

1 **STATE OF CALIFORNIA**  
DEPARTMENT OF INDUSTRIAL RELATIONS  
2 DIVISION OF LABOR STANDARDS ENFORCEMENT  
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**

11 MINAKO AMERICA CORPORATION  
DBA MINCO CONSTRUCTION; AND  
12 REFAAT HILMAY MINA,

13 Petitioners,

14 vs.

15 CALIFORNIA DEPARTMENT OF  
INDUSTRIAL RELATIONS, DIVISION  
16 OF LABOR STANDARDS  
ENFORCEMENT and DOES 1 through  
17 20, Inclusive,

18 Respondents.  
19

Case No.: 19STCP02356

[Assigned to the Honorable Mary H. Strobel]

**RETURN TO PEREMPTORY WRIT OF  
MANDAMUS**

20 TO THE COURT:

21 Respondent CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION  
22 OF LABOR STANDARDS ENFORCEMENT, through her counsel of record, makes the following  
23 return to peremptory writ of mandamus issued in this action:  
24

- 25 1. The Division of Labor Standards Enforcement (“DLSE”) Hearing Officer’s Proposed  
26 Statement of Decision, dated May 16, 2019, in the administrative proceeding titled, “In  
27 the matter of the Debarment Proceeding Against: Minako America Corporation dba  
28

1 Minco Construction; Refaat Hilmy Mina,” DLSE Case No. LB6333, which  
2 recommended that Petitioner “shall be ineligible to, and shall not, bid on or be awarded a  
3 contract for a public works project, and shall not perform work as a subcontractor on a  
4 “public works” project as defined by Labor Code sections 1720, 1720.2, and 1720.3, for a  
5 period of two (2) years, effective 45 days after this decision is issued by the Labor  
6 Commissioner is hereby **SET ASIDE**. The Hearing Officer’s Proposed Statement of  
7 Decision finding, “[a] two-year period is appropriate under these circumstances where  
8 Respondents MINAKO AMERICA CORPORATION DBA MINCO CONSTRUCTION;  
9 REFAAT HILMY MINA ‘wilfully’ violated public works laws, with a history of  
10 violations on numerous public works projects” (“Proposed Decision”) is hereby **SET**  
11 **ASIDE**.

12  
13  
14 2. The Decision re: Debarment, dated May 16, 2019, in the administrative proceeding titled,  
15 “In the matter of the Debarment Proceeding Against: Minako America Corporation dba  
16 Minco Construction; Refaat Hilmy Mina,” DLSE Case No. LB 6333, which adopted the  
17 Hearing Officer’s Proposed Decision that Petitioners be debarred from working on public  
18 works projects in the State of California for two years (“Decision”) is hereby **SET**  
19 **ASIDE**.

20  
21 3. The Hearing Officer has reconsidered the portion of the Decision debarring Petitioners  
22 under California Labor Code § 1777.1(d), in light of the Court’s ruling under California  
23 Code of Civil Procedure § 1094.5(f), because substantial evidence does not support the  
24 Hearing Officer’s findings of “a history of prior violations” of the apprenticeship  
25 requirements, which finding was material to the conclusion that Petitioners committed  
26 “serious” violations of Labor Code § 1777.5, and the Court does not know whether the  
27 Hearing Officer would have reached the same result (i.e. debarment under California  
28

1 Labor Code § 1777.1(d)), without such finding. Accordingly, Respondent must  
2 reconsider whether Petitioners committed serious violations of Labor Code § 1777.5,  
3 without the finding of a history of prior violations.

4 a. *The Proposed Statement of Decision Re: Debarment of Respondents from Public*  
5 *Works Projects after Issuance of Peremptory Writ of Mandamus by the Superior*  
6 *Court of Los Angeles on Minako America Corporation dba Minco Construction's*  
7 *and Refaat Hilmay Mina's Verified Petition for Writ of Mandate is included*  
8 **hereto as Attachment A.**

9  
10 b. *The Decision Re: Debarment of Respondents from Public Works Projects after*  
11 *Issuance of Peremptory Writ of Mandamus by the Superior Court of Los Angeles*  
12 *on Minako America Corporation dba Minco Construction's and Refaat Hilmay*  
13 *Mina's Verified Petition for Writ of Mandate is included hereto as Attachment*  
14 **B.**

15  
16  
17 Dated: August 13 , 2021

DIVISION OF LABOR STANDARDS ENFORCEMENT  
DEPARTMENT OF INDUSTRIAL RELATIONS  
STATE OF CALIFORNIA

18  
19  
20 

21 Patricia Salazar, Attorney for Respondent  
LABOR COMMISSIONER

# ATTACHMENT A

1 **STATE OF CALIFORNIA**  
2 DEPARTMENT OF INDUSTRIAL RELATIONS  
3 DIVISION OF LABOR STANDARDS ENFORCEMENT  
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9 Attorney for the State Labor Commissioner

10 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**  
11 **DEPARTMENT OF INDUSTRIAL RELATIONS**  
12 **FOR THE STATE OF CALIFORNIA**

