

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
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Attorney for the Labor Commissioner

BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT
DEPARTMENT OF INDUSTRIAL RELATIONS
FOR THE STATE OF CALIFORNIA

In the matter of the
Debarment proceeding Against:

ALL FLOORS COMMERCIAL AND
RESIDENTIAL FLOORING, INC.; and
SALVADOR ELIAS PEREA,

Respondents.

) Case No. SAC 1040

) PROPOSED STATEMENT OF
) DECISION RE DEBARMENT
) OF RESPONDENTS FROM
) PUBLIC WORKS PROJECTS

) [Labor Code § 1777.1]

Debarment proceedings pursuant to Labor Code §1777.1 were initiated by the Division of Labor Standards Enforcement ("DLSE") on December 17, 2008, by the filing of a Statement of Alleged Violations against the following named respondents: ALL FLOORS COMMERCIAL AND RESIDENTIAL FLOORING, INC (hereinafter "ALL FLOORS"); SALVADOR ELIAS PEREA¹ (hereinafter "Respondents").

The hearing on the alleged violations was held on March 10, 2009, at the Oakland Office of the Labor Commissioner. Susan Dovi served as the Hearing Officer. David D. Cross, appeared on behalf of Complainant, the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. None of the Respondents appeared for the hearing although they were duly

¹ Mr. Perea's name was misspelled on the Statement of Alleged Violations and was corrected by motion at the hearing.

served with Notice of Hearing, and the Statement of Alleged Violations by First Class and Certified Mail to the address currently listed with the Contractors State License Board. Present as a witness for Complainant was Deputy Labor Commissioner Sherry Gentry.

The hearing was tape recorded. Witness Gentry took the oath and evidence was received. At the conclusion of the hearing, the matter was taken under submission.

FINDINGS

I. NOTICE

The Hearing Officer finds that the Respondents received lawful notice of the March 10, 2009, hearing. The proof of service for the Notice of Hearing and Statement of Alleged Violations together with the return receipts indicating that notice was served both by First Class and Certified Mail are on file in this proceeding. In addition, a letter was received addressed to the hearing officer dated January 22, 2009 by David J. Murphy, Morrison and Foerster, entering an appearance as counsel for Respondents. Mr. Cross noted on the record at the hearing that Mr. Murphy contacted him to indicate that Respondents would not be appearing for the hearing scheduled for March 10, 2009.

II. VIOLATIONS OF THE PUBLIC WORKS LAW

1. Respondent ALL FLOORS is a corporation licensed by the Contractor's State Licensing Board under license number 430969.

2. Respondent Salvador Elias Perea is the Responsible Managing Officer, Chief Executive Officer, President and sole owner of ALL FLOORS and therefore, holds a substantial interest in ALL FLOORS.

3. Respondent ALL FLOORS was a subcontractor on two public works projects, namely the Mountain View Library First Floor Modification Project in Santa Clara County, California and the Marina Branch Library Building Project in Monterey County, California

(hereinafter "Library Projects"), during the periods January 18, 2008 through February 29, 2008, and July 6, 2007 through August 10, 2007, respectively.

4. Deputy Labor Commissioner Sherry Gentry is assigned to the Public Works Unit and has been a deputy labor commissioner for thirteen years. Deputy Gentry testified that on the Library Projects, her investigations revealed that respondents violated Labor Code §1774 by failing to pay the prevailing wage rates to employees. Deputy Gentry testified and presented documentary evidence that respondents misclassified workers resulting in underpayments of the prevailing wage. In addition, certain travel and mileage expenses were not paid on the Marina Branch Library Project.

5. Deputy Gentry testified that respondents violated Labor Code §1776 by failing to maintain accurate certified payroll records. Deputy Gentry testified that Respondents submitted Certified Payroll Reports that were false as they did not accurately reflect the wages actually paid on the project. Workers were paid in some instances less than one half of the prevailing wage required even though the certified payroll reports listed the higher rate. In addition, Deputy Gentry learned through her investigations that Certified Payroll Reports were fraudulently prepared because there were two separate sets of certified payroll records on the Marina Branch Library project which had conflicting hours, listed different workers for the same days, a different number of workers on the project, and different wage payment information. In addition, on the Mountain View Library project, Respondents submitted a payroll journal that listed lower pay rates for workers, and different hours, dates of work and check numbers than listed on the Certified Payroll Report for the same project. Based on information obtained during her investigations, Ms. Gentry also determined that Respondents were listing the same workers on the same days and for the same hours on the Certified Payroll Reports for the Marina Branch

Library project as for a project in Oakley, roughly a two hour drive from the project in Marina. Respondents presented two different explanations for the discrepancies, one to the general contractor and one to Ms. Gentry. In addition, the documents and time cards submitted to Ms. Gentry contained alterations made by whiting out information and changing information, such as the hours on time cards. Ms. Gentry testified that this information was different than that submitted to the general contractor and did not contain information that was specifically requested by her. Finally, Mr. Perea signed the workers' paychecks.

