

IN THE MATTER OF

T.W.T. CONSTRUCTION COMPANY, INC.
and
THOMAS TERRANOVA
President and sole owner and shareholder of
T.W.T. CONSTRUCTION COMPANY, INC.
and
ADVANCED INSULATION SYSTEMS, CORP.
a substantially owned-affiliated entity
Prime Contractor

and

KEITH RUPERT d/b/a
KEITH'S HARDWOOD FLOORING d/b/a
KEITH'S WOOD FLOOR SHOWROOM CO.
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.

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
96-6506 Sullivan County

IN THE MATTER OF

T.W.T. CONSTRUCTION COMPANY, INC.
and
THOMAS TERRANOVA,
President and sole owner and shareholder of
T.W.T. CONSTRUCTION COMPANY, INC.
and
ADVANCED INSULATION SYSTEMS, CORP
a substantially owned-affiliated entity
Prime Contractor

and

I.G. MOXIE GENERAL CONTRACTOR, INC.
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.

Prevailing Rate Case
97-2309 Dutchess County

In the Matter of

T.W.T CONSTRUCTION COMPANY, INC.
and
THOMAS TERRANOVA
President and sole owner and shareholder of
T.W.T. CONSTRUCTION COMPANY, INC.
and
ADVANCED INSULATION SYSTEMS, CORP
a substantially owned affiliated entity
Prime Contractor

and

L.G. MOXIE GENERAL CONTRACTOR, INC.
and
PRESTIGE CONSTRUCTION INC.

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.

Prevailing Rate Case
97-3900 Dutchess County

IN THE MATTER OF

T.W.T CONSTRUCTION COMPANY, INC.
and
THOMAS TERRANOVA
President and sole owner and shareholder of
T.W.T. CONSTRUCTION COMPANY, INC.
and
ADVANCED INSULATION SYSTEMS, CORP.
a substantially owned affiliated entity
Prime Contractor

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.

Prevailing Rate Case
97-2021 Ulster County

IN THE MATTER OF

T.W.T CONSTRUCTION COMPANY, INC.
and
THOMAS TERRANOVA
President and sole owner and shareholder of
T.W.T. CONSTRUCTION COMPANY, INC.
and
ADVANCED INSULATION SYSTEMS, CORP.
a substantially owned affiliated entity
Prime Contractor

Prevailing Rate Case
98-8765 Orange County

A proceeding pursuant to article 9 of the Labor Law to determine whether a contractor paid the rates of wages or provided the supplements prevailing in the locality to building service employees performing building service work under a contract with a public agency.

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

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on May 20 and 21, 2010. 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 T.W.T. Construction Company, Inc. ("TWT") complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of five public work contracts involving renovations and alterations at the Livingston Manner Central School District ("Project 1") for the Livingston Manner Central School District ("Department of Jurisdiction"); construction work at the Board of Cooperative Educational Services ("BOCES") Administrative Building and Special Educational Center (Project 2") for Dutchess County BOCES ("Department of Jurisdiction"); construction work at the Town Storage Building/Hopewell Hamlet Water District ("Project 3") for the Town of East Fishkill ("Department of Jurisdiction"); site work and alterations and

renovations at the Wallkill Correctional Facility (“Project 4”) for the New York State, Office of General Services (“Department of Jurisdiction”); and for the construction of the Ottawa Arboretum Interpretive Center (“Project 5”) for Orange County (“Department of Jurisdiction”).

The hearing also concerned an investigation conducted by the Bureau into whether Keith Rupert d/b/a Keith’s Hardwood Flooring and Keith’s Wood Floor Showroom (“Rupert”) complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a subcontract entered into between Rupert and TWT for the provision of certain construction services with regard to the contract between TWT and the Livingston Manor School District (Project 1).

The hearing also concerned an investigation conducted by the Bureau into whether I. G. Moxie General Contractor, Inc. (“I. G. Moxie”) complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of subcontracts entered into between I. G. Moxie and TWT for the provision of certain construction services with regard to the contracts between TWT and the Livingston Manor School District (Project 1), Dutchess County BOCES (Project 2), and Town of East Fishkill (Project 3).

The hearing also concerned an investigation conducted by the Bureau into whether Prestige Construction Inc. (“Prestige”) complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a subcontract entered into between Prestige and TWT for the provision of certain construction services with regard to the contracts between TWT and Town of East Fishkill (Project 3).

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (John D. Charles, Senior Attorney, of Counsel).

There were no appearances made by, or on behalf of any of the named Respondents.

HEARING OFFICER

John W. Scott was designated as Hearing Officer and conducted the hearing in this matter.

FINDINGS AND CONCLUSIONS

On March 18, 2010, the Department duly served a copy of the Notice of Hearing (Hearing Officer Ex. 1) on all named Respondents, including TWT, Rupert, I. G. Moxie, and Prestige, via regular and certified mail, return receipt requested. A signed a Return Receipt evidencing receipt of the document by Rupert was entered into evidence as Hearing Officer Exhibit 2. Additionally, the first class mailings to TWT, I. G. Moxie and Prestige were not returned (T. 8-9). The Notice of Hearing scheduled a hearing on May 20, 2010 and continuing on May 21, 2010 and required that the Respondents serve an Answer at least 14 days in advance of the scheduled hearing.

The Notice of Hearing alleges that TWT, Rupert, I. G. Moxie, and Prestige underpaid wages and supplements to its workers and that the TWT is responsible for its subcontractor's underpayment pursuant to Labor Law § 223.

