

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of  
*THE PIKE COMPANY, INC.*,

Prime Contractor,

DEFAULT  
REPORT  
&  
RECOMMENDATION

and

NEW YORK COMMERCIAL FLOORING, INC.,  
and DIANE SPRINGER as an officer and/or shareholder  
of NEW YORK COMMERCIAL FLOORING, INC.,

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  
PW062014005625  
laborers, workers, and mechanics employed on  
a public work Project for the State University of New  
York.

Prevailing Rate Case  
No.: 2010007031  
Case ID:

Onondaga County

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To: Honorable Roberta Reardon  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued on 6/12/2017, a hearing was held on  
7/25/2017 in Albany, New York and by videoconference with Syracuse and Rochester,  
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 New York Commercial Flooring, Inc. ("Sub"), a subcontractor of The Pike Company, Inc. ("Prime"), complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving the expansion of the State University of New York Upstate Medical Center ("Project") for the State University of New York ("Department of Jurisdiction").

### **APPEARANCES**

The Bureau was represented by Department Counsel, Pico Ben-Amotz (Erin Hayner, Senior Attorney, of Counsel).

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

Prior to the hearing Prime entered into a stipulation with the Department in which Prime agreed to pay the amount of the underpayment the Bureau had determined Sub owed with interest in advance of the hearing, which payment the Bureau deemed sufficient to resolve Prime's Article 8 liability.

### **FINDINGS AND CONCLUSIONS**

On 6/12/17, the Department duly served a copy of the Notice of Hearing on Sub at Sub's last known address which was also the address set forth in its filings with the New York State Department of State for the service of process. The Department sent the Notice of Hearing via regular and certified mail, return receipt requested. The Notice of Hearing scheduled a hearing and required the Sub to serve an Answer at least 14 days in advance of the scheduled hearing.

The Department also duly served a copy of the Notice of Hearing on Prime, via regular and certified mail, return receipt requested. A signed Return Receipt evidencing receipt of the document by Prime and Prime's Counsel was entered into evidence.

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 and that Prime is responsible for Sub's underpayment pursuant to Labor Law § 223.

Prior to the hearing, Prime entered a stipulation with the Department in which it agreed to pay \$13,386.86, the full amount alleged by the Department to be owed by Sub as an underpayment, as well as interest on that amount at a rate of 6% per annum in the amount of \$495.52, and no penalty, for a total payment of \$13,852.38, in full satisfaction of Prime's wage underpayment liability under Labor Law article 8.

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:

The Project was subject to Labor Law article 8; and

Prime entered into a contract for the Project with the Department of Jurisdiction; and

Sub entered into a contract with Prime for work on the Project; and

Sub willfully underpaid \$13,386.86 to its workers for the audit period weeks ending 6/15/14 to 6/22/14; and

Diane Springer is an officer of Sub; and

Diane Springer knowingly participated in the violation of Labor Law article 8.

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

## **RECOMMENDATIONS**

Based upon the default of 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 \$13,386.86 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 Labor Law article 8; and

DETERMINE that Diane Springer is an officer of Sub who knowingly participated in the 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 Prime stipulated to pay the underpayments plus interest at 6% and no penalty, in complete satisfaction of its liability under Labor Law article 8; and

ORDER that the Bureau compute the total amount due (underpayment of \$13,386.86, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that Prime has fully satisfied its liability under Labor Law article 8;

ORDER that Sub shall receive a credit for the \$13,852.38 paid by Prime; 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: State Office Building, 333 East Washington Street, Room 419, Syracuse, NY 13202; 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: October 6, 2017  
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerome Tracy", is written over a light gray rectangular background.

Jerome Tracy, Hearing Officer