

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

The New York State Department of Labor,

Complainant,  
Universal Custom Millwork, Inc.

Respondent,

In a proceeding pursuant to New York Labor Law Article 25-A and 12 NYCRR Part 921 for a determination that a violation of the WARN Act (L. 2008 ch.475) has occurred.

**REPORT  
&  
RECOMMENDATION**

WRAN-09-0004

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 October 4, 2011 in Albany, New York. 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 Division of Employment and Workforce Solutions ("Division") of the New York State Department of Labor ("Department") into whether Universal Custom Millwork, Inc. ("Respondent")<sup>1</sup>, complied with the requirements of Article 25-A of the Labor Law and regulations promulgated thereunder (12 NYCRR part 921) in connection with the layoff of workers and the closing of Universal Custom Millwork, Inc., without giving the notice required by law.

**APPEARANCES**

The Bureau was represented by Department Acting Counsel, Pico Ben-Amotz, Mary McManus, Senior Attorney, of Counsel.

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<sup>1</sup> At the opening of the hearing, the Department's attorney asked to remove Stephen Chapman as a named Respondent because the Department was not proceeding against him. The caption has been revised to conform to this request.

Respondent did not appear in this matter or attend the hearing.

### **ISSUES**

1. Did the Respondent violate the provisions of Labor Law Article 25-A and 12 NYCRR part 921 when it laid off workers and subsequently closed Universal Custom Millwork, Inc. without giving the notice required by statute?
2. As a result of the Respondent's actions, is it liable for the payment of wages and civil penalties as defined in Labor Law Article 25-A?

### **FINDINGS AND CONCLUSIONS**

The Department is a governmental agency charged with implementation and enforcement of Article 25-A of the Labor Law of the State of New York together with the regulations set forth in 12 NYCRR part 921. Article 25-A and its implementing regulations became effective February 1, 2009, and are applicable to employment losses occurring on or after that date.

The Department served a copy of the Notice of Hearing for this proceeding on counsel for Respondent, and received a signed domestic return receipt as evidence of such service (HO 2). Neither Respondent's counsel nor anyone else appeared on behalf of Respondent at the hearing. As a consequence, Respondent is in default.

At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of Department staff, former employees of Respondent, and documents, that described Respondent's actions and supported the Department's charges that:

Respondent was a business subject to Labor Law Article 25-A and 12 NYCRR part 921;  
and

Respondent implemented layoffs in December 2010 and closed its facility on January 14,

2011; and

Respondent failed to provide advance notice of the layoffs and plant closing to the affected employees or their representatives, the Department, and local workforce investment boards as required by Labor Law §860-b and 12 NYCRR § 921-2.1; and

As a result of its violation of the Labor Law, Respondent is liable to its affected employees for back pay in the amount of \$451,334.35 and benefits in the amount of \$135,400.30; and

As a result of its violation of the Labor Law, Respondent is liable to its affected employees sustaining an employment loss for the cost of any benefits to which the employee would have been entitled had his or her employment not been lost up to a maximum of sixty days; and

As a result of its violation of the Labor Law, Respondent is liable to the Department for a civil penalty of \$500 per day for sixty days, for a total of \$30,000.00.

### **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 Respondent violated the provisions of Labor Law § 860-b and 12 NYCRR § 921-2.1 in failing to provide the notice required by law to affected employees, the Department and local workforce investment boards; and

DETERMINE that Respondent owes back pay and benefits to its employees sustaining an

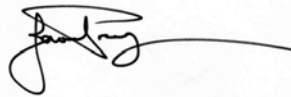
employment loss in an aggregate amount totaling \$586,734.65; and

DETERMINE that Respondent be assessed a civil penalty of \$500 per day for sixty days, a total of \$30,000.00, for failing to provide notice as required by Labor Law § 860-b and 12 NYCRR § 921-2.1,; and

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

ORDER that upon the Bureau's notification, the Respondent shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Director, Division of Employment and Workforce Solutions, New York State Department of Labor, State Office Building Campus, Building 12, Room 420, Albany, NY 12240.

Dated: November 30, 2011  
Albany, New York



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Jerome A. Tracy, Associate Attorney  
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Albany NY 12240