing alleges that Respondents willfully underpaid prevailing wages and supplemental benefits to its workers, and that those underpayments involved the falsification of payroll records.

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:

The Project was subject to Labor Law article 8.

Respondents entered into a contract for the Project with the Department of Jurisdiction.

Respondents provided certified payrolls to the Department of Jurisdiction; the certified payrolls showed the majority of days and hours worked by the workers on the various project sites, and disclosed who worked on those particular sites, but did not encapsulate all the hours worked by the employees; Respondents classified all workers on the Project as laborers or asbestos workers.

The Department relied upon Respondent's certified payrolls to obtain the names of workers who worked on the various sites subject of the Project, and used those same payrolls to determine some of the days and hours worked. The Department compared those certified records to a handwritten daily planner produced by the claimant, as well as a listing of the locations and hours worked by that same employee attached to his complaint to determine the remainder of the hours. The Department used wage statements supplied by the claimant and the certified payrolls to determine wages paid, and gave no credit for any wages paid if there were no certified payrolls or wage statements that coincided with the hours actually worked. The Department also calculated underpayments based upon misclassification of the workers.

Respondents willfully underpaid \$29,689.79 to its workers for the audit period week ending January 13, 2013 through the week ending April 5, 2014¹.

Respondent S C MARTIN GROUP INC., is an incorporated business owned by Joy Martin and Steven Martin, who are officers of the corporation and who knowingly participated in the violation of Labor Law article 8.

No monies were withheld on the Project.

Respondents had no prior history of violations, was uncooperative with the investigation, and violated the Labor Law by falsifying payroll records, failing to properly classify its workers and failing them to pay them the prevailing rate of wages and supplements required by law. The Department presented no evidence with regard to the size of Respondent's business, although the certified payrolls indicate that it was a small family owned business consisting of seven employees including the two owners/officers.

For the foregoing reasons, the findings 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 the hearing in support of those charges, and based upon

¹ The Department takes the position, as set forth by its witness, a public work wage investigator, that because Respondents were uncooperative and failed to provide any evidence of wage payments to its workers, the Respondents received zero credit for wages paid to workers on the Project if there were not any documents to substantiate those payments.

the record as a whole, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Respondents underpaid its workers prevailing wages and supplements in the amount of \$29,689.79 on the Project; and

DETERMINE that the failure of Respondents to pay the prevailing wage or supplement rate was a “willful” violation of Labor Law article 8; and

DETERMINE that the willful violation of Respondents involved the falsification of payroll records under Labor Law article 8²; and

DETERMINE that Joy Martin and Steven Martin were the owners and officers of Respondent contractor S C Martin Group Inc. who knowingly participated in the violation of Labor Law article 8; and

DETERMINE that S C Martin Group Inc., and Joy Martin and Steven Martin knowingly participated in the falsification of payroll records within the meaning of Labor Law article 8, and should be ineligible to submit a bid, on or be awarded any public contract with the state, any municipal corporation or public body for a period of five years.

DETERMINE that Respondents are responsible for interest on the total underpayment at the rate of 16% per annum from the date of underpayment to the date of payment; and

DETERMINE that Respondents be assessed a civil penalty in the amount of 20% of the underpayment and interest due³; and

² The Department requested a finding that Respondents falsified its payrolls. The Department relied upon Respondent’s payrolls to obtain the names of workers, and some of the days and hours worked on the Project. The Department found that the payroll records were inconsistent with the other records they procured from various sources which showed rates of pay, hours and the classification of workers, all of which, were counter to what was reported on the Respondents’ certified payrolls. The certified payrolls also listed all of the workers as laborers/asbestos workers rather than the classifications required by the nature of the work performed on the Project (laborers/operators/asbestos). Labor Law § 220-b (3) (b) (1) 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. 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>). In the absence of a statutory definition, the meaning ascribed by lexicographers is a useful guide. *De La Cruz v. Caddell Dry Dock & Repair Co., Inc.*, 21 NY3d 530, 537-538; *Quotron Systems v. Gallman*, 39 NY2d 428, 431 (1976). Here, the Department found the payrolls inaccurate with regard to the rates paid to the workers, their days and hours of work and the classification of its workers, all factors leading to the willful falsification of payroll records.

³ While the Department requested a penalty of 25%, it only presented oral testimony with regard to the statutory factors used to determine the civil penalty; of the factors named, it presented evidence relevant to only four. The Commissioner of Labor, or his designated representative, may reduce the civil penalty to an amount less than that which would otherwise be assessed in accordance with the criteria enumerated in subdivision 8 of section 220 and subdivision 2 of section 220-b of the Labor Law, where uncontroverted evidence exists of some, but not all, of the factors set forth therein; *i.e.* size of the employer’ business, the good faith of the employer, the gravity of the violation, the history of previous violations and the failure to comply with recordkeeping or other nonwage requirements. controls in determining the appropriate civil penalty to be assessed.

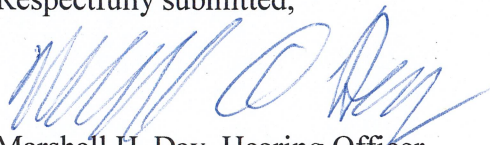
ORDER that the Bureau compute the total amount due (underpayment of \$29,689.79, interest at 16% from date of underpayment and 20% civil penalty); and

ORDER that upon the Bureau's notification, Respondents shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at: State Office Building Campus, Bldg. 12, Room 130, 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: September 11, 2018
Albany, New York

Respectfully submitted,



Marshall H. Day, Hearing Officer