

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

JAMESWAY GLASS CORP., d/b/a
MONSEY GLASS & WINDOW CO., INC.
Prime Contractor

and

SIERRA ERECTORS, INC.
and
THOMAS ASCHMONEIT
as an officer and shareholder of
SIERRA ERECTORS, INC.
Subcontractor

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
01-04660 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 February 3, 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 Sierra Erectors, Inc., and Thomas Aschmoneit, as an officer and shareholder of Sierra Erectors, Inc., ("Sub") a subcontractor of Jamesway Glass Corp., d/b/a Monsey Glass and Window Co., Inc. ("Prime") complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a public work contract involving the

construction of windows and storefront for the new Cornwall High School, (“Project”) for the Cornwall Central School District (“Department of Jurisdiction”).

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 Sub or Prime

FINDINGS AND CONCLUSIONS

On September 19, 2008, the Department duly served a copy of the Notice of Hearing on Sub, via regular and certified mail, return receipt requested. Signed Return Receipts evidencing receipt of the Notice of Hearing by Prime and Sub were received into evidence as Hearing Officer Exhibit 3. The Notice of Hearing scheduled a hearing for December 16, 2008, and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing. On November 28, 2008, a letter requesting an adjournment from Thomas Aschmoneit was received by the Hearing Officer. This document was received into evidence as Hearing Officer Exhibit 5. There was no subsequent communication from Mr. Aschmoneit and Department Counsel stated that in a conversation with Mr. Aschmoneit’s purported counsel, that individual said she would not be representing him. Thereafter, a Notice of Rescheduled Hearing, received in evidence as Hearing Officer Exhibit 9, was issued on December 18, 2008. The certified mail copies of the Notice of Rescheduled Hearing sent to Prime were received, but those sent to Sub were returned; the copies sent to Sub by regular mail were not returned. Prime and Sub failed to file an Answer to the charges contained in the Notice of Hearing or to appear at the hearing and as a consequence, Prime and Sub are in default in this proceeding.

The Notice of Hearing alleges that the Sub underpaid wages and supplements to its workers and falsified payrolls, and that the Prime is responsible for its subcontractor’s underpayment pursuant to Labor Law § 223.

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 Sub willfully underpaid \$2,465.02 to two of its workers for the audit period week ending 7/13/03 through week ending 8/10/03.

Furthermore, the Department showed that Sub falsified its payroll records in connection with that willful underpayment.

Finally, the Department showed that Thomas Aschmoneit was an officer of Sub and that Thomas Aschmoneit 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 Sub underpaid its workers \$2,465.02 on the Project; 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 Article 8 of the Labor Law; and

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

DETERMINE that Thomas Aschmoneit is an officer of Sub who knowingly participated in the violation of Article 8 of the Labor Law; 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 Prime is responsible for any underpayment, interest and civil penalty due pursuant to its liability under Section 223 of the Labor Law; and

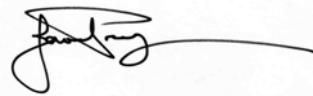
ORDER that the Bureau compute the total amount due (underpayment of \$2,465.02, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that upon the Bureau's notification, Sub 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 13, 2009
Albany, New York

Respectfully submitted,

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

Jerome Tracy, Hearing Officer