

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California

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9 Attorneys for the State Labor Commissioner

10 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
11 DIVISION OF LABOR STANDARDS ENFORCEMENT
12 STATE LABOR COMMISSIONER

13 In re the DEBARMENT
14 proceeding against:

15 CARL RAY RAMOS, Individually dba
16 RAMOS PAINTING, a Sole Proprietorship,

17 Respondent.

Case No. SC 5518

Assigned for All Purposes to the
Honorable Elliot S. Beckelman, Hearing
Officer

**Decision and ORDER OF DEBARMENT
of Respondent from Public Works
Projects**

[Labor Code section 1777.1]

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19
20 The attached *Proposed Statement of Decision* of Hearing Officer Elliot S. Beckelman,
21 DEBARRING Respondent CARL RAY RAMOS, an Individual dba RAMOS PAINTING,
22 a Sole Proprietorship, from bidding, being awarded or performing any work on public works
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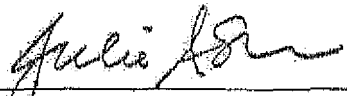
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1 projects in the State of California for ONE YEAR, is hereby adopted in full by the Division
2 of Labor Standards Enforcement as the FINAL *Decision* in the above-captioned matter.

3
4 This *Decision* shall become effective 45 days from the execution of the *Order* below.

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6 **IT IS SO ORDERED.**

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9 Dated: Sept. 17, 2014 DIVISION OF LABOR STANDARDS ENFORCEMENT
10 Department of Industrial Relations
State of California

11
12 By: 
13 JULIE A. SU
14 State Labor Commissioner

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action. My business address is DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, 770 E. Shaw Avenue, Suite 222, Fresno, California 93710.

On September 17, 2014, I served the following document(s) as described below:

DECISION AND ORDER OF DEBARMENT OF RESPONDENTS FROM PUBLIC WORKS PROJECTS

the original(s)

true and correct copy(s) thereof enclosed in a sealed envelope addressed as follows:

See attached "Service List"

BY MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service and said correspondence is deposited with the United States Postal Service the same day.

BY FACSIMILE: I sent a copy of said document(s) by fax machine for instantaneous transmittal via telephone line to the offices of addressee(s) listed above using the below-listed facsimile number(s).

BY PERSONAL SERVICE: I delivered a copy of said document(s) to the party(s) set forth above.

FEDERAL EXPRESS. Next Day Delivery. I deposited or delivered to a courier or driver authorized by FedEx to receive documents, in the county of Fresno for overnight (next day) delivery, a true copy of the foregoing document(s) in a sealed envelope with fees provided for.

BY CERTIFIED MAIL.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 17, 2014, at Fresno, California.

Christina Othon

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In re CARL RAY RAMOS, Individually dba RAMOS PAINTING,
a Sole Partnership
SAC Case No. 5518

SERVICE LIST

Carlos Ray Ramos Ramos Painting P.O. Box 3871 Paso Robles, California 93447	David D. Cross DIR - DLSE - LEGAL SECTION 2031 Howe Avenue, Suite 100 Sacramento, California 95825
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1 DIVISION OF LABOR STANDARDS ENFORCEMENT

2 Department of Industrial Relations

3 State of California

4 BY: ELLIOT S. BECKELMAN, SBN 139129

5 455 Golden Gate Avenue, 9th Floor

6 San Francisco, CA 94102

7 Telephone No. (415) 703-4877

8 Facsimile No. (415) 703-4806

9 Attorney for the Labor Commissioner on Behalf of
10 Plaintiff/ Respondent

11 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**

12 **DEPARTMENT OF INDUSTRIAL RELATIONS**

13 **FOR THE STATE OF CALIFORNIA**

14 In the Matter of the
15 Debarment Proceedings Against

Case No. SC 5518

16 CARL RAY RAMOS, INDIVIDUALLY,
17 DBA RAMOS PAINTING, A SOLE
18 PROPRIETORSHIP

**PROPOSED STATEMENT OF DECISION
RE DEBARMENT OF RESPONDENT
FROM PUBLIC WORKS PROJECTS
(Lab. Code § 1777.1)**

19 Respondents.

20 Debarment proceedings pursuant to Labor Code section 1777.1 were initiated by the Division
21 of Labor Standards Enforcement, Labor Commissioner, Department of Industrial Relations, State of
22 California ("DLSE" or "Labor Commissioner") by the filing and service of a *Statement of Alleged*
23 *Violations* against the following named respondents, CARL RAY RAMOS, INDIVIDUALLY, DBA
24 RAMOS PAINTING, A SOLE PROPRIETORSHIP ("Respondents").