13 In the Matter of the  
14 Debarment Proceeding Against:

15 MINAKO AMERICA CORPORATION  
16 DBA MINCO CONSTRUCTION; REFAAT  
17 HILMY MINA,

18 Respondents.

**CASE NO.: LB6333**

**PROPOSED STATEMENT OF DECISION  
RE: DEBARMENT OF RESPONDENTS  
FROM PUBLIC WORKS PROJECTS  
AFTER ISSUANCE OF PEREMPTORY  
WRIT OF MANDAMUS BY THE  
SUPERIOR COURT OF LOS ANGELES  
ON MINAKO AMERICA CORPORATION  
DBA MINCO CONSTRUCTION'S AND  
REFAAT HILMAY MINA'S VERIFIED  
PETITION FOR WRIT OF MANDATE**

[Labor Code § 1777.1]

19  
20  
21 Debarment proceedings pursuant to Labor Code section 1777.1<sup>1</sup> were initiated by the  
22 DIVISION OF LABOR STANDARDS ENFORCEMENT, STATE LABOR COMMISSIONER,  
23 against the following named respondents in the administrative matter known as: MINAKO  
24 AMERICA CORPORATION DBA MINCO CONSTRUCTION; REFAAT HILMY MINA.

25 The hearing in this matter was held in Los Angeles, California on July 24 to July 26,  
26 2017, December 14 to December 15, 2017, and January 8 to January 11, 2018. Patricia Salazar,  
27

28 <sup>1</sup> Unless otherwise stated, all statutory references are to the Labor Code.

1 of the Labor Commissioner’s office, served as the hearing officer.

2 On May 16, 2019, the Division of Labor Standards Enforcement issued a *Proposed*  
3 *Statement of Decision Re: Debarment of Respondents From Public Works*, and *Decision re:*  
4 *Debarment of Respondents from Public Works Projects* (collectively, the “Decision”).

5 In the Decision, the hearing officer found that Minako America Corporation dba Minco  
6 Construction and Refaat Hilmy Mina had:

7 (1) ‘willfully violated public works laws on at least two projects within three  
8 years,’ (2) ‘violated public works laws with the inten[t] to defraud on the Joint  
9 Water Project, the Bike Parking Project, and the JOC 1029 Project,’ and (3)  
10 ‘knowingly committed serious violations of Labor Code section 1777.5 on the  
11 Long Beach Main, Joint Water Project, Bike Parking Project, JOC 1029 Project,  
12 Eastern Avenue Project, and the JOC 1026 Project. (Order<sup>2</sup>, p. 2.)

13 The hearing officer ordered that Minako America Corporation dba Minco Construction  
14 and Refaat Hilmy Mina were ineligible to bid, be awarded a contract for a public works project,  
15 or to perform work as a subcontractor on a “public works” project for two years. (AR 43.)

16 Accordingly, on May 16, 2019, the Labor Commissioner ordered debarment for a period of two  
17 years.

18 On June 12, 2019, Minako America Corporation dba Minco Construction (“Minco”);  
19 Refaat Hilmy Mina (collectively, “Petitioners”) filed its petition for writ of mandate in the matter  
20 entitled, *Minako America Corporation dba Minco Construction; and Refaat Hilmy<sup>3</sup> Mina v.*  
21 *California Department of Industrial Relations, Division of Labor Standards Enforcement and*  
22 *DOES 1 through 20, Inclusive*, Case No. 19STCP02356.

23 On June 25, 2019, the Court approved Petitioners’ and Respondents California  
24 Department of Industrial Relations, Division of Labor Standards Enforcement’s (“Respondent”  
25 or “DLSE”) stipulation to stay the Decision pending the Court’s ruling on the writ petition.

26 The parties filed multiple briefs from July 31, 2020 to April 6, 2021. On May 11, 2021,

27 \_\_\_\_\_  
28 <sup>2</sup> Pagination as referenced here is based on the page numbers in the Court’s Minute Order, dated May 11,  
2021, which constitutes part of the “Order,” as defined further below.

<sup>3</sup> The hearing officer notes Petitioner Refaat Hilmy Mina was named as “Refaat *Hilmy* Mina” for the  
administrative matter, Case No. LB6333, but later named as “Refaat *Hilmy* Mina” in Case No.  
19STCP02356. For purposes of clarity and consistency, and because this is a Proposed Statement of  
Decision in Case No. LB6333, the hearing officer will refer to Petitioner as “Refaat Hilmy Mina.”

1 the court issued a Minute Order, followed on June 14, 2021 by a Peremptory Writ of Mandamus,  
2 a Judgment granting the Peremptory Writ of Mandamus, and a Notice of Entry of Judgment  
3 (collectively, the “Order”).

4 **I. THE COURT’S ORDER**

5 **a. Prevailing Wage Violations per Sections 1777.1(a)-(b)**

6 In its Order, the Court found “substantial evidence” did not support the hearing officer’s  
7 findings that Petitioners committed prevailing wage violations with “intent to defraud” pursuant  
8 to section 1777.1(a) with respect to the Joint Water Project, Bike Parking Project, and JOC 1029  
9 Project. (Order, p. 22.) The Court further determined substantial evidence did not support the  
10 hearing officer’s findings that Petitioners committed multiple “willful” violations per section  
11 1777.1(b) within a three-year period regarding the Joint Water Project, Bike Parking Project, and  
12 JOC 1029 Project. (*Id.*, pp. 22-23.)

