

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

V.M.K. Corp.; and RICHARD MACONE as officer
and/or shareholder of V.M.K. Corp.;

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 laborers, workers and mechanics
employed on a public work project for the
Elmont Union Free School District.

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**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
No. 2008001862
Case ID:
PW04 2009022490
Nassau County

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

Pursuant to a Notice of Hearing issued on October 25, 2017, a hearing was held on December 15, 2017 in Albany, New York and by videoconference with Garden City, 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 V.M.K. Corp. ("V.M.K. Corp.", "Respondent") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving one project, to wit: furnishing labor, tools, and equipment necessary for the roof renovation at the Clara Carlson Elementary School (PRC No. 2008001862) ("Project") for the Elmont Union Free School District, located in Elmont, Nassau County, New York ("Department of Jurisdiction").

HEARING OFFICER

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

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz,
(Larissa Bates, Senior Attorney, of Counsel)

There was no appearance made by, or on behalf of V.M.K. Corp.

FINDINGS AND CONCLUSIONS

On October 27, 2017, the Department duly served a copy of the Notice of Hearing on V.M.K. Corp., via regular and certified mail, return receipt requested (Hearing Officer Ex. 2). The regular mail envelope was not returned to the Department. In addition, on October 31, 2017, the Department personally served a copy of the Notice of Hearing on V.M.K. Corp. by service on the New York State Department of State (Hearing Officer Ex. 3). The Notice of Hearing scheduled a hearing on December 15, 2017 and required the Respondent to serve an Answer at least 14 days in advance of the scheduled hearing.

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

The Notice of Hearing alleges that V.M.K. Corp. 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:

The Project was subject to Labor Law article 8; and

V.M.K. Corp. entered into a contract for the Project with Department of Jurisdiction; and

V.M.K. Corp. willfully underpaid \$82,483.25 to its workers for the audit period weeks ending 07/02/2008 to 11/12/2008; and

V.M.K. Corp. falsified its payroll records in connection with that willful underpayment;
and

Richard Macone is an officer of V.M.K. Corp.; and

Richard Macone knowingly participated in the violation of Labor Law article 8.

The Department did not offer evidence establishing that Respondent was an experienced public work contractor with a history of failures to pay prevailing wages. However, I will take judicial notice that this case is just one of several cases pending before the Commissioner involving Respondent's willful failure to pay prevailing wages to its many employees on public work projects. Furthermore, I find that Respondent's failure to pay prevailing wages to 23 employees in this case, when it knew this was a public work project and it was provided the applicable prevailing wage schedule, constituted serious violations of Labor Law article 8. Respondent's requirement that its employees kickback wages and then its falsification of the payroll documents to indicate that the employees received their full wages is clearly a failure to comply with recordkeeping requirements. Finally, Respondent's failure to cooperate with the investigation and participate in this hearing are indicia of bad faith. I find the totality of the evidence sufficient to support the Department's request that the Commissioner assess a 25% civil penalty.

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

RECOMMENDATIONS

Based upon the default of V.M.K. Corp. 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 V.M.K. Corp. underpaid its workers \$82,483.25 on the Project, PRC No. 2008001862; and

DETERMINE that V.M.K. Corp. 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 V.M.K. Corp. to pay the prevailing wage or supplement rate was a “willful” violation of Labor Law article 8; and

DETERMINE that the willful violation of V.M.K. Corp. involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that Richard Macone is an officer of V.M.K. Corp.; and

DETERMINE that Richard Macone knowingly participated in the violation of Labor Law article 8; and

DETERMINE that V.M.K. Corp. be assessed a civil penalty in the Department’s requested amount of 25% of the underpayment and interest due; and

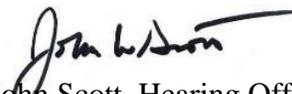
ORDER that the Bureau compute the total amount due (underpayments of \$82,483.25, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that upon the Bureau’s notification, V.M.K. Corp. shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at: 400 Oak Street, Suite 101, Garden City, NY 11530-6551; 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, 2018
Albany, New York

Respectfully submitted,


John Scott, Hearing Officer