

STATE OF NEW YORK      DEPARTMENT OF LABOR

IN THE MATTER OF

MANNING-SQUIRES-HENNIG CO., INC.

Prime Contractor  
and

D. LAND CONSTRUCTION COMPANY, INC.

Subcontractor  
and

DADON R. LAND,

Individually, as an officer of

D. LAND CONSTRUCTION COMPANY, INC.

and one who owns or controls more than ten percent of the  
shares

and

KEATA LAND, Individually, as an officer of,  
D. LAND CONSTRUCTION COMPANY, INC.

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 Zoological  
Society of Buffalo, in Buffalo, New York

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Prevailing Rate Case  
2006004125 Erie 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 27, 2010. 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.

Land Construction Company, Inc. (“D. Land”) a subcontractor of Manning-Squires-Hennig Co., Inc. (“Manning-Squires”) 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 a rain forest exhibit at the Buffalo Zoo (“Project”) for Zoological Society of Buffalo.

### **APPEARANCES**

The Bureau was represented by Department Counsel, Maria Colavito (Richard Cucolo, Senior Attorney, of Counsel).

There were no appearances made by, or on behalf of D. Land, Dadon R. Land or Keta Land. Manning-Squires paid the amount of the underpayment the Bureau had determined D. Land owed in advance of the hearing, and stipulated to pay interest on the underpayment at the hearing, which the Bureau deemed sufficient to resolve Manning-Squires’s Article 8 liability.

### **FINDINGS AND CONCLUSIONS**

On June 16, 2010, the Department duly served a copy of the Notice of Hearing on D. Land, Dadon R. Land and Keta Land via regular and certified mail, return receipt requested. The regular mail envelopes addressed to those Respondents were not returned to the Department. The Notice of Hearing scheduled an August 27, 2010 hearing and required that the Respondents serve an Answer at least 14 days in advance of the scheduled hearing.

The Notice of Hearing alleges that D. Land underpaid wages and supplements to its workers and that the Manning-Squires is responsible for its subcontractor’s underpayment pursuant to Labor Law § 223.

Prior to the hearing, Manning-Squires paid \$8,462.71 on account of D. Land’s underpayment. At the hearing, Manning-Squires stipulated to pay interest on that underpayment at a rate of 10% per annum in the amount of \$1,646.58 within 30 days.

D. Land, Dadon R. Land and Keta Land failed to file an Answer to the charges

contained in the Notice of Hearing or to appear at the hearing. As a consequence, they are in default in this proceeding.

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 D. Land willfully underpaid \$8,462.71 to its workers for the audit period weeks ending August 5, 2007 to December 2, 2007; and that Dadon R. Land and Keta Land are officers of D. Land; and that Dadon R. Land is a shareholder of D. Land who owned or controlled at least ten per centum of its outstanding stock; and that Dadon R. Land and Keta Land 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 D. Land underpaid its workers \$8,462.71 on Project;

DETERMINE that D. Land 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;

DETERMINE that the failure of D. Land to pay the prevailing wage or supplement rate was a "willful" violation of Article 8 of the Labor Law;

DETERMINE that Dadon R. Land and Keta Land are officers of D. Land; and

DETERMINE that Dadon R. Land is a shareholder of D. Land who owned or controlled at least ten per centum of its outstanding stock;

DETERMINE that Dadon R. Land and Keta Land knowingly participated in the violation of Article 8 of the Labor Law;

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

DETERMINE that Manning-Squires has paid \$8,462.71 in underpayment and stipulated to pay \$1,646.58 in interest required to fully satisfy its vicarious liability under Article 8 of the Labor Law; and

ORDER that the Bureau compute the total amount due (underpayment of \$8,462.71, interest at 16% from date of underpayment and 25% civil penalty);

ORDER that, upon payment of \$1,646.58 and complete performance of the stipulation entered into between Manning-Squires and the Department, Manning-Squires will have fully satisfied its liability under Article 8 of the Labor Law;

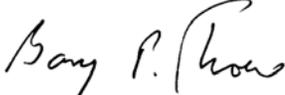
ORDER that D. Land shall receive a credit for the \$10,109.29 paid by Manning-Squires;

ORDER that upon the Bureau's notification, D. Land shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at 65 Court Street Room 201, Buffalo, NY 14202; 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: September 24, 2010  
Albany, New York

Respectfully submitted,

  
Gary P. Troue, Hearing Officer