13 **b. The Apprenticeship Requirements of Section 1777.5**

14 The next issue before the Court was whether substantial evidence supported the hearing  
15 officer’s findings that Petitioners committed “serious” violations of the apprenticeship  
16 requirements of section 1777.5 with respect to Long Beach Main, Joint Water Project, Bike  
17 Parking Project, JOC 1029 Project, Eastern Avenue Project, and the JOC 1026 Project.

18 The Court cited the applicable legal authority to determine whether substantial evidence  
19 supported the hearing officer’s findings of violations of the apprenticeship requirements under  
20 section 1777.5.

21 Section 1777.1(d)(1) authorizes debarment “[i]n the event a contractor or subcontractor is  
22 determined by the Labor Commissioner to have knowingly committed a serious violation of any  
23 provision of Section 1777.5.” (Order, p. 23.) “Section 1777.5 sets forth apprenticeship  
24 requirements that apply to public contractors.” (*Id.*) In finding whether a violation is “serious,  
25 and in determining whether and for how long a party should be debarred for violating Section  
26 1777.5,” the Labor Commissioner “shall consider” five “circumstances.” (Labor Code §  
27 1777.1(d)(2)(A)-(E); see also Order, p. 23.)

1 A “knowing” violation of apprenticeship requirements of section 1777.5 is determined as  
2 follows:

3 For purposes of Labor Code Section 1777.7, a contractor knowingly violates  
4 Labor Code Section 1777.5 if the contractor knew or should have known of the  
5 requirements of that Section and fails to comply, unless the failure to comply was  
6 due to circumstances beyond the contractor's control. There is an irrebuttable  
7 presumption that a contractor knew or should have known of the requirements of  
8 Section 1777.5 if the contractor had previously been found to have violated that  
9 Section, or the contract and/or bid documents notified the contractor of the  
10 obligation to comply with Labor Code provisions applicable to public works  
11 projects, or the contractor had previously employed apprentices on a public works  
12 project.

13 (California Code of Regulations (“C.C.R.”), tit. 8, § 231(h); see also Order, p. 23.)

14 With the exception of the hearing officer’s findings of a “history of prior  
15 violations,” the Court found substantial evidence supported the hearing officer’s findings  
16 that Petitioners knowingly violated section 1777.5 for all six projects. (Order, pp. 23-24.)  
17 The Court also found substantial evidence, with the exception of a “history of prior  
18 violations,” supported the hearing officer’s findings that Petitioners’ violations of section  
19 1777.5 were serious. (*Id.*, p. 24.) The Court pointed to the hearing officer’s findings of  
20 violations under section 1777.5 as serious to include: the violations were intentional, and  
21 Minco failed to employ 3,300 apprentice hours depriving “apprentices of learning  
22 opportunities during the span of three years or more.” (*Id.*)(citing AR 41-42; see also  
23 Labor Code § 1777.1(d)(2)(A), (C)-(E).)

24 Moreover, and with the exception of a “history of prior violations,” the Court  
25 referenced multiple examples from the administrative record in support of this same  
26 conclusion, including:

- 27 • Each of the six public works contracts or bid documents notified Petitioners of  
28 the obligation to comply with Labor Code provisions applicable to public  
work projects. (Order, p. 24)(citing AR 198; 543; 820; 1081; 1214.)
- Petitioners’ admission they failed to submit DAS 140 (Contract Award  
Information) and DAS 142 (Request for Dispatch of an Apprentice) forms to  
the union Joint Apprenticeship Training Committees. (*Id.*)(citing AR 21-27;  
4439, 4697-4706.)
- DLSE testimony from its investigators and documentary evidence that support



1 the findings of apprenticeship violations. (*Id.*)(citing to AR 21-27; see e.g.  
2 DLSE Exhibits 6-42 at AR 181-1104; see also AR 4292-4362 [Chen  
3 testimony].)

4 Petitioners did not “challenge or dispute this evidence in their writ briefs.” (Order, p. 24.)

5 Petitioners contended they made a “good faith mistake” and “reasonably believed” Minco  
6 could not request or employ union apprentices because of its non-union status. (*Id.*) The Court  
7 determined substantial evidence supported the hearing officer’s rejection of this argument. The  
8 Court further concluded substantial evidence supported the hearing officer’s finding that  
9 Petitioners “knew or should have known” of the apprenticeship requirements based on the  
10 following:

- 11 • As noted, the public works contracts or bid documents notified Petitioners of  
12 the obligation to comply with Labor Code provisions applicable to public  
13 works projects. (*Id.*, p. 24)(citing AR 198; 543; 820; 1081; 1214.)
- 14 • Petitioners’ evidence – the DAS 140 forms – “explained the requirement that  
15 contractors submit contract award information to ‘ALL applicable Apprenticeship  
16 Committees in your craft or trade in the area of the site of the public work.’”  
17 (*Id.*)(citing AR 41, 3201.)