6. DLSE issued two Civil Wage and Penalty Assessments against ALL FLOORS on the Library Projects listed in paragraph 3 above. DLSE exercised its discretion and assessed full penalties pursuant to Labor Code § 1775 due to the egregious nature of the violations, mainly concerning the fact that Respondents failed to provide cancelled checks or time cards to substantiate the certified payrolls, the fact that the check numbers reported on the certified payrolls did not match with the check stubs provided by a worker, and the various discrepancies between the two sets of Certified Payroll Reports and between the Certified Payroll Reports and the payroll journal. Judgment was entered against Respondent All Floors on the Mountain View Library project, which was later paid.

CONCLUSIONS OF LAW

Labor Code §1777.1 provides:

(a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter **with intent to defraud**, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership or association in which the contractor, or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the

following:

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

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be **in willful violation** of this chapter, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation of this chapter to do either of the following:

- (1) bid on or be awarded a contract for a public works project;
- (2) perform work as a subcontractor on a public works project.

California Code of Regulations, Title 8, Section 16800 defines "Intent to Defraud" as "the intent to deceive another person or entity, as defined in this article, and to induce such other person or entity, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property of any kind."

Labor Code §1777.1(c) defines a "willful violation" as "when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions." *California Code of Regulations* 8 CCR § 16800 defines "deliberately" as "premeditated and intentional".

Labor Code section 1777.1(b) provides that once a contractor or subcontractor willfully violates this section, that contractor or subcontractor is ineligible for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation.

An intent to deceive or defraud can be inferred from the facts. *People v. Kiperman*

(1977) 69 Cal.App.3d Supp. 25,31. "An unlawful intent is logically inferred from the doing of an unlawful act." *People v. McLaughlin* (1952) 111 Cal. App.2d 781, 789.

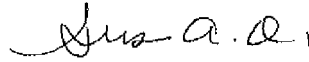
The credible and unrefuted evidence presented by Deputy Gentry establishes that Respondents failed to pay the proper prevailing wage rates, misclassified workers, resulting in payment of less than the prevailing wage rates, failed to pay travel and mileage reimbursements and falsified the certified payroll reports by keeping two different sets of books and reporting workers on dates and for hours which were false. In addition, Respondents presented two divergent explanations for the discrepancies, the one to the DLSE containing information altered from its original form. The testimony of Deputy Gentry, corroborated by documentary evidence, establishes that Labor Code §§ 1774 and 1776 were violated with an intent to defraud ALL FLOORS workers and the awarding bodies. Furthermore, the violations were willful within the meaning of Labor Code §1777.1(c) and 8 CCR §16800 in that the preparation of false and fraudulent certified payroll records was intentional and deliberate and also exhibits an intent to deceive respondents workers, the awarding body and the DLSE.

ORDER OF DEBARMENT

In accordance with the foregoing, it is hereby ordered that Respondents ALL FLOORS COMMERCIAL AND RESIDENTIAL FLOORING, INC. and SALVADOR ELIAS PEREA, shall be ineligible to, and shall not, bid on or be awarded a contract for a public works project, and shall not perform work as a subcontractor on a public work as defined in Labor Code §§ 1720, 1720.2 and 1720.3, for a period of three (3) years, effective May 15, 2009. A three year period is appropriate under these circumstances where Respondents willfully and fraudulently prepared false certified payroll records, failed to pay workers the prevailing wage, kept multiple sets of Certified Payroll Reports and other

payroll reports, and refused to cooperate and supply records and information requested by DLSE during its investigation, justifying a three year period of debarment.

