

STATE OF NEW YORK: DEPARTMENT OF LABOR

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In the Matter of

EMERGENCY CESSPOOL & SEWER CLEANERS
INC., and LAUREN MANGANO, as an officer and/or
shareholder of EMERGENCY CESSPOOL & SEWER
CLEANERS INC.;

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
Town of Babylon in West Babylon, New York.

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**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Wage Rate
No. 2015005180
Case ID: PW12 2016004404
Suffolk County

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

Pursuant to a Notice of Hearing issued on August 1, 2017, a hearing was held on August 31, 2017 in Albany, New York and by videoconference with, Patchogue, 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 Emergency Cesspool & Sewer Cleaners, Inc ("Respondent") complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving furnishing materials, labor, tools, and equipment necessary for the cleaning of leachate transmission pipes ("Project") for the Town of Babylon, Suffolk 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,
(Frank Chou, Attorney, of Counsel)

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

FINDINGS AND CONCLUSIONS

On August 4, 2017, the Department duly served a copy of the Notice of Hearing on Respondent, via regular and certified mail, return receipt requested (HO Ex.2). The regular mail envelope was not returned to the Department. Additionally, on August 21, 2018 the Department personally served the Notice of Hearing on Respondent by service on the New York State Department of State (HO Ex. 4). The Notice of Hearing scheduled an August 31, 2017 hearing and required the Respondent to serve an Answer at least 14 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:

The Project was subject to Labor Law article 8; and

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

Respondent willfully underpaid \$5,760.14 to its workers for the audit period weeks ending 09/09/2015 to 07/20/2016; and

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

Lauren Mangano is an officer of Respondent; and

Lauren Mangano knowingly participated in the violation of Labor Law article 8.

The Department did not offer evidence of the size of Respondent's business, whether Respondent was an experienced public work contractor, or whether Respondent had a history of prior violations. However, the Department did offer evidence establishing that Respondent was aware that this was a public work project and was given the applicable prevailing wage rate schedule. In addition, the record indicates that Respondent inquired of the Department of Jurisdiction about the proper classifications of its employees. Respondent's misclassifications of its workers and knowing failure to pay the proper wage and supplement rates are serious violations of Labor Law article 8 and indicia of bad faith. Finally, Respondent's falsification of its payroll records is a clear failure to comply with recordkeeping requirements. I find the totality of the evidence, specifically including the foregoing, is not sufficient to support the assessment of the 25% civil penalty requested by the Department.

On July 26, 2016, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in the amount of \$7,248.08. The Department of Jurisdiction acknowledged that sufficient funds are available in an open purchase order to satisfy the Department's Notice to Withhold Payment.

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 \$5,760.14 on Project PW12 2016004404, PRC No. 2015005180; 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 Lauren Mangano is an officer of Respondent; and

DETERMINE that Lauren Mangano knowingly participated in the violation of Labor Law article 8; and

DETERMINE that Respondent be assessed a civil penalty in the amount of 20% of the underpayment and interest due; and

ORDER that the Bureau compute the total amount due (underpayment of \$5,760.14, interest at 16% from date of underpayment and 20% civil penalty); and

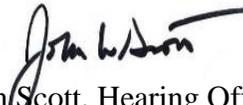
ORDER that Department of Jurisdiction remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau at: New York State Department of Labor, 160 South Ocean Avenue, Patchogue, New York 11772; and

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Respondent, upon the Bureau’s notification of the deficit amount, shall immediately remit the outstanding balance, made payable to the Commissioner of Labor, to the Bureau at the aforesaid address; 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