

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

St. George Groupe, a California corporation
d/b/a St. George Construction

Case No. 19-0108-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected prime contractor St. George Groupe, Inc., doing business as St. George Construction (St. George or Requesting Party), submitted a request for review of a Civil Wage and Penalty Assessment (CWPA or Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on February 8, 2019, with respect to work performed by subcontractor Villareal Roofing Company, Inc. (Villareal) on the Roof Repairs for Library, Police Department, and City Hall (Project) for the City of Glendora (Awarding Body) in Los Angeles County. The Assessment determined that \$110,379.92 was due in unpaid wages, and \$59,170.00 was due in statutory penalties.¹

Abdalla Abdelmalak, Chief Executive Officer of St. George, and Scott Bentley the Requesting Party's authorized representative, appeared for St. George. Lance Arthur Grucela appeared as counsel for DLSE. The parties agreed to submit the matter for decision on stipulated facts and documentary evidence with the opportunity for closing argument. Prior to submission of the matter the parties stipulated as follows:

1. The work subject to the Civil Wage and Penalty Assessment was performed on a public work and required the employment of apprentices and the payment of prevailing wages under the California Prevailing Wage Law;
2. The CWPA was timely under Labor Code section 1741;²

¹ Villareal reached a settlement with DLSE and withdrew its request for review.

² All further section references are to the Labor Code, unless otherwise indicated.

3. The Request for Review was timely; and,
4. The enforcement file was timely made available.

Thereafter, on August 14, 2020, the Parties jointly filed Exhibits 1 through 28, along with a list of the exhibits. The joint exhibits are hereby admitted into evidence. The parties also filed Stipulated Facts and Joint Statement of Issues to be Decided by the Director (SF) in which they stipulated that the issue for decision was whether St. George is liable for penalties assessed pursuant to section 1775 as a result of Villareal's failure to pay workers the required prevailing wage. The matter was submitted for decision when St. George filed its closing argument on October 23, 2020.

For the reasons set forth below, the Director finds that DLSE carried its initial burden of presenting evidence that provided prima facie support for the Assessment, and St. George failed to carry its burden of proving the basis for the Assessment was incorrect.³ (See Cal. Code Regs., tit. 8, § 17250, subds. (a) and (b).) Accordingly, the Director issues this decision affirming the Assessment.

FACTS

On August 10, 2017, the Awarding Body advertised the Project for bid. (Joint Exhibit (JE) No. 18, p. 338.) On September 26, 2017, St. George entered into a contract with the Awarding Body for the Project. (JE No. 20.) The contract price was \$420,000.00. (JE No. 20, p. 351, ¶ 4.1.) The contract included specific provisions regarding legal requirements including the following:

The Contractor, and any subcontractor under the Contractor, shall pay not less than the specified prevailing rate of per diem wages to all workers employed in the execution of the contract. (Labor Code section 1771.) The Contractor shall have the responsibility for compliance with California Labor Code section 1776 relative to the retention and inspection of payroll records. (Labor Code section 1776.)

(JE No. 20, p.352, ¶ 6.2(C).)

³ St. George stipulated to its liability for the Assessment, except for section 1775 and 1813 penalties. The Parties stipulated that St. George was not liable for section 1813 penalties.

On or about October 26, 2017, St. George entered into a contract agreement with subcontractor Villareal for Villareal to perform roofing work on the Project. (JE No. 27.) The contract executed between St. George and Villareal did not include a copy of sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

Villareal had workers on the Project from October 18, 2017, to March 28, 2018. (JE No. 3, p. 24.) The prevailing wage determination for the classification Roofers was LOS-2017-1. (JE No. 13.)

DLSE opened an investigation of Villareal's compliance with prevailing wage laws on the Project based on a complaint it received on or about February 23, 2018, from Frank Velazquez of the Center for Contract Compliance. (JE No. 4.) The complaint raised issues with regard to non-payment / underpayment of wages, unpaid overtime, and whether Villareal was registered with the State to perform on public works projects. (JE No. 4, p. 39.) DLSE assigned Industrial Relations Representative Sara Brown to investigate the matter. (JE No. 1, p. 1.)