Dated: March 23, 2009



SUSAN A. DOVI
Hearing Officer

BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT
DEPARTMENT OF INDUSTRIAL RELATIONS
FOR THE STATE OF CALIFORNIA

In the matter of the
Debarment proceeding Against:

ALL FLOORS COMMERCIAL AND
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) Case No. SAC 1040

) DECISION RE DEBARMENT
) OF RESPONDENTS FROM
) PUBLIC WORKS PROJECTS

) [Labor Code § 1777.1]

The attached proposed Statement of Decision and Order of Debarment making ALL FLOORS COMMERCIAL AND RESIDENTIAL FLOORING, INC., and SALVADOR ELIAS PEREA ineligible to bid on or be awarded a contract for a public works project and ineligible to perform work as a subcontractor on a public works project in the State of California for three years, is hereby adopted by the Division of Labor Standards Enforcement as the Decision in the above-captioned matter.

This decision shall become effective May 15, 2009.

IT IS SO ORDERED

Dated: March 23, 2009



ANGELA BRADSTREET
Labor Commissioner and Chief of the California
Division of Labor Standards Enforcement

1 **PROOF OF SERVICE**

2 In the matter of the Debarment proceeding against:

3 ALL FLOORS COMMERCIAL AND RESIDENTIAL FLOORING, INC.; and SALVADOR
4 ELIAS PEREA

5 I, the undersigned, declare that I am and was at the time of service of the papers herein
6 referred to, over the age of 18 and not a party to the within action or proceeding. My address is
7 1515 Clay Street, Ste. 801, Oakland, California, 94612 which is located in the county in which
8 the within mentioned mailing occurred. I am familiar with the practice at my place of business
9 for collection and processing of documents for mailing with the United State Post Office and by
facsimile. Such documents will be deposited with the United States Postal Service with postage
10 prepaid and/or faxed to the addresses and/or facsimile numbers as stated below, and/or
11 personally served at the location as stated below on the same day in the ordinary course of
12 business.

13 On March 23, 2009, I served the following document(s):

14 **1. Decision re Debarment of Respondents From Public Works Projects**

15 X by placing true copies thereof in an envelope(s) and then sealing the envelope with
16 postage thereon fully prepaid, depositing it in the United States mail in the city and county of
17 Alameda by ordinary first-class mail, addressed as follows:

18 _____ by placing true copies thereof in a UPS envelope for delivery by overnight mail with all
19 fees prepaid and addressed as follows:

20 _____ by personal delivery addressed to the following person(s) at the address stated below at
21 approximately 4:30 p.m.

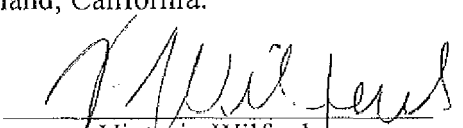
22 **David Cross**
23 **Division of Labor Standards**
24 **2031 Howe Street, Ste. 100**
25 **Sacramento, CA 95825**

26 **David J. Murphy**
27 **Morrison Foerster**
28 **755 Page Mill Road**
29 **Palo Alto, CA 94304**

30 _____ by facsimile at the following facsimile number(s):

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

33 Executed this 23rd day of March 2009 at Oakland, California.

34 
35 Victoria Wilferd

1 **PROOF OF SERVICE**

2 In the matter of the Debarment proceeding against:

3 ALL FLOORS COMMERCIAL AND RESIDENTIAL FLOORING, INC.; and SALVADOR
4 ELIAS PEREA

5 I, the undersigned, declare that I am and was at the time of service of the papers herein
6 referred to, over the age of 18 and not a party to the within action or proceeding. My address is
7 1515 Clay Street, Ste. 801, Oakland, California, 94612 which is located in the county in which
8 the within mentioned mailing occurred. I am familiar with the practice at my place of business
9 for collection and processing of documents for mailing with the United State Post Office and by
facsimile. Such documents will be deposited with the United States Postal Service with postage
prepaid and/or faxed to the addresses and/or facsimile numbers as stated below, and/or
personally served at the location as stated below on the same day in the ordinary course of
business.

10 On March 23, 2009, I served the following document(s):

11 **1. Proposed Statement of Decision re Debarment of Respondents From Public
12 Works Projects**

13 X by placing true copies thereof in an envelope(s) and then sealing the envelope with
14 postage thereon fully prepaid, depositing it in the United States mail in the city and county of
Alameda by ordinary first-class mail, addressed as follows:

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16 fees prepaid and addressed as follows:

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David J. Murphy
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