

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Security Signal Devices, Inc.

Case No. 15-0109-PWH

From a Determination of Civil Penalty issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

INTRODUCTION

Affected contractor Security Signal Devices, Inc., doing business as SSD Alarm Systems (SSD) submitted a request for review of a Civil Wage and Penalty Assessment (Assessment or CWPA) issued by the Division of Labor Standards Enforcement (DLSE) on January 30, 2015, with respect to work performed by SSD on the El Monte City Hall project (Project) for the City of El Monte (City). An amended Assessment indicated that the affected contractor failed to pay wages of \$3,193.54 and training fund contributions of \$98.18, and imposed penalties of \$3,600.00 and \$2,040.00 under Labor Code sections 1775 and 1777.7 respectively; the total amount assessed was \$8,931.72. The \$2,040.00 in penalties imposed under section 1777.7 was for the contractor's failure to submit contract award information to all applicable apprentice committees and for the failure to request apprentices as required by section 1777.5. SSD moved to set aside the Assessment as untimely. The parties prepared a Joint Stipulation of Facts with respect to the statute of limitations issue.

In this Decision, the Director finds that the Assessment was not timely served by DLSE on SSD with respect to the wage violations asserted. However, the Assessment was timely served with respect to the apprenticeship violations.

STIPULATED FACTS

1. On January 16, 2013, McNeil Security Systems (McNeil) entered into a contract with the City.¹
2. There were two distinct services McNeil agreed to perform under the contract: (1) installation of a security system; and, (2) monitoring of the security system from a remote location.
3. The installation scope of work under the contract involved the delivery and installation of the security system.
4. On April 24, 2013, SSD substantially completed the installation scope of work.
5. SSD's job completion sign-off report is dated April 24, 2013.
6. On May 8, 2013, an installer named Ricky Bumbalow installed a button so the City could open the gate at the project site using a telephone.
7. On May 8, 2013, the City's security system was deemed fully operational.
8. SSD's daily status report is dated May 8, 2013.
9. The City paid SSD approximately \$10,575.00 for installing the security system.
10. SSD did not perform any further construction, alteration, demolition, installation, repair, or maintenance work for the City after May 8, 2013.
11. No notice of completion was ever recorded by the City.
12. The monitoring of the security system was performed off-site.
13. The monitoring of the security system was performed by a different group of employees than those who are identified in the Assessment.
14. The Assessment was issued on January 30, 2015.

¹ SSD asserted, and it was uncontested by DLSE, that it purchased McNeil.

DISCUSSION

There are two distinct limitations periods for the types of violations alleged in the Assessment. Labor Code section 1741, subdivision (a)² provides a limitations period for the service of an assessment by the DLSE for the failure to pay the correct wages. California Code of Regulations, title 8, section 232.70 (hereafter Rule 70) provides a separate limitations period for the service of an assessment by the DLSE for the failure to employ apprentices on public works.

1. Wage Violations.

In 2013, section 1741, subdivision (a) provided in pertinent part as follows:

The assessment shall be served not more than 180 days after the filing of a notice of completion...or not later than 180 days after acceptance of the public work, whichever is last. However if the assessment is served after the expiration of the 180-day period, but before the expiration of an additional 180 days, and the Awarding Body has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained.

Effective, January 1, 2014, section 1741, subdivision (a) was amended to increase the statute of limitations. The new provision provides as follows:

The assessment shall be served no later than 18 months after the filing of a valid notice of completion in the office of the county recorder in the county in which the public work or some part thereof was performed, or not later than 18 months after the acceptance of the public work whichever occurs last.

Statutes apply prospectively unless there is a clear expressed statutory intent otherwise.

(*Elsner v. Ueveges* (2004) 34 Cal.4th 915, 936.) If the legislature extends a period of limitations, any matter not already barred is subject to the new period of limitations.

