

In the Matter of

BRUCE D. HUHTA and Teresa G. Huhta,

Case No. 59-00

Final Order of the Commissioner Jack Roberts

Issued May 25, 2001

SYNOPSIS

Respondent Bruce D. Huhta, as corporate president of a corporation previously adjudged by the agency to be liable for intentionally failing to pay four workers the prevailing wage rate on a public works contract, knew the amount of the applicable prevailing wage and was responsible for the corporation's failure to pay the prevailing wage. Respondent Bruce D. Huhta was held not eligible for public works contracts for three years pursuant to ORS 279.361(1) and (2). ORS 279.350, 279.361; OAR 839-016-0035, 839-016-0085.

The above-entitled case came on regularly for hearing before Linda A. Lohr, designated as Administrative Law Judge ("ALJ") by Jack Roberts, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on March 27, 2001, in the hearing room of the Bureau of Labor and Industries, located at 800 NE Oregon Street, Portland, Oregon.

Cynthia L. Domas, an employee of the Agency, represented the Bureau of Labor and Industries ("BOLI" or "the Agency"). Bruce D. Huhta and Teresa G. Huhta ("Respondents"), after being duly notified of the time and place of this hearing, failed to appear in person or through counsel.

The Agency called as witnesses: Kristie Patton, licensing renewal manager, Construction Contractor's Board; Melissa Marks, former Wage and Hour Division compliance specialist; Barry Stenlund, corporate officer, Woodburn Construction Co., Inc.; Floyd Crouch, project manager, Woodburn Construction Co., Inc.; and Ramona Christensen, Washington Department of Labor and Industries.

The forum received as evidence:

- a) Administrative exhibits X-1 through X-9;
- b) Agency exhibits A-1 through A-29 (filed with the Agency's case summary) and A-30 (submitted at hearing).

Having fully considered the entire record in this matter, I, Jack Roberts, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

FINDINGS OF FACT – PROCEDURAL

1) On August 29, 2000, the Agency issued a Notice of Intent to Place on List of Ineligibles and to Assess Civil Penalties ("Notice") naming as Respondents: Black Hawk, Inc. dba Columbia Contracting, Bruce D. Huhta, Teresa G. Huhta, Steven W. Francis, and Kylemac. The Notice was properly served on all of the Respondents. The Notice alleged that, in violation of ORS 279.350(1), Respondents intentionally failed to pay the prevailing wage rate to four workers who performed manual labor on a Beaverton School District public works project known as the Scholls Ferry Project, causing the prime contractor, Woodburn Construction Co., Inc., to pay \$10,529.62 in wages to Respondents' employees. The Notice further alleged Respondents filed inaccurate and incomplete certified payroll reports in violation of ORS 279.354 and failed to maintain records required under OAR 839-0016-0025(2).

2) Respondents Black Hawk, Inc. dba Columbia Contracting, Steven W. Francis, and Kylemac each failed to file a written answer and request for hearing as required by the Notice. On September 26, 2000, the Agency served each with a Notice of Intent to Issue Final Order By Default. The Agency received no response. On November 16, 2000, the Agency issued a Final Order (On Default) finding Respondents Black Hawk, Inc. dba Columbia Contracting, Steven W. Francis, and Kylemac had

violated the provisions of ORS chapter 279 charged in the Notice. Those Respondents were found ineligible to receive any contract or subcontract for public works for a period of three years from the date of publication of their names on the list of ineligibles and Black Hawk, Inc. dba Columbia Contracting was assessed \$50,000 in civil penalties.ⁱ

3) Bruce D. Huhta and Teresa G. Huhta filed timely answers to the Notice. In his answer, Bruce D. Huhta admitted he operated Black Hawk, Inc. dba Columbia Contracting, denied all other allegations in the Notice, and asserted he never had a subcontract agreement with anyone and the employees were “coerced and claimed to be on site in order to collect [a] ‘windfall’ when [they] were actually working 300 miles away in another state.” In her answer, Teresa G. Huhta denied all allegations and denied ever being a corporate officer in the “corporation or company.”

4) On November 29, 2000, the Agency requested a hearing.

5) On December 5, 2000, the Agency moved to amend the caption on the Notice to delete those named Respondents who were no longer parties to the Agency’s action. The forum granted the Agency’s motion on December 7, 2000.

6) On December 7, 2000, the forum issued to Bruce D. Huhta and Teresa G. Huhta (“Respondents”) and the Agency a Notice of Hearing setting forth March 27, 2001, in Portland, Oregon, as the time and place of the hearing in this matter. The hearing notice included a notice of Contested Case Rights and Procedures containing the information required by ORS 183.413 and a complete copy of the Agency’s administrative rules regarding the contested case process. It was mailed to both Respondents c/o PO Box 352, Longview, Washington 98632, the address provided by Respondents in their answers to the Notice. In the hearing notice, Respondents were advised: “If you cannot participate in the scheduled hearing at the time set, you must notify the Hearings Unit IMMEDIATELY and request a postponement.” The Hearings

Unit did not receive any notification from Respondents indicating they could not or would not appear at the scheduled hearing.

