

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Cedars Engineering Construction, Inc.**

Case No. 13-0351-PWH

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement.**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected contractor Cedars Engineering Construction, Inc. (Cedars) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the Central Jail Complex – Consolidated Maintenance Project (Project) performed for the Orange County Sheriff Coroner (County). The Assessment determined that \$107,131.10 in unpaid prevailing wages and statutory penalties was due. A hearing on the merits was held on January 21, 2015, in Los Angeles, California, before Hearing Officer Nathan D. Schmidt. William A. Snyder appeared for DLSE. There was no appearance for Cedars. Now, based on un rebutted evidence showing that Cedars failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Assessment.

**Facts**

At a Prehearing Conference held on October 30, 2014, Mr. Snyder and Jeffrey Hook, counsel for intervenor International Fidelity Insurance Company (Fidelity), Cedars' surety for the Project, informed the Hearing Officer that Fidelity and DLSE had settled Fidelity's liability under its surety bond for the Project resulting in payment of the majority of the assessed unpaid wages and training funds. The issues for hearing are: Cedars' liability for the balance of the assessed unpaid wages and training funds; the assessment of penalties against Sierra under Labor Code sections 1775 and 1813; and liquidated damages under Labor Code section 1742.1, subdivision (a).<sup>1</sup>

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<sup>1</sup> All further statutory references are to the California Labor Code, unless otherwise indicated.

Failure to Appear: By a letter to the Hearing Officer dated October 2, 2014, William F. Clark withdrew as counsel for Cedars and informed the Hearing Officer that Cedars was “defunct, closed and has no assets” and that “Cedars closed its doors well over a year ago.”<sup>2</sup> At a Prehearing Conference on November 14, 2014, Ernie Nishii represented Tony Rizk, the President of Cedars, as an individual, but stated that he did not represent Cedars and that he could not identify any other representative or counsel that would be representing Cedars going forward in this proceeding. The Minutes of Prehearing Conference and Order Setting Hearing on the Merits were therefore served by the Hearing Officer on Rizk in his capacity as President of Cedars. No forwarding address or telephone number was provided for Rizk and mail sent to him at Cedars’ address of record was returned as undeliverable.

Neither Rizk nor any other representative for Cedars appeared at the Hearing on the Merits. Pursuant to notice the Hearing Officer proceeded to conduct the Hearing on the Merits as scheduled for the purpose of formulating a recommended decision as warranted by the evidence pursuant to California Code of Regulations, title 8, section 17246, subdivision (a). DLSE’s evidentiary exhibits were admitted into evidence without objection and the matter was submitted on the evidentiary record based on the testimony of DLSE’s Deputy Labor Commissioner Jeffrey Pich.

Assessment: The facts stated below are based on the testimony of Pich, Exhibits 1 through 22 submitted by DLSE, the Assessment, and the other documents in the Hearing Officer’s file.

On or about June 16, 2009, Cedars entered into a public works contract with the County as prime contractor for the Project. Cedars workers performed work on the Project between approximately September 15, 2009, and May 19, 2011. The applicable prevailing wage determinations and classifications are SC-23-102-2-2008-1 (Laborer, Group 1) and ORA-2009-1 (Electrician, Inside Wireman).

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<sup>2</sup> Clark also informed the Hearing Officer that Tony Rizk, the primary shareholder and President of Cedars had filed for individual bankruptcy and received a Chapter 7 discharge on August 1, 2014. Because Rizk’s individual bankruptcy does not extend to Cedars, which is a corporate entity, this matter continued to hearing against Cedars.