25 The debarment hearing on the alleged violations was held on July 29, 2014, at the San
26 Francisco Office of the Labor Commissioner. Elliot S. Beckelman served as Hearing Officer. David
27 D. Cross appeared on behalf of Complainant. None of Respondents appeared for hearing. Present as
28 a witness for Complainant Labor Commissioner was Deputy Labor Commissioner Sherry Gentry
("Senior Deputy Gentry" or "Gentry").

1 The hearing was tape recorded. Senior Deputy Gentry testified under oath. Exhibits 1 - 10
2 were admitted into evidence. At the conclusion of the hearing, the matter was taken under
3 submission.

4 **FINDINGS OF FACT**

5 **I. NOTICE**

6 1. Respondent CARL RAY RAMOS was at all relevant times mentioned a contractor
7 licensed by the Contractors State License Board under license number 753575. (Exhibit 1)

8 2. Respondent CARL RAY RAMOS was listed at all relevant times at the sole owner of
9 Ramos Painting with the Contractors State License Board. (Exhibit 1)

10 3. The Hearing Officer finds Respondents received lawful notice of the July 29, 2014
11 hearing. The proof of service for the *Notice of Hearing* ("Notice") and *Statement of Alleged*
12 *Violations* ("Statement") was admitted into evidence as Exhibit 9 and shows service was complete
13 on June 10, 2014. California Code of Regulations, Title 8, section 16801(a)(2)(A) provides "Notice
14 of hearing and Statement of Alleged Violations shall be complete when mailed by first class postage
15 to the last address of record that Respondent listed with the Sate Contractors License Board." The
16 mailing address for the *Notice* and *Statement* were the same address Respondents provided to
17 Contractors State License Board ("CSLB") for the relevant time periods. (Exhibit 1) In addition, the
18 *Notice* and *Statement* were sent by certified mail to the same address, and the certified mail receipt
19 was signed by Respondent CARL RAY RAMOS on June 26, 2014. (Exhibit 10) Lastly, DLSE
20 attorney David D. Cross, testified, although not sworn under penalty of perjury, that he spoke with
21 Respondent CARL RAY RAMOS who told Cross he had received the notices and was not going to
22 show at the hearing.

23
24 **II. THE MATTER OF RERPORTING CERTIFIED PAYROLL RECORDS**

25 1. Senior Deputy Gentry testified she spoke with Victoria Shockley ("Deputy
26 Shockley"), the Deputy Labor Commissioner in DLSE's Public Works Unit who was in charge of
27 the investigation of Respondents. Deputy Shockley worked in the DLSE Bakersfield office, and was
28 under Gentry's supervision. Gentry testified she reviewed the records of the file on this case that

1 were kept in the regular course of business at the DLSE office. The Hearing Officer finds Senior
2 Deputy Gentry's testimony credible and competent and testified to the following.

3 2. Respondents were at all relevant times a subcontractor on the Hollister Fire Station #
4 1 job in San Benito County, California, pursuant to a public works project awarded by the City of
5 Hollister. (Exhibit 6)

6 3. The prime contractor to the above-referenced public works project was Green Valley
7 Corporation dba Barry Swenson Builders. (Exhibit 2, 3, 5, 6, 7)

8 4. On May 8, 2012, Deputy Shockley sent a *Request for Payroll Records* ("Request") by
9 certified mail to Respondents. The *Request* is authorized by Labor Code section 1776. The *Request*
10 sought certified payroll records for the above public works project, and notified Respondent that
11 failure to comply could subject Respondent to civil penalties and debarment. (Exhibit 2)

12 5. The proof of service for the *Request of Payroll Records* shows Respondent CARL
13 RAY RAMOS signed the certified receipt on May 18, 2012. (Exhibit 3)

14 6. Senior Deputy Gentry testified the Bakersfield DLSE office has no indication that any
15 certified records were received or that Respondents sent the records.