18 This was the same evidence the hearing officer considered when weighing the first  
19 “circumstance” of section 1777.1(d)(2)(A) regarding whether the violation was intentional,  
20 which militated toward a finding of a serious violation. (AR 41-42.)

21 The Court then turned its attention to the second “circumstance” of section  
22 1777.1(d)(2)(B) regarding whether Petitioners had committed other violations of section 1777.5.  
23 (Order, p. 25)(citing AR 42.) For the second “circumstance,” the hearing officer concluded as  
24 follows:

25 The evidence also showed **a history of prior violations**. In addition, the evidence  
26 demonstrates [Minco] violated this section for all six projects.  
27 (*Id.*, p. 25.)[Emphasis added.]

28 In rejecting the hearing officer’s finding for this second “circumstance,” the Court stated,  
“[t]hus, the hearing officer found a history of prior violations ‘in addition’ to the six projects at  
issue in this case.” (*Id.*) After requesting supplemental briefing on this specific issue, the Court  
concluded substantial evidence did not support the hearing officer’s findings of a “history of

1 prior violations.” (*Id.*, pp. 25-26.)

2 The Court concluded:

3 Based on the foregoing, substantial evidence supports the hearing officer’s  
4 findings that Petitioners knowingly committed violations of Labor Code section  
5 1777.5 on the Long Beach Main Project, Joint Water Project, Bike Parking  
6 Project, JOC 1029 Project, Eastern Avenue Project, and the JOC 1026 Project.  
7 (AR 43.) However, substantial evidence does not support the hearing officer’s  
8 finding of ‘a history of prior violations’ of the apprenticeship requirements. (AR  
9 42.) That finding was material to the conclusion that Petitioners committed  
10 “serious” violations of section 1777.5. (AR 41-43.) The court does not know  
11 whether the hearing officer would have reached the same result without such  
12 finding. Accordingly, the matter must be remanded so that Respondent can  
13 reconsider whether Petitioners committed serious violations of section 1777.5  
14 **without the finding of a history of prior violations.** [Emphasis added.]

15 (*Id.*, p. 26.)

16 The Court concluded substantial evidence did not support a “history of prior violations,”  
17 which was one of the findings the hearing officer cited to in support of the second  
18 “circumstance” under section 1777.1(d)(2)(B). (See *Id.*, p. 26.) However, the Court did not reach  
19 the same conclusion for any of the remaining four “circumstances” of section 1777.1(d)(2). The  
20 Labor Commissioner was also required to consider the other “circumstances” in order to  
21 determine whether there was a serious violation of section 1777.5 apprenticeship requirements.

### 22 **c. The Propriety of the Penalty**

23 Petitioners argued DLSE failed to consider mitigating factors as required by 8 C.C.R.  
24 section 16802(a) regarding the propriety of the penalty. (*Id.*, p. 30.) In rejecting Petitioners’  
25 argument, the Court found the hearing officer “gave a reasoned explanation for the penalty  
26 decision, and the extensive findings in the decision further show the basis for the penalty.”  
27 (*Id.*)(citing AR 41-43; AR 12-40.) The Court further noted, “[a]s required, the hearing officer  
28 considered ‘the nature of the offense; the amount of underpayment of wages per worker; the  
experience of the Respondent in the area of public works; and the Respondent’s compliance with  
Labor Code section 1776.’” (*Id.*)(citing 8 C.C.R. § 16802(a).)

However, in ordering the two-year debarment, the Court stated the debarment penalty  
was based on findings of prevailing wage violations under section 1777.1(a)-(b), and a finding  
under section 1777.1(d)(2) of a serious violation of apprenticeship requirements per section

1 1777.5. (See *Id.*, p. 30.) The Court remanded this matter for reconsideration, stating “it seems  
2 possible the Labor Commissioner would have reached a different decision on the penalty without  
3 the findings under” sections 1777.1(a)-(b), and the finding of a “history of prior violations”  
4 under section 1777.5. (*Id.*, pp. 30-31.)

## 5 **II. LEGAL ANALYSIS**

### 6 **a. The Issue**

7 The Court ordered the hearing officer to reconsider whether the two-year debarment  
8 penalty is proper in light of the Court’s ruling under C.C.P. section 1094.5(f) that substantial  
9 evidence did not support the hearing officer’s findings of a “history of prior violations” of the  
10 apprenticeship requirements, which finding was material to the conclusion that Petitioners  
11 committed “serious” violations of section 1777.5. In addition, the Court ordered the hearing  
12 officer to reconsider whether Petitioners committed serious violations of section 1777.5, without  
13 the finding of a “history of prior violations.”

### 14 **b. The Hearing Officer’s Reconsideration Given the Order**

15 In finding whether a violation is “serious, and in determining whether and for how long a  
16 party should be debarred for violating Section 1777.5,” the Labor Commissioner “shall consider”  
17 “all of the following circumstances:”

18 (A) Whether the violation was intentional.

