

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Central Valley Exteriors, Inc.

Case No. 13-0623-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement.

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected subcontractor Central Valley Exteriors (Central Valley) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) with respect to the Residence at West Columbus project (Project) in Kern County. The Assessment determined that \$80,375.35 in unpaid prevailing wages and statutory penalties was due. A revised audit prepared in advance of the hearing reduced the assessed unpaid prevailing wages and statutory penalties to \$34,773.24. A hearing on the merits was held on July 8, 2014, in Bakersfield, California, before Hearing Officer Nathan D. Schmidt. William A. Snyder appeared for DLSE. There was no appearance for Central Valley. The case was submitted for decision on July 18, 2014. Now, based on un rebutted evidence showing that Central Valley failed to pay the required prevailing wages to its workers, the Director of Industrial Relations affirms the Assessment.

Facts

Failure to Appear: According to the Request for Review filed by Randy McDowell, the owner of Central Valley, Central Valley has business mailing addresses and telephone numbers in both Palmdale and Friant, California. Central Valley neither answered the telephone nor responded to any of the multiple voicemail messages left on both numbers in an effort to schedule the prehearing conference in this matter. On April 16, 2014, a Notice of Appointment of Hearing Officer; Notice of Prehearing Conference; and Preliminary Orders was mailed to Central Valley at both addresses of record giving Central Valley notice that the Hearing Officer would be conducting a telephonic prehearing conference on May 7, 2014. The minutes of the

May 7 prehearing conference, including an order setting the Hearing on the Merits for July 8, 2014, was served by mail on both of Central Valley's addresses of record on May 15, 2014. DLSE likewise served its exhibit list and proposed joint statement of issues on Central Valley on June 25, 2014. Central Valley submitted neither an exhibit list nor a witness list and did not respond to DLSE's proposed joint statement of issues.

Central Valley did not appear 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 Industrial Relations Representative Joe Denecochea.

Assessment: The facts stated below are based on the testimony of Denecochea, Exhibits 1 through 5, 9 through 19, 21 and 22 submitted by DLSE, the Assessment, and the other documents in the Hearing Officer's file.

On or about March 16, 2012, Wallace & Smith General Contractors (Wallace & Smith) entered into a public works contract with Columbus Haven LP to construct the Project.¹ Wallace & Smith subcontracted with Central Valley to perform lathing and plastering work on the Project. Central Valley workers performed work on the Project between approximately September 20, 2012, and March 10, 2013. The applicable prevailing wage determinations are R-203-X-2-2011-1 (Residential Plasterer) and R-102-X-16-2011-1 (Residential Plaster Tender).

Based on Central Valley's certified payroll records, and additional wage information provided to DLSE by Wallace and Smith, the evidence establishes that Central Valley failed to pay the required prevailing wages to 18 of its workers on the Project in the aggregate amount of \$24,623.24. In addition, DLSE assessed \$10,150.00 in penalties under Labor Code section

¹ Wallace & Smith also requested review of the Assessment but settled its liability with DLSE in advance of the hearing on the merits and has withdrawn its request for review.

1775,² at the rate of \$50.00 per violation, for 203 instances of failure to pay the applicable prevailing wages.

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. Subdivision (b) of section 1742 provides, among other things, that a hearing on the request for review "shall be commenced within 90 days," that the contractor shall be provided with an opportunity to review evidence that DLSE intends to utilize at the hearing.

The contractor "shall have the burden of proving that the basis for the Civil Wage and Penalty Assessment is incorrect." (*Ibid.*) In this case, the record establishes the basis for the Assessment, and Central Valley 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.

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

FINDINGS AND ORDER

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

2. Central Valley Exteriors, Inc. underpaid its workers on the Project in the aggregate amount of \$24,623.24 in prevailing wages.

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 March 10, 2013, when Central Valley ceased working on the Project. The daily amount of interest due on the unpaid prevailing wages found owing in Finding 2, calculated at ten percent simple interest on the basis of a 365 day year, is \$6.75 per day. Accrued interest from March 10, 2013, through July 18, 2014, the date this matter was submitted for decision, is therefore found owing in the amount of \$3,285.35.

4. Penalties under section 1775 are due in the amount of \$10,150.00 for 203 violations at the rate of \$50.00 per violation.

5. Liquidated damages are due in the amount of \$24,623.24, and are not subject to waiver under section 1742.1, subdivision (a).

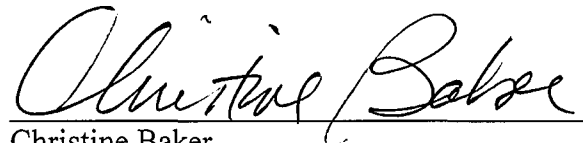
6. The amounts found remaining due in the Assessment as affirmed by this Decision are as follows:

Wages Due:	\$24,623.24
Prejudgment interest on unpaid wages per section 1741, subdivision (b):	\$3,285.35
Penalties under section 1775, subdivision (a):	\$10,150.00
Liquidated damages:	<u>\$24,623.24</u>
TOTAL:	\$62,681.83

Interest will continue to accrue on all 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 in full 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: 7/21/2014



Christine Baker
Director of Industrial Relations