

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

J. S. McHUGH, INC., and JEFFREY B. MULHALL,
Individually as one of the five largest shareholders of the corporation
Prime Contractor
and
T D CONTRACTORS CORP.
d/b/a T D CONTRACTORS, INC.,
and
WILLIAM THORNE,
Individually as an officer and one of the five largest shareholders of the
corporation;
THE THORNE GROUP, INC.
as a substantially owned-affiliated entity and/or successor of
T D CONTRACTORS CORP.,
and
WILLIAM THORNE and REBECCA THORNE,
Individually as officers and among the five largest shareholders of the
corporation;
SPORTSCRAFTERS, INC.
as a substantially owned-affiliated entity and/or successor of
T D CONTRACTORS CORP.,
and
WILLIAM THORNE,
Individually as an officer and one of the five largest shareholders of the
corporation; and
CERTIFIED INSTALLERS, INC.
as a substantially owned-affiliated entity and/or successor of T D
CONTRACTORS CORP.,
and
REBECCA A. THORNE,
Individually as an officer and one of the five largest shareholders of the
corporation

Subcontractor

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 Town of Bedford, in Bedford, New York.

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Wage Rate
Case No. 07-2178

PW 06 0006

Westchester County

IN THE MATTER OF

ROCKMORE CONTRACTING CORP.,
and
JOHN M. FINN,
Individually as one of the five largest shareholders of the
corporation

Prime Contractor;
J.S. McHUGH, INC., and JEFFREY B. MULHALL,
Individually as one of the five largest shareholders of the
corporation

Subcontractor;
and
T D CONTRACTORS CORP. d/b/a T D CONTRACTORS, INC.,
and

WILLIAM THORNE,
Individually as an officer and one of the five largest shareholders
of the corporation;
THE THORNE GROUP, INC.

as a substantially owned-affiliated entity and/or successor of
T D CONTRACTORS CORP., and WILLIAM THORNE,
Individually as an officer and one of the five largest shareholders
of the corporation;

SPORTSCRAFTERS, INC.
as a substantially owned-affiliated entity and/or successor of
T D CONTRACTORS CORP., and WILLIAM THORNE,
Individually as an officer and one of the five largest shareholders
of the corporation;

and
CERTIFIED INSTALLERS, INC.
as a substantially owned-affiliated entity and/or successor of
T D CONTRACTORS CORP., and REBECCA A. THORNE,

Individually as an officer and one of the five largest shareholders
of the corporation
Sub-subcontractor

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
workers employed on a public work project known as Additions and
Alterations at the Nesaquake Middle School, in Smithtown

Prevailing Rate Case
PRC No. 2009006983
Case ID: PW08
2011008246
Westchester County

IN THE MATTER OF

FORTUNATO SONS, INC., and BERNARD FORTUNATO,
Individually as one of the five largest shareholders of the corporation
Prime Contractor;
and

J.S. McHUGH, INC., and JEFFREY B. MULHALL,
Individually as one of the five largest shareholders of the corporation
Subcontractor;
and

T D CONTRACTORS CORP. d/b/a T D CONTRACTORS, INC
and
WILLIAM THORNE,
Individually as an officer and one of the five largest shareholders of the
corporation;

THE THORNE GROUP, INC.
as a substantially owned-affiliated entity and/or successor of
T D CONTRACTORS CORP., and WILLIAM THORNE,
Individually as an officer and one of the five largest shareholders of the
corporation;

SPORTSCRAFTERS, INC.
as a substantially owned-affiliated entity and/or successor of
T D CONTRACTORS CORP., and WILLIAM THORNE,
Individually as an officer and one of the five largest shareholders of the
corporation;

and
CERTIFIED INSTALLERS, INC.
as a substantially owned-affiliated entity and/or successor of
T D CONTRACTORS CORP., and REBECCA A. THORNE,
Individually as an officer and one of the five largest shareholders of the
corporation

Sub-subcontractor

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
workers employed on a public work project known as Additions and
Alterations at the Great Hollow Middle School in Smithtown.

**Prevailing Rate Case
Case No. 03-6084
PW 12 060004**

Suffolk County

To: Honorable Peter M. Rivera
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on July 16, 2012 in Albany, New York and by videoconference with Patchogue and White Plains 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 T D Contractors Corp, d/b/a T D Contractors, Inc., ("Sub"), a subcontractor on three public work projects, complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*).

APPEARANCES

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz, (Louise Roback, of counsel).