19 (B) Whether the party has committed other violations of Section 1777.5.

20 (C) Whether, upon notice of the violation, the party took steps to voluntarily  
21 remedy the violation.

22 (D) Whether, and to what extent, the violation resulted in lost training  
opportunities for apprentices.

23 (E) Whether, and to what extent, the violation otherwise harmed apprentices or  
24 apprenticeship programs.

(Labor Code § 1777.1(d)(2).)

25 The hearing officer’s findings regarding a “history of prior violations” concerned the  
26 second circumstance of section 1777.1(d)(2)(B), *i.e.*, “[w]hether the party has committed other  
27 violations of Section 1777.5.” The hearing officer’s findings concluded, “[t]he evidence showed  
28

1 a “history of prior violations,” which the Court later determined was not supported by substantial  
2 evidence.

3 Section 1777.1(d)(2) is one of *multiple* provisions found in the Prevailing Wage Law (or,  
4 “PWL”) in California. (See *Azusa Land Partners v. Dep’t of Indus. Rels.* (2010) 191 Cal.App.4th  
5 1, 14)(“*Azusa Land Partners*”).) In providing an overview of PWL, the California Supreme  
6 Court states it is the Legislature’s intent that the public policy of California “vigorously enforce  
7 minimum labor standards in order to ensure employees are not required or permitted to work  
8 under substandard unlawful conditions, and to protect employers who comply with the law from  
9 those who attempt to gain competitive advantage at the expense of their workers by failing to  
10 comply with minimum labor standards.” (*Id.*)(citing Labor Code § 90.5.) (*Lusardi Construction*  
11 *Co. v. Aubry* (1992) 1 Cal.4th 976, 985)(“*Lusardi*”).) The PWL was also enacted to protect and  
12 benefit the workers on public works projects, the public, and are to be liberally construed. (*Id.*;  
13 *City of Long Beach v. Dep’t of Indus. Rels.* (2004) 34 Cal.4th 942, 949-950.)

14 In interpreting the statutory provisions at issue, the court’s first task is to determine  
15 legislative intent. (*Henson v. C. Overaa & Co.* (2015) 238 Cal.App.4th 184, 193)  
16 (“*Henson*”)(discussing Labor Code section 1777.5.) To determine intent, the courts look to the  
17 plain language of the statute which, if clear and unambiguous, will control, obviating the need  
18 for judicial construction. (*Id.*) However, courts do not view the language of the statute in  
19 isolation and, instead, construe the words of the statute in context, keeping in mind the statutory  
20 purpose. (*Id.*) The courts will choose the construction that comports most closely with the  
21 legislative intent, with a view toward promoting, not defeating, the statute’s general purpose.  
22 (*Azusa Land Partners, supra*, 191 Cal.App.4th at 21-22.) The drafters of PWL took into account  
23 multiple considerations regarding apprenticeship requirements, including the basic idea of an  
24 apprenticeship program “to allow on-the-job training for apprentices who work under the  
25 supervision of journeymen” and “to encourage and assist persons to enter into the skilled work  
26 force. . .” (See *Henson* at 189.)

27 With these principles in mind, the hearing officer addresses whether debarment is  
28

1 warranted where the Court ruled substantial evidence did not support her findings of a “history  
2 of prior violations,” and whether the hearing officer would have reached the same conclusion of  
3 “serious” violations without it.

4 Section 1777.1(d)(2) requires the hearing officer consider **all** the “circumstances” to  
5 determine whether Petitioners’ violations were serious in supporting a finding of debarment for  
6 violations of apprenticeship requirements under section 1777.5. The hearing officer’s findings  
7 regarding a “history of prior violations” supported one of the five circumstances articulated by  
8 section 1777.1(d)(2). However, the finding of a “history of prior violations,” assisted the hearing  
9 officer in considering the second circumstance of section 1777.1(d)(2)(B), “whether the party has  
10 committed *other*” section 1777.5 violations. This second “circumstance” cannot be viewed in  
11 isolation of the other “circumstances” of section 1777.1(d)(2). (See *Henson, supra*, 238  
12 Cal.App.4th at 193.)

13 Rather, the hearing officer’s finding regarding a “history of prior violations” must be  
14 construed in the larger context and statutory purpose of the PWL so as not to defeat the statute’s  
15 general purpose. (See *Id.* at 193; see also *Azusa Land Partners, supra*, 191 Cal.App.4th at 21-  
16 22.) This includes the Legislature’s goals behind the apprenticeship program, which is to allow  
17 on-the-job training opportunities for apprentices, and encourage and assist persons to enter into  
18 the skilled work force. (*Henson* at 189.) It also includes interpreting section 1777.1(d)(2) with  
19 the purpose of protecting and benefitting workers on public works projects. (*Lusardi, supra*, 1  
20 Cal.4th at 985; *City of Long Beach, supra*, 34 Cal.4th at 949-950.) This is consistent with the  
21 hearing officer’s other findings that Petitioners’ violations were intentional, and Minco failed to  
22 employ 3,300 apprentice hours, which deprived apprentices of learning opportunities during the  
23 span of three years or more. (Order, p. 24.) These further support the hearing officer’s findings of  
24 *other* serious violations under section 1777.1(d)(2)(A), (D)-(E). (See AR 41-42.)