The evidence establishes that Cedars failed to pay the required prevailing wages to 23 of its workers on the Project in the aggregate amount of \$47,997.90 and failed to pay required training fund contributions in the aggregate amount of \$6,803.20. In addition, DLSE assessed \$48,930.00 in penalties under section 1775, at the mitigated rate of \$30.00 per violation, for 1,631 instances of failure to pay the applicable prevailing wages, and \$3,400.00 in penalties under section 1813, at the statutory rate of \$25.00 per violation, for 136 instances of failure to pay overtime to one worker, George Harfouche. At the hearing, Pich testified that DLSE had received a payment of \$42,000.00 from Fidelity on November 5, 2014, pursuant to their settlement agreement. \$36,761.54 of that amount was disbursed to the workers as wages and the balance of \$5,238.46 was paid as training funds to the California Apprenticeship Council. DLSE stipulated that Cedars is entitled to receive credit for Fidelity's payment as an offset to its liability under the Assessment. The assessed unpaid wages are therefore reduced from \$47,997.90 to \$11,236.36 and the assessed unpaid training funds are reduced from \$6,803.20 to \$1,564.74.

#### 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." (§ 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. Section 1813 prescribes a fixed penalty of \$25.00 for each instance of failure to pay the prevailing overtime rate when due. Section 1742.1, subdivision (a) provides for the imposition of liquidated damages, essentially a doubling of the unpaid wages, if those wages are not paid within sixty days following the service of a Civil Wage and Penalty Assessment.

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 may appeal that assessment by filing a Request for Review under section 1742. The contractor "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 Cedars presented no evidence to disprove the basis for the Assessment or to support a waiver of liquidated damages under section 1742.1, subdivision (a). Accordingly, the Assessment is affirmed in its entirety less credit for the portion of the assessed unpaid wages and training funds paid by Fidelity pursuant to its settlement with DLSE.

### FINDINGS AND ORDER

1. Affected contractor Cedars Engineering Construction, Inc. filed a timely Request for Review from a Civil Wage and Penalty Assessment issued by the Division of Labor Standards Enforcement.

2. Cedars underpaid its workers on the Project in the aggregate amount of \$47,997.90 in prevailing wages and failed to pay required training fund contributions in the aggregate amount of \$6,803.20. After credit for \$42,000.00 paid by Cedars' surety to DLSE, Cedars' liability for unpaid wages and training funds is reduced to \$11,236.36 and \$1,564.74, respectively.

3. In accordance with section 1741, subdivision (b), prejudgment interest has accrued on all unpaid wages at the statutory interest rate of ten percent per annum commencing May 21, 2011, when Cedars ceased working on the Project. The accrued interest due on the full amount of unpaid prevailing wages found owing in Finding 2, from May 21, 2011, through and including November 5, 2014, when Fidelity paid \$42,000.00 in wages, calculated at ten percent simple interest on the basis of a 365 day year, is found to be \$16,621.74. Using the same calculation and interest rate, interest on the balance of the unpaid wages continues to accrue at the rate of \$1.64 per day.

4. Penalties under section 1775 are due in the amount of \$48,930.00 for 1631 violations at the mitigated rate of \$30.00 per violation.

5. Penalties under section 1813 are due in the amount of \$3,400.00 for 136 violations at the rate of \$25.00 per violation.

6. Because none of the unpaid wages were paid within 60 days after service of the Assessment, liquidated damages are due in the full amount of the unpaid wages, \$47,997.90, and are not subject to waiver under section 1742.1, subdivision (a).

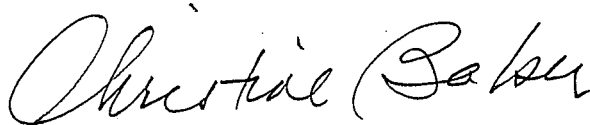
7. The amounts found remaining due in the Assessment as affirmed by this Decision are as follows:

Wages due:	\$11,236.36
Prejudgment interest on unpaid wages per section 1741, subdivision (b):	\$16,621.74
Training funds due:	\$1,564.74
Penalties under section 1775, subdivision (a):	\$48,930.00
Penalties under section 1813:	\$3,400.00
Liquidated damages:	<u>\$47,997.90</u>
<b>TOTAL:</b>	<b>\$129,750.74</b>

Interest has and will continue to accrue since November 6, 2014, on the balance of the unpaid wages in accordance with section 1741, subdivision (b), as calculated in Finding 3, above, until the assessed unpaid wages are paid or administrative and judicial review of this matter is concluded.

The Civil Wage and Penalty Assessment is affirmed and modified 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: 4/29/2015



Christine Baker  
Director of Industrial Relations