Brown's investigation determined that Villareal underpaid eight (8) workers in the total amount of \$109,001.14 while performing work on the Project. (JE No. 3, p. 24.) Also, Brown determined that Villareal failed to make training fund contributions in the amount of \$1,378.78 while performing work on the Project. (JE No. 3, p. 24; JE No. 15.) Brown's senior deputy at DLSE approved a section 1775 penalty rate of \$150.00 per violation. Brown found 288 violations for a total of \$43,200.00 in penalties. (JE No. 1, pp. 1-2.)

In addition, Brown's investigation determined that Villareal did not make any attempt to comply with apprenticeship requirements. (JE No. 1, pp. 5, and 8-10.) The senior deputy approved a section 1777.5 penalty rate of \$80.00 per violation. Brown found 149 violations for a total of \$11,920.00 in penalties. (JE No. 1, pp 1-2.)

DISCUSSION

Enforcement of the Obligation to Pay Prevailing Wages and Employ Apprentices.

The California Prevailing Wage Law (CPWL), set forth at Labor Code sections 1720 et seq., requires the payment of prevailing wages to workers employed on public works construction projects. DLSE enforces prevailing wage requirements not only for the benefit of the workers but also, “to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.” (§ 90.5, subd. (a); *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 985.)

Section 1775, subdivision (a), requires, among other provisions, that contractors and subcontractors pay the difference to workers who were paid less than the prevailing rate, and also prescribes penalties for failing to pay the prevailing rate. Section 1742.1, subdivision (a), provides for the imposition of liquidated damages (essentially a doubling of the unpaid wages) if the unpaid wages are not paid within 60 days following service of a civil wage and penalty assessment under section 1741.

In general, and unless an exemption applies, section 1777.5 and the applicable regulations require the hiring of apprentices to perform one hour of work for every five hours of work performed by journeypersons in the applicable craft or trade. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) Prior to commencing work on a contract for public works, every contractor must submit contract award information to applicable apprenticeship programs that can supply apprentices to the project. (§ 1777.5, subd. (e); Cal. Code Regs., tit. 8, § 230, subd. (a).) A contractor does not violate the requirement to employ apprentices in the 1:5 ratio if it has properly requested dispatch of apprentices and no apprenticeship committee in the geographic area of the public works project dispatches apprentices during the pendency of the project, provided the contractor made the request in enough time to meet the required ratio. (Cal. Code Regs., tit. 8, § 230.1, subd. (a).) Thus, the contractor is required to both notify apprenticeship programs of upcoming opportunities and to request dispatch of apprentices.

Section 1777.7 prescribes penalties for failing to comply with the apprenticeship provisions. The prime contractor is not liable with the subcontractor for penalties imposed under the section, unless the prime contractor had knowledge of the subcontractor's failure to comply with section 1777.5, or unless the prime contractor failed to meet specific requirements set forth therein. (§ 1777.7, subds. (a) and (e).)

When DLSE determines that a violation of the prevailing wage laws has occurred, it may issue a written civil wage and penalty assessment pursuant to section 1741. An affected contractor or subcontractor may appeal the assessment by filing a request for review under section 1742. The request for review is transmitted to the Director of the Department of Industrial Relations, who assigns an impartial hearing officer to conduct a hearing in the matter as necessary. (§ 1742, subd. (b).) DLSE has the initial burden of presenting evidence that "provides prima facie support for the Assessment" (Cal. Code Regs., tit. 8, § 17250, subd. (a).) When that burden is met, "the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment . . . is incorrect." (Cal. Code Regs., tit. 8, § 17250, subd. (b); accord, § 1742, subd. (b).) At the conclusion of the hearing process, the Director issues a written decision affirming, modifying or dismissing the assessment. (§ 1742, subd. (b).)