25 In sum, the rules of statutory construction prohibit the hearing officer from considering  
26 one of the “circumstances” of section 1777.1(d)(2) in isolation. It also requires the hearing  
27 officer to consider the legislative goals of PWL, including the drafters’ considerations regarding  
28

1 apprenticeship requirements, and the liberal construction of PWL provisions. Accordingly, these  
2 considerations compel the hearing officer to determine that she must consider **all** five  
3 “circumstances” under Labor Code section 1777.1(d)(2) to determine whether Petitioners’  
4 violations of apprenticeship requirements were “serious.”

5 Moreover, with the exception of a “history of prior violations,” the Court stated the other  
6 hearing officer findings concerning the serious nature of section 1777.5 violations were  
7 supported by substantial evidence. (See Order, p. 24.) This not only included the hearing  
8 officer’s findings that the violations were intentional, and Minco’s failure to employ 3,300  
9 apprentice hours deprived apprentices of learning opportunities during the span of three years or  
10 more. It also included the Court’s references to multiple examples from the administrative record  
11 to support the hearing officer’s, and ultimately, its conclusion, that substantial evidence supports  
12 these other findings.

13 These examples include: (i) the public works contracts or bid documents on all six  
14 projects notifying Petitioners of the obligation to comply with Labor Code provisions applicable  
15 to public work projects; (ii) Petitioners’ admission that they failed to submit DAS 140 and DAS  
16 142 forms to the union Joint Apprenticeship Training Committees; (iii) Petitioners’ evidence, the  
17 DAS 140 Forms, which explain that contractors were required to submit contract award  
18 information to “ALL” applicable apprenticeship committees of the craft or trade in the area of  
19 the site of public work; and (iv) DLSE testimony from its investigators and documentary  
20 evidence supporting the findings of apprenticeship violations. (*Id.*, p. 24.)

21 The hearing officer’s findings regarding a “history of prior violations” may have been  
22 material to the conclusion that Petitioners committed “serious” violations of section 1777.5.  
23 However, that was not the only consideration which led to this conclusion. As discussed above,  
24 the “history of prior violations” assisted the hearing officer in considering the “second”  
25 “circumstance” of section 1777.1(d)(2)(B). In weighing all the circumstances of section  
26 1777.1(d)(2), however, substantial evidence supports the hearing officer’s *other* findings that  
27 Petitioners committed serious apprenticeship violations. These other findings were also material  
28

1 to the hearing officer’s conclusion.

2 Accordingly, with the exception of a “history of prior violations,” a debarment penalty  
3 remains warranted where Petitioners’ violations of apprenticeship requirements under section  
4 1777.5 were serious, based on the weighing of all the other circumstances of section  
5 1777.1(d)(2).

6 **c. The Debarment Penalty**

7 Next, in weighing all the circumstances, with the exception of a “history of prior  
8 violations,” the Labor Commissioner shall determine how long Petitioners should be disbarred.  
9 Because Petitioners knowingly committed serious violations of Labor Code section 1777.5, the  
10 Labor Commissioner may deny Petitioners “the right to bid on or to be awarded or perform work  
11 as a subcontractor on any public works contract for a period of up to one year for the first  
12 violation and for a period of up to three years for a second or subsequent violation.” (Labor Code  
13 § 1777.1(d)(1).)

14 The hearing officer previously ordered a two-year debarment against Petitioners.  
15 However, the Court ruled substantial evidence did not support the hearing officer’s findings of  
16 prevailing wage violations under Labor Code sections 1777.1(a)-(b), or the finding of a “history  
17 or prior violations,” which the hearing officer determined under one of the five circumstances  
18 articulated in section 1777.1(d)(2)(A)-(E). In light of the Court’s ruling regarding no substantial  
19 evidence supported the findings of prevailing wage violations under section 1777.1(a)-(b), or  
20 based on a “history or prior violations,” the two-year debarment is reduced to one year.

21 **III. CONCLUSION**

22 Based on the substantial evidence, and in light of the Court’s Order, this *Proposed*  
23 *Statement of Decision Re: Debarment of Petitioners from Public Work Projects* is amended to  
24 state we find that MINAKO AMERICA CORPORATION DBA MINCO CONSTRUCTION;  
25 REFAAT HILMY MINA, knowingly committed serious violations of section 1777.5 on the  
26 Long Beach Main Project, Joint Water Project, Bike Parking Project, JOC 1029 Project, Eastern  
27 Avenue Project, and JOC 1026 Project.