(*Mudd v. McColgan* (1947) 30 Cal.2nd 463.) There was no express declaration that the amendment to section 1741 applied retroactively.

Under either the 2013 or 2014 limitations provision of section 1741, generally the period within which to serve the assessment begins to run after the filing of a notice of completion. However, no notice of completion was ever recorded by the City. SSD contends that the City accepted the Project on May 8, 2013. DLSE does not dispute

² All further statutory references are to Labor Code unless stated otherwise.

SSD's assertion, and stipulated that SSD did not perform any further construction, alteration, demolition, installation, repair of maintenance work after May 8, 2013. Rather, DLSE contends the contract is ongoing, that it is renewed on an annual basis, and since the contract requires the contractor to perform maintenance and repair, the statute of limitations has not begun to run.

Statutes of limitations "mark the point where, in the judgment of the legislature, the equities tip in favor of the defendant (who may be innocent of wrongdoing) and against the plaintiff (who failed to take prompt action)." (*Poosh v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.) Limitations periods "give defendants reasonable repose, thereby protecting parties from 'defending stale claims, where factual obscurity through the loss of time, memory or supporting documentation may present unfair handicaps.'" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.)

DLSE's contention that the contract is ongoing for the purpose of asserting violations of the public works law, without citation to authority, would mean that in this particular situation the statute of limitations would never begin to run as long as the parties did not opt out of their yearly renewal for monitoring and maintenance and repair, even if no maintenance or repair was performed. This interpretation would defeat the purpose of the statute of limitations found in section 1741.

Under either version of the law, the Assessment was untimely, as it was served more than 20 months after the Project was accepted. Thus, the Assessment must be dismissed with respect to the wage violations.

2. Apprentice Violations.

Sections 1777.5 through 1777.7 set forth the statutory requirements governing the employment of apprentices on public works projects. These requirements are further addressed in regulations promulgated by the California Apprenticeship Council. California Code of Regulations, title 8, section 227 provides that the regulations "shall govern all actions pursuant to ... Labor Code Sections 1777.5 and 1777.7." Indeed, section 1777.7, subdivision (g) states that "[t]he interpretation of Section 1777.5 and substantive requirements of this section applicable to

contractors and subcontractors shall be in accordance with the regulations of the California Apprenticeship Council.”

A Determination for violation of section 1777.5 “shall be issued and served on the Affected Parties no later than three years after date of accrual.” (Rule 70.) The date of accrual is the end of the contract as the affected contractor has the opportunity to meet its obligations under the law by employing apprentices for the requisite number of hours before the end of the contract. (Cal. Code Regs., tit. 8, § 230.1.)

According to the parties’ stipulated facts, the last day employees worked on the installation phase of the Project was May 8, 2013. Thus, the date of accrual was May 8, 2016. DLSE served the Assessment by mail on January 30, 2015, which was prior to the expiration of the three year limitations period (May 8, 2016).

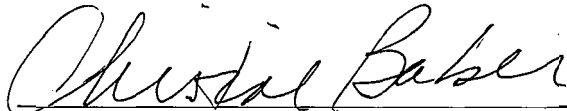
FINDINGS

1. The Project (public work) was accepted by the City of El Monte on May 8, 2013.
2. The CWPA was served on January 30, 2015.
3. The date of service of the CWPA was more than 18 months after the Project was accepted, but within three years from the date of acceptance.
4. The CWPA was timely served by DLSE on SSD with respect to the penalties imposed under section 1777.7 for violations of section 1777.5.
5. The CWPA was not timely served by DLSE on SSD with respect to the violations alleged for failure to pay wages, training fund contributions, and the penalties imposed for those failures.

ORDER

The Assessment is reduced to \$2,040.00 in penalties under section 1777.7 in accordance with the Findings. The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on all parties. The matter is returned to the Hearing Officer for hearing on the remaining issues.

Dated: 2/11/2016



Christine Baker
Christine Baker
Director of Industrial Relations