7) On January 12, 2001, the forum issued a case summary order requiring the Agency and Respondents to submit case summaries that included: lists of all persons to be called as witnesses; identification and copies of all documents to be offered into evidence; a brief statement of the elements of the claim (for the Agency only); a brief statement of any defenses to the claim (for Respondents only); and a statement of any agreed or stipulated facts. The forum ordered the participants to submit their case summaries by March 16, 2001, and advised them of the possible sanctions for failure to comply with the case summary order. The Agency filed a timely case summary and four subsequent addenda to its case summary. The Hearings Unit did not receive a case summary from either Respondent.

8) Respondents did not appear at the time and place set for hearing and no one appeared on their behalf. Respondents had not notified the forum they would not be appearing at the hearing. Pursuant to OAR 839-050-0330(2), the ALJ waited 30 minutes past the time set for hearing. When Respondents failed to appear, the ALJ found Respondents to be in default and commenced the hearing.

9) Pursuant to ORS 183.415(7), the ALJ advised the Agency of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

10) The ALJ issued a proposed order on April 17, 2001, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. Neither the Agency nor Respondents filed exceptions.

FINDINGS OF FACT – THE MERITS

1) At all times material herein, Respondents were corporate officers of Black Hawk, Inc., a corporation operating under the assumed business name, Columbia

Contracting (“the company”). Bruce D. Huhta (“Respondent B. Huhta”) was the corporate president with the authority to obtain and administer contracts on behalf of the corporation. Teresa G. Huhta (“Respondent T. Huhta”) was the corporate secretary and bookkeeper.

2) On November 16, 2000, the Commissioner issued a Final Order (On Default) adjudging the company liable for violations of ORS 279.350 and 279.354. The company was placed on the Commissioner’s list of those ineligible to receive public works contracts for a period of three years and assessed a \$50,000 civil penalty for prevailing wage violations. The company did not seek relief from default nor did it seek judicial review of the Final Order (On Default).

3) At all times material herein, Respondent B. Huhta appeared as corporate president and Respondent T. Huhta appeared as corporate secretary on the company’s Washington and Oregon construction contractor’s licenses. Both used the PO Box 352, Longview, Washington 98632 mailing address for business correspondence.

4) At all times material herein, Woodburn Construction Co., Inc. (“WCC”) was the prime contractor on the New Beaverton Elementary School – Scholls Ferry Site public works contract, known as the Scholls Ferry Project. The contract amount exceeded \$25,000 and was not regulated under the Davis-Bacon Act.

5) On May 22, 1998, WCC awarded the company a painting subcontract on the Scholls Ferry Project. The company, under the direction of Respondent B. Huhta, began work on the project in March 1999. The Agency’s “Prevailing Wage Rates for Public Works Contracts in Oregon” booklet, effective February 15, 1998, showed the prevailing wage rate for painters was \$19.28 per hour (base rate) and \$3.40 per hour (fringe benefit), for a total of \$22.68 per hour. The overtime rate was \$32.32 per hour.

The company's employees performed manual work on the Scholls Ferry Project from around March 24 until about August 20, 1999.

6) By letter dated June 24, 1999, Barry Stenlund, WCC's corporate vice-president, advised Respondent B. Huhta that: "We have interviewed your employees and have documentation, which indicates that they are not being paid prevailing wage." Stenlund's letter requested Respondent B. Huhta to provide to WCC "certified wage reports for all work performed at the site, a list of all employees who have worked on the project, time cards for each of the employees listed, payroll documentation (pay stubs, check registers, etc.) to verify wages paid, and original lien waivers from each employee."

7) Respondent B. Huhta provided WCC with certified wage reports for four weeks that classified the employees as painters and, by his signature on the reports, certified the employees had been paid the prevailing wage of \$22.68 per hour, including fringe benefits.

8) On July 15, 1999, Stenlund responded with another letter stating, in part:

"Thank you for sending the wage certificates for the following weeks: Week ending: 3-27; 4-3; 4-10 and 6-26. Upon review with our job superintendent it appears that you have had employees on the job many more days and hours than these certificates indicate.

"Also, we have had a few interviews with some of your employees and they have indicated you have not been paying the prevailing wage.

" * * * * *

"A copy of my letter dated June 24, 1999 is enclosed for your review. As of this date you have not provided one single item I have required before I will release monies.

"You may rest assured Woodburn Construction Co. will do all within its power to protect itself from your employees and suppliers. They have 120 days from their last day of work to make a claim. * * *

"We look forward to your cooperation.