All of the named Respondents failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing. As a consequence, TWT, Rupert, I. G. Moxie, and Prestige 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 TWT willfully underpaid its workers on Project 1 in the amount of \$4,569.98 for the audit period weeks ending 2/15/1998 to 7/26/1998; on Project 2 in the amount of \$16,994.72 for the audit period weeks ending 4/30/1998 to 12/19/1998; on Project 3 in the amount of \$17,971.05 for the audit period weeks ending 6/21/1998 to 12/5/1998; and on Project 4 in the amount of \$7,454.65 for the audit period weeks ending 6/21/1998 to 12/5/1998;

and that I. G. Moxie willfully underpaid its workers on Project 2 in the amount of \$7,629.04 for the audit period weeks ending 4/18/1998 to 8/23/1998, and on Project 3 in the amount of \$2,841.44 for the audit period weeks ending 5/9/1998 to 11/14/1998;

and that Rupert underpaid its workers on Project 1 in the amount of \$1,487.80 for the audit period weeks ending 8/10/1997 to 8/24/1997;

and that Prestige underpaid its workers on Project 3 in the amount of \$8,504.00 for the audit period weeks ending 9/1/1998 to 9/1/1998;

and that TWT and I. G. Moxie falsified their payroll records in connection with the willful underpayments;

and that Thomas Terranova is an officer of TWT;

and that Thomas Terranova is one of the five largest shareholders of TWT;¹

and that Thomas Terranova knowingly participated in the violation of Article 8 of the Labor Law;

and that all individuals included in the Department's Audits of TWT for the five Projects were employees of TWT and not independent contractors as alleged by TWT.

The Department issued the following Notices to Withhold Payment to the Departments of Jurisdiction:

Project 1

January 27, 1999 regarding TWT in the amount of \$100,000.00; and

February 23, 1999 regarding Rupert in the amount of \$3,960.00.

Project 2

December 14, 1998 regarding TWT in the amount of \$50,000.00.

Project 3

January 27, 1999 regarding TWT in the amount of \$32,750.00;

February 5, 1999 regarding I. G. Moxie in the amount of \$4,615.91;

February 10, 1999 regarding TWT in the amount of \$10,696.85; and

February 10, 1999 regarding Prestige in the amount of \$10,014.18.

Project 4

January 19, 1999 regarding TWT in the amount of \$7,099.84; and

March 26, 1999 regarding TWT in the amount of \$20,250.00.

¹ Although the Notice of Hearing recites the amended language that refers to any shareholder owning or controlling at least "ten per centum of the outstanding stock", the amendment became effective November 1, 2002, subsequent to the audit period. *See*, Labor Law § 220-b (3) (b) (1).

Project 5

December 10, 1998 regarding TWT in the amount of \$36,254.00; and

January 19, 1999 regarding TWT ion the amount of \$24,192.30.

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 T.W.T. Construction Company Inc. underpaid its workers \$4,569.98 on Project 1, PRC No. 96006506; and

DETERMINE that Keith Rupert d/b/a Keith's Hardwood Flooring underpaid its workers \$1,487.80 on Project 1, PRC No. 96006506; and

DETERMINE that T.W.T. Construction Company Inc. underpaid its workers \$16,994.72 on Project 2, PRC No. 97002309; and

DETERMINE that I. G. Moxie Inc. underpaid its workers \$7,629.04 on Project 2, PRC No. 97002309; and

DETERMINE that T.W.T. Construction Company Inc. underpaid its workers \$17,971.05 on Project 3, PRC No. 97003900; and

DETERMINE that I. G. Moxie Inc. underpaid its workers \$2,841.44 on Project 3, PRC No. 97003900; and

DETERMINE that Prestige Construction Inc. underpaid its workers \$8,504.00 on Project 3, PRC No. 97003900; and

DETERMINE that T.W.T. Construction Company Inc. underpaid its workers \$7,454.65 on Project 4, PRC No. 97002021; and

DETERMINE that T.W.T. Construction Company Inc. underpaid its workers \$31,177.27 on Project 5, PRC No. 98008765; and

DETERMINE that Thomas Terranova is an officer of T.W.T Construction Company, Inc.; and

DETERMINE that Thomas Terranova is one of the five largest shareholders of T.W.T Construction Company, Inc.; and

DETERMINE that Thomas Terranova knowingly participated in the violation of Article 8 of the Labor Law; and

DETERMINE that T.W.T Construction Company, Inc. be assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due; and

DETERMINE that Keith Rupert d/b/a Keith's Hardwood Flooring be assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due; and

DETERMINE that I. G. Moxie Inc. be assessed a civil penalty in the Department's requested amount of 25% of the underpayment and interest due; and

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

DETERMINE that T.W.T Construction Company, Inc. , as the Prime Contractor on Projects 1, 2, and 3, is responsible for the underpayment, interest and civil penalty due from its subcontractors pursuant to its liability under Article 8 of the Labor Law; and

ORDER that the Bureau compute the total amount due, inclusive of the underpayments listed above, interest at 16% from date of underpayment and 25% civil penalty; and

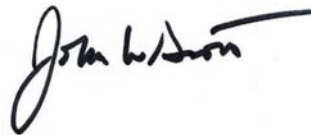
ORDER that Departments Of Jurisdiction remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau, 3 Washington Center, 4th Floor, Newburgh, New York 12550; and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, the Respondents, 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: November 2, 2010
Albany, New York

Respectfully submitted,

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

John W. Scott, Hearing Officer