

IN THE MATTER OF

NORTHLAND ASSOCIATES, INCORPORATED

Prime Contractor

and

CORTLAND GLASS CO., INC.

CORTLAND GLASS COMPANY, INC.,

and its substantially owned-affiliated entity

SEVEN VALLEY GLASS SHOP, INC.,

Subcontractor,

GERALD A. POLLOCK

and

EVE J POLLOCK

Individually, and as Owners, Officers and Shareholders

of CORTLAND GLASS COMPANY, INC

and/or its substantially owned-affiliated entity

SEVEN VALLEY GLASS SHOP, INC.,

for a determination pursuant to Article 8 of the Labor Law to whether prevailing wages and supplements were paid to or provided for the laborers, workers mechanics employed on a public work project for the West Genesee Central School District in Camillus, New York.

**AMENDED DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
01-002042 Onondaga County

IN THE MATTER OF

NORTHLAND ASSOCIATES, INCORPORATED
Prime Contractor
and
CORTLAND GLASS CO., INC.
and its substantially owned-affiliated entity
SEVEN VALLEY GLASS SHOP, INC.,
Subcontractor,

GERALD A. POLLOCK
and
EVE J POLLOCK

Individually, and as Owners, Officers and Shareholders
of CORTLAND GLASS COMPANY, INC
and/or its substantially owned-affiliated entity
SEVEN VALLEY GLASS SHOP, INC.,

Prevailing Rate Case
03-003950 Jefferson County

for a determination pursuant to Article 8 of the Labor Law
to whether prevailing wages and supplements were
paid to or provided for the laborers, workers mechanics
employed on a public work project for Jefferson County in
Watertown, New York.

IN THE MATTER OF

CORTLAND GLASS CO., INC.
and its substantially owned-affiliated entity
SEVEN VALLEY GLASS SHOP, INC.,
Prime Contractor

GERALD A. POLLOCK
and
EVE J POLLOCK

Individually, and as Owners, Officers and Shareholders
of CORTLAND GLASS COMPANY, INC
and/or its substantially owned-affiliated entity
SEVEN VALLEY GLASS SHOP, INC.,

Prevailing Rate Case
00-004182 Cortland County

for a determination pursuant to Article 8 of the Labor Law
to whether prevailing wages and supplements were
paid to or provided for the laborers, workers mechanics
employed on a public work project for the Homer Central
School District, Homer, New York.

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 13, 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 Cortland Glass Company, Inc. ("Cortland"), a subcontractor of Northland Associates, Incorporated ("Northland") in two of the above-captioned matters, and a prime contractor in the third, complied with the requirements of Article 8 of the Labor Law (§§ 220 et seq.) in the performance of three public work contracts. The first matter, bearing Prevailing Rate Case Number 01-002042, involved a subcontract for the installation of pre-glazed windows at the West Genesee High School ("Project 1") for the West Genesee Central School District. The second, bearing Prevailing Rate Case Number 03-003950, involved a subcontract for the installation of pre-glazed windows at the Jefferson County Courthouse Complex ("Project 2") for Jefferson County. The third, bearing Prevailing Rate Case Number 00-004182, involved a prime contract for the installation of pre-glazed windows at various buildings located throughout the Homer Central School District ("Project 3") for the Homer Central School District.

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Marshall H. Day, Senior Attorney, of Counsel). Northland was represented by Linda E. Alario, Esq. of the firm Alario Associates, P.C. Although an Answer was submitted by Cotter &

Cotter, P.C. on behalf of Gerald A. Pollack, Eve J. Pollack and Seven Valley Glass Shop, Inc., there was no appearances made by, or on behalf of Cortland; and none of the other named respondents appeared at the hearing. At the hearing, the Department withdrew its claims against Eve J. Pollack and Seven Valley Glass Shop, Inc., on the basis that it lacked sufficient evidence to proceed against them.