In this matter, St. George admitted the following: (1) Villareal underpaid eight (8) workers on the Project a total of \$109,001.14; (2) Villareal failed to make training fund contributions in the amount of \$1,378.78; and, (3) no back wages were paid nor was a deposit submitted to the Department of Industrial Relations as a result of the Assessment. Thus, St. George admitted it was jointly and severally liable for the unpaid wages and training fund contributions, as well as for liquidated damages, all as a result of violations of the prevailing wage law by its subcontractor Villareal. (SF, Aug. 14, 2020, pp. 2-3, ¶¶ 8, and 11-13.)

St. George also admitted that its subcontractor Villareal failed to submit contract award information to any apprenticeship committee or employ apprentices in the classification of Roofer while performing work on the Project. Further, St. George

admitted that the Labor Commissioner did not abuse her discretion in setting section 1777.7 penalties at rate of \$80.00 per violation, and, that as a result of Villareal's violation of section 1777.5, it was jointly and severally liable for penalties assessed for the violations of the apprenticeship provisions by Villareal in the amount of \$11,920.00. (SF, Aug. 14, 2020, pp. 3, ¶¶ 18-20.)

Finally, St. George admitted that the Labor Commissioner did not abuse her discretion in setting section 1775 penalties at a rate of \$150.00 per violation, and that as a result of Villareal's failure to pay the required prevailing wages, Villareal was liable for penalties assessed under that provision in the amount of \$43,200.00. However, St. George contended that it was not liable for penalties under section 1775, subdivision (a), because it met the safe harbor provisions of section 1775, subdivision (b). (SF, Aug. 14, 2020, pp. 3, ¶¶ 16, 17, and 22.)

St. George and Villareal Are Jointly and Severally Liable For the Penalties Assessed Under Section 1775.

The prime contractor and the subcontractor are jointly and severally liable for penalties under section 1775. (See § 1743, subd. (a); *Violante v. Southwest Communities Dev't and Constr. Co.* (2006) 138 Cal.App.4th 972, 979.) The prime contractor can avoid liability if it proves it was ignorant of the subcontractor's failure to pay the specified prevailing rate of wages to its workers on the Project, *and* that it met all of the following four specific requirements:

- (1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and sections 1771, 1776, 1777.5, 1813 and 1815.
- (2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
- (3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing wage rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

- (4) Prior to making final payment to the subcontractor for work performed on the public work project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to section 1813.

(§ 1775, subd. (b); see § 1742, subd. (b) [contractor bears burden to prove basis for assessment is incorrect]; Cal. Code Regs., tit. 8, §17250, subd. (c).) Essentially, section 1775, subdivision (b), creates what is euphemistically referred to as a “safe harbor” for the prime contractor. In order to qualify for the safe harbor, the prime contractor must strictly comply with the requirements of the subdivision. The prime contractor’s knowledge of the subcontractor’s failure to pay prevailing wage rates, or the failure on the part of the prime contractor to establish all of those four specific requirements, results in the prime contractor’s liability.

St. George failed to meet the first requirement. It did not produce evidence that the contract executed between it and Villareal for the performance of work on the Project included copies of the requisite Labor Code sections enumerated in subdivision (b)(1) of section 1775. The only document executed by St. George and Villareal that was admitted into evidence was a three-page bid proposal form dated October 27, 2016, written on Villareal letterhead, apparently prepared by Villareal, which St. George’s chief executive officer, Abdelmalak, signed at the bottom of each page. (JE No. 27.) The document does not include any mention of the requisite Labor Code sections or a copy of them.

In its closing argument, St. George claimed that it intended that the requisite Labor Code provisions be incorporated by reference into its subcontract with Villareal. It asserted that it provided Villareal with a copy of Instructions to Bidders & Conditions of Bid to Villareal, and it thought that document contained the requisite provisions. First, no document with the title “Instructions to Bidders & Conditions of Bid” has been produced and submitted into evidence. The only document produced and submitted into evidence having to do with bidding is one entitled “Notice Inviting Bids” which was marked as JE No. 18. That document does not contain a copy of the requisite Labor

