

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Amerivet Plumbing Services, Inc.

Case No. 13-0625-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor Amerivet Plumbing Services, Inc. (Amerivet), requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) regarding the Stanley Mosk Library and Courts Building project (Project) performed for the California Department of General Services (DGS) in Sacramento County. The Assessment determined that \$488,120.15 in unpaid prevailing wages and statutory penalties was due. A telephonic hearing on the merits was held on March 2, 2015, before Hearing Officer Nathan D. Schmidt. David Cross appeared for DLSE. Amerivet failed to appear at hearing. Now, based on un rebutted evidence showing that Amerivet failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Assessment.

Facts

The prime contractor for the Project, Arntz Builders, Inc. (Arntz), who also requested review of the Assessment, settled the assessed unpaid wages and training funds with DLSE in full and withdrew its request for review on October 23, 2014.¹ The sole remaining issue for hearing is the assessment of penalties against Amerivet under Labor Code section 1775.²

Failure to Appear: Van Allyn Goodwin withdrew as counsel for Amerivet in May 2014 and informed the hearing officer that Walter Kuhlman III, Amerivet's President, would be pro-

¹ Case number 13-0437-PWH.

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

ceeding in pro per. From that point forward, all minutes, notices and orders in this matter were served on Kuhlman at Amerivet's address of record. Kuhlman did not respond to any of the attempts to contact him at his address or telephone number of record by either DLSE or the Hearing Officer. At the last Prehearing Conference on January 23, 2014, the Hearing Officer attempted to reach Kuhlman at his telephone number of record and received a message stating that the number was no longer in service. No forwarding telephone number being available, the conference proceeded in Kuhlman's absence and the matter was set for a Hearing on the Merits. The Minutes of Prehearing Conference and Order Setting Hearing on the Merits were served on Kuhlman by the Hearing Officer on February 3, 2015, and were not returned as undeliverable. Neither Kuhlman nor any other representative for Amerivet appeared for the Hearing on the Merits. The case proceeded in Amerivet's absence and the Hearing Officer recommended a decision based on the evidence presented pursuant to California Code of Regulations, title 8, section 17246, subdivision (a).

DLSE's evidentiary exhibits 1-18 were admitted into evidence without objection. Ying Wu testified on behalf of DLSE.

Assessment: The facts stated below are based on Exhibits 1-18 submitted by DLSE, the Assessment, the testimony of Ying Wu, and any other documents in the Hearing Officer's file.

Arntz entered into a public works contract with DGS regarding the Project and subcontracted with Amerivet to perform plumbing work. The applicable prevailing wage determinations and classifications are SAC-2010-1 (Plumber) and NC-23-102-1-2010-1 (Laborer, Group 3). Amerivet workers performed work on the Project from approximately February 2, 2011, to April 3, 2013. For the first 43 weeks of work on the Project, through November 19, 2011, Amerivet submitted Certified Payroll Records (CPRs) in the name of, and using the contractors' license number of, Amerivet Plumbing Services, a sole proprietorship operated by Walter Edward Jacob Kuhlman III. From November 20, 2011, through the conclusion of Amerivet's work on the Project, CPRs were submitted in the name of, and using the contractors' license number of, Amerivet Plumbing Services, Inc.

DLSE issued the Assessment against, and served it upon, both Amerivet Plumbing Services, Inc. and Walter Edward Jacob Kuhlman, III, individually and doing business as Amerivet Plumbing Services, a sole proprietorship. Only Amerivet Plumbing Services, Inc. requested review of the Assessment.³ DLSE assessed \$75,050.00 in penalties under section 1775, at the applicable maximum rate of \$50.00 per violation, for 1,441 instances of failure to pay the applicable prevailing wage rates.

Discussion

Sections 1720 and following set forth a scheme for determining and requiring the payment of prevailing wages to workers employed on public works construction projects. DLSE enforces prevailing wage requirements not only for the benefit of workers but also "to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (Lab. Code § 90.5, subd. (a), and *see Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976.)

Section 1775, subdivision (a) requires, among other things, that contractors and subcontractors pay the difference to workers who received less than the prevailing rate and also prescribes penalties for failing to pay the prevailing rate.

When DLSE determines that a violation of the prevailing wage laws has occurred, a written civil wage and penalty assessment is issued pursuant to section 1741. An affected contractor or subcontractor may appeal that assessment by filing a Request for Review under section 1742. The contractor or subcontractor "shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect." (§ 1742, subd. (b).) In this case, the record establishes the basis for the Assessment and Amerivet presented no evidence to disprove the basis for the Assessment. Accordingly, the Assessment is affirmed in its entirety.

³ Because Kuhlman did not request review of the Assessment on behalf of his sole proprietorship, a separate legal entity, the Assessment became final against Kuhlman doing business as Amerivet Plumbing Services on October 24, 2013, 65 days after service of the Assessment.

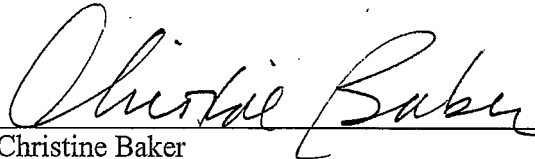
FINDINGS AND ORDER

1. Affected subcontractor Amerivet Plumbing Services, Inc. filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.

2. Penalties under section 1775 are due in the amount of \$72,050.00 for 1,441 violations at the rate of \$50.00 per violation. Amerivet Plumbing Services, Inc. and Walter Edward Jacob Kuhlman III, individually and doing business as Amerivet Plumbing Services, a sole proprietorship, are jointly and severally liable for these penalties pursuant to section 1743.

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

Dated: 4/30/2015



Christine Baker
Director of Industrial Relations