Steven Taitz, Esq., represented Fortunato Sons Contracting, Inc. and Bernard Fortunato, ("Fortunato"), prime contractor in one of the projects.

Kevin D. Slakas, Esq., represented Rockmore Contracting Corp. and John M. Finn ("Rockmore"), prime contractor in one of the projects.

Thomas Bianco, Esq., represented J. S. McHugh, Inc. and Jeffrey B. Mulhall ("McHugh"), prime contractor on one of the projects

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

FINDINGS AND CONCLUSIONS

On June 5, 2012, the Department duly served a copy of the Notice of Hearing on Sub, via regular and certified mail, return receipt requested. The regular mail envelope was not returned to the Department. The Notice of Hearing scheduled a July 16, 2012, hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

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

The Notice of Hearing alleges that Sub underpaid wages and supplements to its workers on three public work projects, and that Fortunato, Rockmore and McHugh, as the three prime contractors, are responsible for Sub's underpayment pursuant to Labor Law § 223.

At the hearing, the three prime contractors stipulated on the record to pay the underpayments of Sub in full satisfaction of their liability under Labor Law article 8 as follows:

PRC 07-2178

PATTERSON RECREATION CENTER ("PROJECT 1")

McHugh agreed to pay underpaymentst to workers on the Project of \$5,885.85 interest of \$1,837.21, and a civil penalty of 20%, or \$1,544.61, for a total amount due of \$9,267.67.

PRC 03-6084

GREAT HOLLOW MIDDLE SCHOOL ("PROJECT 2")

Rockmore agreed to pay underpayments to workers on the Project of \$4,581.34, interest of \$1,409.63, and a civil penalty of 20%, or \$1,198.19, for a total amount due of \$7189.16.

PRC 03-6084

GREAT HOLLOW MIDDLE SCHOOL ("PROJECT 3")

Fortunato agreed to pay underpayments to workers on the Project of \$857.87, interest of \$228.77, and a civil penalty of 20%, or \$217.33, for a total amount due of \$1303.97

The parties agreed that the bulk of the amounts agreed to by the prime contractors would be recovered from existing withholdings established by the Department, and that McHugh would pay any net due.

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigators and documents describing the underpayments, which supported the Bureau's charges that:

On Project 1, Sub willfully underpaid \$5855.85 to its workers for the audit period weeks ending December 12, 2003 to July 9, 2004; and

On Project 2 Sub willfully underpaid \$4581.34 to its workers for the audit period weeks ending March 12, 2004 to October 1, 2004; and

On Project 3, Sub willfully underpaid \$857.87 to its workers for the audit period weeks ending March 12, 2004 to October 1, 2004; and

For the foregoing reasons, the findings, conclusions and determinations of the Bureau should be sustained.

RECOMMENDATIONS

Based upon the default of the Sub 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 Sub underpaid its workers \$5855.85 on Project 1, PRC No. 07-2178; and

DETERMINE that Sub underpaid its workers \$4,581.34 on Project 2, PRC No. 03-6084; and

DETERMINE that Sub underpaid its workers \$857.87 on Project 3, PRC No 03-6084.; and

DETERMINE that Sub 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; and

DETERMINE that the failure of Sub to pay the prevailing wage or supplement rate was a "willful" violation of Labor Law article 8; 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, pursuant to the stipulation between prime contractors Fortunato, Rockmore and McHugh and the Department, the three prime contractors will be responsible for the underpayments determined due, but interest on the underpayments against will be reduced as set forth above civil penalty shall be 20%; and

ORDER that the Bureau compute the total amount due (underpayment of on the three Projects, interest at 16% from the date of underpayment and 25% civil penalty); and

ORDER that, upon receipt of payment of the underpayments, interest and penalty as set forth in their stipulations above, the prime contractors will have fully satisfied their liability under Labor Law article 8; and

ORDER that Sub shall receive a credit for the amounts paid by the prime contractors; and

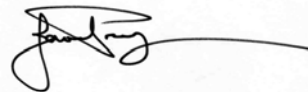
ORDER that Departments of Jurisdiction remit payments of any withheld funds to the Commissioner of Labor, up to the amounts directed by the Bureau consistent with its computation of the total amounts due, by forwarding the same to the Bureau; and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Sub, 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: 160 South Ocean Avenue, Second Floor, Patchogue, New York; 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: February 19, 2013
Albany, New York

Respectfully submitted,



Jerome Tracy
Hearing Officer