Code provisions required by section 1775, subdivision (b)(1). (See p. 338 of JE No. 18.) Second, there are no stipulated facts upon which St. George could rely for its assertion regarding incorporation by reference of the requisite Labor Code provisions. Nor does any stipulated fact show that copies of the requisite Labor Code provisions were contained within another document executed by St. George and Villareal, separate from the contract between it and Villareal. St. George's subjective intent of a plan to incorporate by reference the Labor Code provisions does not show the plan was effectuated. Therefore, the record establishes that St. George failed to satisfy the requirements of section 1775, subdivision (b)(1).⁴

Because St. George did not establish that it complied with all four requirements, of section 1775, subdivision (b), it is not entitled to relief from the obligation to pay the penalties imposed under section 1775, subdivision (a). Consequently, St. George is jointly and severally liable with Villareal for the penalties assessed.

Based on the foregoing, the Director makes the following findings:

FINDINGS AND ORDER

1. The Project was a public work subject to the payment of prevailing wages and the employment of apprentices.
2. The Civil Wage and Penalty Assessment was timely served by DLSE in accordance with section 1741.
3. Affected prime contractor St. George Groupe, Inc., doing business as St. George Construction, filed a timely Request for Review of the Civil Wage and Penalty Assessment issue by DLSE with respect to the Project.
4. The workers listed in the audit performed work in Los Angeles County during the pendency of the Project and were entitled to be paid the journeyman rate for that work in their respective crafts.

⁴ As St. George did not meet the very first of the specific requirements, there is no need to consider whether it met any one of the other specific requirements because St. George must show it complied with all those requirements in order to obtain the benefit of the safe harbor.

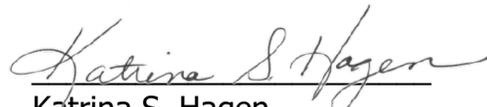
5. Villareal Roofing, Inc. underpaid prevailing wages to its employees on the Project in the amount of \$109,001.14.
6. Villareal Roofing, Inc. failed to pay training fund contributions for its employees on the Project in the amount of \$1,378.78.
7. Prime contractor St. George Groupe, Inc., doing business as St. George Construction is liable for liquidated damage in the amount of \$109,001.14.
8. The Labor Commissioner did not abuse her discretion in setting section 1775 penalties at the rate of \$150.00 per violation, and the resulting total penalty of \$43,200.00 is affirmed.
9. Villareal Roofing, Inc. failed to provide contract award information to the applicable apprenticeship committee for the craft of Roofer.
10. Villareal Roofing, Inc. employed journeypersons in the craft of Roofer on the Project but failed to employ any apprentices in that craft.
11. The Labor Commissioner did not abuse her discretion in setting section 1777.7 penalties at the rate of \$80.00 per violation, and the resulting total penalty of \$11,920.00 is affirmed.
12. Prime contractor St. George Groupe, Inc., doing business as St. George Construction, did not comply with the requirements of section 1775, subdivision (b).
13. Based on its admissions, Prime contractor St. George Groupe, Inc., doing business as St. George Construction, is liable for unpaid wages in the amount of \$109,001.14, unpaid training fund contributions in the amount of \$1,378.78, penalties assessed under section 1775, subdivision (a), in the amount of \$43,200.00, and penalties assessed under section 1777.7, subdivision (a)(1), in the amount of \$11,920.00.
14. The amounts found due from St. George Groupe, Inc., doing business as St. George Construction, as affirmed in this Decision are as follows:

Basis of the Assessment	Amount
Wages Due:	\$109,001.14
Training Fund Contributions Due:	\$ 1,378.78
Penalties under section 1775:	\$ 43,200.00
Liquidated damages:	\$109,001.14
Penalties under section 1777.7:	\$ 11,920.00
TOTAL:	\$274,501.06

In addition, interest is due from St George Groupe, Inc., doing business as St. George Construction, and shall continue to accrue on all unpaid wages as provided in section 1741, subdivision (b).

The Civil Wage and Penalty Assessment is affirmed as set forth in the above Findings. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 05-10-2021


 Katrina S. Hagen
 Director,
 Department of Industrial Relations