1 **Debarment**

2 “Although debarment can have a severe economic impact on contractors, it ‘is not  
3 intended as punishment. It is instead, a necessary means to enable the contracting governmental  
4 agency to deal with irresponsible bidders and contractors, and to administer its duties with  
5 efficiency.’” (*Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108  
6 Cal.App.4th 533, 542.) The evidence established that Minco repeatedly acted irresponsibly. With  
7 the exception of a “history of prior violations,” the evidence establishes Minco knowingly  
8 committed serious violations of the apprenticeship requirements. Accordingly, debarment is  
9 appropriate. The proper period of debarment for purposes of the sanctions mandated by section  
10 1777.1 and California Code of Regulations, Title 8, Section 16802(a), is one (1) year. The  
11 debarment applies to MINAKO AMERICA CORPORATION DBA MINCO  
12 CONSTRUCTION; REFAAT HILMY MINA.

13  
14 **AMENDED ORDER OF DEBARMENT**

15 In accordance with the foregoing, it is hereby ordered that Respondents MINAKO  
16 AMERICA CORPORATION DBA MINCO CONSTRUCTION; REFAAT HILMY MINA,  
17 shall be ineligible to, and shall not, bid on or be awarded a contract for a public works project,  
18 and shall not perform work as a subcontractor on a “public works” project as defined by Labor  
19 Code sections 1720, 1720.2 and 1720.3, for a period of one (1) year, effective 45 days after this  
20 decision is issued by the Labor Commissioner. A one-year period is appropriate under these  
21 circumstances where Respondents MINAKO AMERICA CORPORATION DBA MINCO  
22 CONSTRUCTION; REFAAT HILMY MINA, knowingly committed serious violations of the  
23 apprenticeship requirements.

24 This debarment shall also apply to any other contractor or subcontractor in which  
25 MINAKO AMERICA CORPORATION DBA MINCO CONSTRUCTION; REFAAT HILMY  
26 MINA, have any interest or for which either MINAKO AMERICA CORPORATION DBA  
27 MINCO CONSTRUCTION; REFAAT HILMY MINA, act as responsible managing employees,  
28



1 responsible managing officers, general partners, managers, supervisors, owners, partners,  
2 officers, employees, agents, consultants, or representatives. As defined under Labor Code  
3 section 1777.1(h), “ ‘Any interest’ includes, but is not limited to, all instances where the  
4 debarred contractor or subcontractor receives payments, whether cash or any other form of  
5 compensation, from any entity bidding or performing work on the public works project, or enters  
6 into any contracts or agreements with the entity bidding or performing work on the public works  
7 project for services performed or to be performed for contracts that have been or will be assigned  
8 or sublet, or for vehicles, tools, equipment or supplies that have been or will be sold, rented or  
9 leased during the period of from the initiation of the debarment proceedings until the end of the  
10 term of the debarment period.”

11 Dated: August 11, 2021

  
\_\_\_\_\_  
PATRICIA SALAZAR  
Hearing Officer

# ATTACHMENT B

1 **STATE OF CALIFORNIA**  
2 DEPARTMENT OF INDUSTRIAL RELATIONS  
3 DIVISION OF LABOR STANDARDS ENFORCEMENT  
4 Patricia Salazar, Esq. (SBN 249935)  
5 320 W. 4th Street, Suite 600  
6 Los Angeles, California 90013  
7 Telephone No.: (213) 897-1511  
8 Facsimile No.: (213) 897-1511

9 Attorney for the State Labor Commissioner

10 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**  
11 **DEPARTMENT OF INDUSTRIAL RELATIONS**  
12 **FOR THE STATE OF CALIFORNIA**

13 In the Matter of the  
14 Debarment Proceeding Against:

15 MINAKO AMERICA CORPORATION  
16 DBA MINCO CONSTRUCTION; REFAAT  
17 HILMY MINA,

18 Respondents.

**CASE NO.: LB6333**

**DECISION RE: DEBARMENT OF  
RESPONDENTS FROM PUBLIC WORKS  
PROJECTS AFTER ISSUANCE OF  
PEREMPTORY WRIT OF MANDAMUS  
BY THE SUPERIOR COURT OF LOS  
ANGELES ON MINAKO AMERICA  
CORPORATION DBA MINCO  
CONSTRUCTION'S AND REFAAT  
HILMAY MINA'S VERIFIED PETITION  
FOR WRIT OF MANDATE**

[Labor Code § 1777.1]

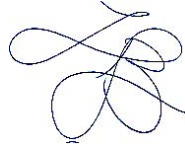
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20  
21 *The Proposed Statement of Decision Re: Debarment of Respondents from Public Works*  
22 *Projects after Issuance of Peremptory Writ of Mandamus by the Superior Court of Los Angeles*  
23 *on Minako America Corporation dba Minco Construction's and Refaat Hilmay Mina's Verified*  
24 *Petition for Writ of Mandate*, of the undersigned attorney Patricia Salazar, debaring  
25 Respondents MINAKO AMERICA CORPORATON DBA MINCO CONSTRUCTION;  
26 REFAAT HILMY MINA, from working on public works projects in the State of California for  
27 one year, is hereby adopted by the Division of Labor Standards Enforcement as the Decision in  
28 the above-captioned matter.