At the hearing, Northland stipulated to pay the amount of the underpayments on Projects 1 and 2, with interest at a rate of 16% per annum from August 13, 2007, which payment the Bureau deemed sufficient to resolve Northland's Article 8 liability and which totaled \$29,862.35 on Project 1 and \$13,359.17 on Project 2 for a total payment of \$43,221.52.

FINDINGS AND CONCLUSIONS

On June 28, 2010, the Department duly served a copy of the Notice of Hearing on Cortland and Gerald Pollack via regular and certified mail, return receipt requested. A signed Return Receipt evidencing receipt of the document by Gerald Pollack was entered into evidence as Hearing Officer Exhibit 3. The Notice of Hearing scheduled an August 13, 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 the Cortland underpaid wages and supplements to its workers and that Northland is responsible for its subcontractor's underpayment pursuant to Labor Law § 223. At the hearing, Northland stipulated, *inter alia*, to pay the underpayment of its subcontractor in full satisfaction of its Article 8 liability.

Cortland failed to file an Answer to the charges contained in the Notice of Hearing and neither Cortland nor Gerald Pollack appeared 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 Cortland willfully underpaid its workers on the three projects as follows:

PROJECT 1

On Project 1 Cortland underpaid its workers \$17,521.92 for the audit period weeks ending October 19, 2002 to September 6, 2003;

PROJECT 2

On Project 2 Cortland underpaid its workers \$8,324.97 for the audit period weeks ending September 20, 2003 to February 14, 2004;

PROJECT 3

On Project 3 Cortland underpaid its workers \$59,181.85 for the audit period weeks ending July 13, 2002 to March 6, 2004.

SHAREHOLDER/OFFICER INVOLVEMENT

The evidence further showed that Gerald A. Pollack was an officer of Cortland; that Gerald A. Pollack owned or controlled at least ten per centum of its outstanding stock and was one of its five largest shareholders; and that Gerald A. Pollack knowingly participated in the violation of Article 8 of the Labor Law.

PROJECT 3 WITHHOLDING

On October 5, 2004, the Department issued a Notice to Withhold Payment to the Homer Central School District in the amount of \$82,500.00, which the School District acknowledged on October 25, 2004, advising that it was withholding the \$31,990.00 remaining on the contract as a result of the Notice.

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 Cortland underpaid its workers \$17,521.92 on Project 1;

DETERMINE that Cortland underpaid its workers \$8,324.97 on Project 2;

DETERMINE that Cortland underpaid its workers \$59,181.85 on Project 3;

DETERMINE that Cortland 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 Cortland to pay the prevailing wage or supplement rate was a “willful” violation of Article 8 of the Labor Law;

DETERMINE that Gerald A. Pollack was an officer of Cortland; that Gerald A. Pollack owned or controlled at least ten per centum of its outstanding stock and was one of its five largest shareholders; and that Gerald A. Pollack knowingly participated in the violation of Article 8 of the Labor Law;

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

DETERMINE that Northland is responsible for the underpayment and stipulated interest due pursuant to its liability under Article 8 of the Labor Law;

DETERMINE that Northland stipulated to pay in complete satisfaction of its liability under Article 8 of the Labor Law; and

ORDER that the Bureau compute the total amount due on each of the three projects (underpayment, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that, upon payment of \$43,221.52 and complete performance of the stipulation entered into between Northland and the Department, Northland will have fully satisfied its liability under Article 8 of the Labor Law;

ORDER that Cortland shall receive a credit for the \$43,221.52 paid by Northland; and

ORDER that Homer Central School District remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with

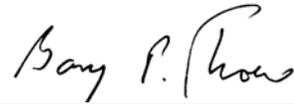
its computation of the total amount due, by forwarding the same to the Bureau at its offices located at 333 East Washington Street Room 419, Syracuse, NY 13202; and

ORDER that after application of the withheld amount to satisfy the total amount due, Cortland, 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: October 15, 2010
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary P. Troue". The signature is written in black ink and is positioned above a horizontal line.

Gary P. Troue, Hearing Officer