16 7. Senior Deputy Gentry testified she reviewed the "900 notes" maintained by Deputy
17 Shockley which show she did not receive the records from Respondents. Gentry testified "900
18 notes" are used by public works deputies to record the chronology of all significant events in a case.

19 8. Senior Deputy Gentry authenticated the records that were sent by DLSE to
20 Respondent that concern certified payroll records and that no records were received in response to
21 the following documents that were sent: *Notice of Impending Debarment* dated July 9, 2012 (Exhibit
22 4), *Civil Wage and Penalty Assessment* dated July 9, 2012 (Exhibit 5), *Amended Civil Wage and*
23 *Penalty Assessment* dated July 26, 2012 (Exhibit 7) and *Request that Clerk Enter Judgment and*
24 *Judgment on the Final Civil and Wage Penalty Assessment* dated March 4, 2013 (Exhibit 8).

25 9. Senior Deputy Gentry testified the DLSE communicated with the Prime Contractor
26 who reported he did not receive certified payroll records from the Respondent.

27 10. Senior Deputy Gentry testified this was the first instance of Respondent failing to
28 provide certified payroll records.

1
2 **CONCLUSIONS OF LAW**

3 Labor Code section 177.1 provides in pertinent part:

4 (c) Whenever a contractor or subcontractor performing a public works project has
5 failed to provide a timely response to a request by the Division of Labor Standards
6 Enforcement, the Division of Apprenticeship Standards, or the awarding body to
7 produce certified payroll records pursuant to Section 1776, the Labor Commissioner
8 shall notify the contractor or subcontractor that, in addition to any other penalties
9 provided by law, the contractor or subcontractor will be subject to debarment under
10 this section if the certified payroll records are not produced within 30 days after receipt
11 of the written notice. If the commissioner finds that the contractor or subcontractor
12 has failed to comply with Section 1776 by that deadline, unless the commissioner
13 finds that the failure to comply was due to circumstances outside the contractor's or
14 subcontractor's control, the contractor or subcontractor or a firm, corporation,
15 partnership, or association in which the contractor or subcontractor has any interest is
16 ineligible for a period of not less than one year and not more than three years to do
17 either of the following:

- 18 (1) Bid on or be awarded a contract for a public works project.
19 (2) Perform work as a subcontractor on a public works project.

20 The credible and unrefuted evidence at the hearing was that Respondent failed to timely
21 respond to the request by the DLSE for certified payroll records. In fact, Respondent has not
22 provided any records at all. There were no circumstances outside of Respondent's control to justify
23 or explain this non-response.

24 The DLSE has requested debarment for one-year because this is the first instance of non-
25 compliance with a request for certified payroll records. "Although debarment can have a severe
26 economic impact on contractors, it is not intended as punishment. It is, instead, a necessary means
27 to enable the contracting governmental agency to deal with irresponsible bidders and contractors,
28 and to administer its duties with efficiency." (*Southern California Underground Contractors, Inc. v.*
City of San Diego (2003) 108 Cal.App.4th 533, 542.)

29 **ORDER OF DEBARMENT**

30 In accordance with the foregoing, it is hereby ordered Respondent CARL RAY RAMOS,
31 INDIVIDUALLY, DBA RAMOS PAINTING, A SOLE PROPRIETORSHIP, CSLB # 753575
32 shall be ineligible to, and shall not, bid on or be awarded a contract for a public works project, and

1 shall not perform as a subcontractor on a public work as defined by the Labor Code sections 1720,
2 1720.2 and 1720.3, for a period of one (1) year, effective 45 days after this decision is issued by the
3 Labor Commissioner. A one-year debarment is appropriate where Respondent violated Labor Code
4 section 1777.1(c) by failing to comply at all to requests for certified payroll records by DLSE.
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6 Dated: September 17, 2014
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ELLIOT S. BECKELMAN
Hearing Officer
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3 COUNTY OF FRESNO) ss.

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Christina Othon
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SAC Case No. 5518

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