

IN THE MATTER OF

D&G PAINTING & DECORATING, INC.;
DANIEL SCHEURICH
and
GUS PAPASTEFANOU,
Individually as officers, owners and shareholders of the
corporation

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 workers employed on a public work
project known as caulking and masonry repair at the Gibson
Road Campus in Goshen

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
Case No. 2007001287
PW 08 2010015004
Orange County

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 August 30, 2011 and February 29, 2012 in Albany, New York and by videoconference with, 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 D & G Painting & Decorating, ("Respondent") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving furnishing labor, material, and equipment necessary to perform masonry work on a public work project known as caulking and masonry repair at the Gibson Road Campus in Goshen, Orange County ("Project") for Orange County BOCES ("Department of Jurisdiction").

HEARING OFFICER

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

APPEARANCES

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

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

FINDINGS AND CONCLUSIONS

On May 6, 2011 and June 10, 2012, the Department duly served a copy of the Notice of Hearing (Hearing Officer Ex. 1) on Respondent, via regular and certified mail, return receipt requested. Subsequent to the service of the Notice of Hearing, the original hearing dates of June 27, 28, and 29, 2011 were adjourned at the request of Gus Papastefanou, the Vice President of the Respondent (T. 4). The Notice of Hearing and the Notice of Adjournment and Rescheduled Hearing (Hearing Officer Ex. 3) required the Respondent to serve an Answer at least 7 days in advance of the scheduled hearing.

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

The Notice of Hearing alleges that Respondent underpaid wages and supplements to its workers.

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:

Prime willfully underpaid \$37,383.24 to its workers for the audit period weeks ending 6/7/2008 to 7/12/2008 (DOL Exs. 20, 21); and

Prime falsified its payroll records in connection with that willful underpayment; and

Gus Papastefanou is the Vice-President of Respondent (DOL Ex. 5, 17); and

On June 22, 2010, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in the amount of \$95,131.96. (DOL Ex. 15) but there is no amount currently withheld by the Department of Jurisdiction as a result of the Notice. (DOL Ex. 16)

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

RECOMMENDATIONS

Based upon the default of the Respondent 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 underpaid its workers \$37,383.24 on PRC No. 2007001287 and

DETERMINE that Respondent 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 Respondent to pay the prevailing wage or supplement rate was a "willful" violation of Labor Law article 8; and

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

DETERMINE that Gus Papastefanou is an officer of Respondent; and

DETERMINE that Gus Papastefanou knowingly participated in the violation of Labor Law article 8; and

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

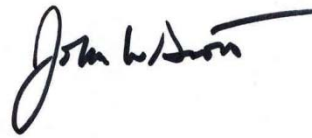
ORDER that the Bureau compute the total amount due (underpayment of \$37,383.24, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that upon the Bureau's notification, Respondent 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 19, 2012
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