1 This Decision shall become effective August 11, 2021. The debarment shall  
2 commence in 45 days on September 27, 2021.  
3

4 IT IS SO ORDERED.

5 Dated: 08-11-2021

6 STATE OF CALIFORNIA  
7 DEPARTMENT OF INDUSTRIAL RELATIONS  
8 DIVISION OF LABOR STANDARDS ENFORCEMENT

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11 LILIA GARCIA-BROWER  
12 STATE LABOR COMMISSIONER  
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STATE OF CALIFORNIA  
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**STATE OF CALIFORNIA**  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
Patricia Salazar (SBN 249935)  
320 W. 4th Street, Suite 600  
Los Angeles CA 90013  
Telephone No. (213) 897-1511  
Facsimile No. (213) 897-2877  
  
Attorney for the State Labor Commissioner

*No filing fees, court costs, etc.,  
per Labor Code §§ 101 and 101.5*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

MINAKO AMERICA CORPORATION DBA  
MINCO CONSTRUCTION; AND REFAAT  
HILMAY MINA,

*Petitioners,*

v.

CALIFORNIA DEPARTMENT OF  
INDUSTRIAL RELATIONS, DIVISION OF  
LABOR STANDARDS ENFORCEMENT and  
DOES 1 through 20, Inclusive,

*Respondents.*

CASE NO. 19STCP02356

*Assigned to Honorable Mary H. Strobel, Dept.  
82*

**PROOF OF SERVICE  
(Code of Civ. Proc., § 1013)**

1 **PROOF OF SERVICE**

2 **Re: Minako**  
3 **LASC Case No. 19STCP02356**  
4 **State Case No. LB6333**

5 STATE OF CALIFORNIA )  
6 )  
7 ) ss.  
8 COUNTY OF LOS ANGELES )

9 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and  
10 not a party to this action. My business address is Department of Industrial Relations, Division of  
11 Labor Standards Enforcement, 320 W. 4th Street, Suite 600, Los Angeles, California 90013.

12 On August 13, 2021, I served the following document(s) described as:

- 13 **1. RETURN TO PEREMPTORY WRIT OF MANDAMUS;**
- 14 **2. PROPOSED STATEMENT OF DECISION RE: DEBARMENT OF RESPONDENTS**
- 15 **FROM PUBLIC WORKS PROJECTS AFTER ISSUANCE OF PEREMPTORY WRIT**
- 16 **OF MANDAMUS BY THE SUPERIOR COURT OF LOS ANGELES ON MINAKO**
- 17 **AMERICA CORPORATION DBA MINCO CONSTRUCTION’S AND REFAAT**
- 18 **HILMAY MINA’S VERIFIED PETITION FOR WRIT OF MANDATE;**
- 19 **3. DECISION RE: DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS**
- 20 **PROJECTS AFTER ISSUANCE OF PEREMPTORY WRIT OF MANDAMUS BY**
- 21 **THE SUPERIOR COURT OF LOS ANGELES ON MINAKO AMERICA**
- 22 **CORPORATION DBA MINCO CONSTRUCTION’S AND REFAAT HILMAY**
- 23 **MINA’S VERIFIED PETITION FOR WRIT OF MANDATE;**
- 24 **4. PROOF OF SERVICE**

25 on the interested party(ies) in this action as follows:

26 Thomas W. Kovacich ( <a href="mailto:TKovacich@aalrr.com">TKovacich@aalrr.com</a> ) 27 Jillian N. Alexander ( <a href="mailto:JAlexander@aalrr.com">JAlexander@aalrr.com</a> ) 28 ATKINSON, ANDELSON, LOYA, RUUD & ROMO, A Professional Corporation 12800 Center Court Drive South, Suite 300 Cerritos, CA 90703	Lance A. Grucela ( <a href="mailto:LGrucela@dir.ca.gov">LGrucela@dir.ca.gov</a> ) DEPARTMENT OF INDUSTRIAL RELATIONS Division of Labor Standards Enforcement 7575 Metropolitan Drive, Suite 210 San Diego, CA 92108
--	--

- 29  **(BY MAIL)** I am readily familiar with the business practice for collection and processing of  
30 correspondence for mailing with the United States Postal Service. This correspondence shall  
31 be deposited with the United States Postal Service this same day in the ordinary course of  
32 business at our office address in Los Angeles, California. Service made pursuant to this  
33 paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation  
34 date of postage meter date on the envelope is more than one day after the date of deposit for  
35 mailing contained in this affidavit.
- 36  **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package  
37 provided by an overnight delivery carrier and addressed to the persons at the addresses listed  
38 above. I placed the envelope or package for collection and overnight delivery at an office or a  
39 regularly utilized drop box of the overnight delivery carrier.

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- (BY FACSIMILE)** I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the report confirming the fax transmission, which I printed out, is attached.
- (BY EMAIL)** I caused the documents to be sent to the persons at the email addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (PERSONAL SERVICE)** I personally delivered the documents to the person or at the person's office by leaving the documents in an envelope or package clearly labeled to identify the person being served with a receptionist or an individual in charge of the office.
- (STATE)** I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed on August 13, 2021, at Los Angeles, California.

  
\_\_\_\_\_  
Jonna Lyn Estioko