"Sincerely,

"Barry E. Stenlund, Vice President"

9) In September 1999, Agency compliance specialist Melissa Marks was assigned to investigate the company's failure to pay prevailing wages to workers on the Scholls Ferry Project. She mailed letters to Respondent B. Huhta c/o PO Box 352, Longview, Washington, on September 21 and 28, October 11, 13, 25, and 26, November 4, and December 3, 1999, requesting the company's payroll records and other documents relevant to her investigation. During that time, she spoke with Respondent B. Huhta several times by telephone and he repeatedly promised to provide her with the requested information. On October 4 and 12, and November 2, 9, and 12, 1999, Respondent B. Huhta faxed some information to Marks that was not completely responsive to her previous requests.

10) Based on records maintained by WCC and some of the employees, Marks estimated the amount of wages owed to Jose Chavez (\$4,000), Eron Martinez (\$4,500), Chris Taylor (\$382.50), and Robert Wheeler (\$1,647.12). On behalf of the Agency, she filed a Notice of Claim against WCC's surety bond based on her estimate of the wages owed.

11) On December 23, 1999, WCC provided a check to the Agency in the amount of \$10,529.62 as payment in full for the wages owed to the company's employees.

12) On December 30, 1999, Stenlund memorialized a conversation he had with Respondent B. Huhta regarding WCC's wage payment:

"This morning at about 10:30 a.m. I received a phone call from Bruce asking why I have made a payment to BOLI in the amount of \$10,529.62. I stated that BOLI had sent notification to our bonding company and I was protecting [us] from this claim.

"He stated that it was stupid of me to make that payment. He had purposely not provided the payroll information to BOLI so the time would pass and he could avoid paying any more monies. I asked why he had not contacted me so I was aware of his plan. I reminded him that BOLI

was seeking relief from our bond because he was not providing the information to document payment.

"I reminded him that he had not responded to my July letter asking for documentation concerning payroll and that his continued lack of professional behavior on the job indicated to me that he had no desire to meet his contractual obligations.

" * * * * * "

13) At all times material herein, Respondent T. Huhta was a 10% shareholder in the company and Respondent B. Huhta's wife. In December 1998, the company, through Respondent B. Huhta, represented to the Washington Department of Labor and Industries that Respondent T. Huhta spent 100% of her time devoted to the company's business.

ULTIMATE FINDINGS OF FACT

1) At all times material, Respondents were corporate officers of Black Hawk, Inc., a Washington corporation doing business in the state of Oregon under the assumed business name, Columbia Contracting. Respondent Bruce D. Huhta was the corporate president and Respondent Teresa G. Huhta was the corporate secretary.

2) Respondents' company bid on and received a subcontract to perform painting work on the New Beaverton Elementary School Project – Scholls Ferry Site.

3) The company performed work on the project and, through Respondent Bruce D. Huhta, paid four of its workers at wage rates less than the applicable prevailing wage, causing the prime contractor, Woodburn Construction Co., Inc., to pay \$10,529.62 in unpaid wages to the company's employees. Respondent Bruce D. Huhta knew the amount of the applicable prevailing wage and was responsible for the failure to pay prevailing wages on the project.

4) Respondent Teresa G. Huhta was not responsible for the failure to pay the prevailing wage rate.

5) Respondent Bruce D. Huhta intentionally failed to pay the prevailing rate of wages to four workers on a public works project.

CONCLUSIONS OF LAW

1) Respondents are corporate officers of a company that employed workers to perform work on a public works project and are subject to the provisions of ORS 279.348 to 279.363. The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter.

2) ORS 279.350(1) provides in part:

“The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour’s work in the same trade or occupation in the locality where such labor is performed.”

OAR 839-016-0035(1) provides:

“Every contractor or subcontractor employing workers on a public works project shall pay to such workers no less than the prevailing rate of wage for each trade or occupation, as determined by the Commissioner, in which the workers are employed.”

Respondent Bruce D. Huhta violated ORS 279.350(1) by failing to pay the prevailing rate of wage to four workers employed upon a public works project.

3) ORS 279.361 provides, in part:

“(1) When the Commissioner of the Bureau of Labor and Industries, in accordance with the provisions of ORS 183.310 to 183.550, determines that a * * * subcontractor intentionally failed or refused to pay the prevailing rate of wage to workers employed upon public works, * * * the * * * subcontractor * * * shall be ineligible for a period not to exceed three years from the date of publication of the name of the * * * subcontractor on the ineligible list as provided by this section to receive any contract or subcontract for public works.

”(2) When the contractor or subcontractor is a corporation, the provisions of subsection (1) of this section shall apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing rate of wage or the failure to pay to a subcontractor’s employees amounts required by ORS 279.350 that are paid by the contractor on the subcontractor’s behalf.”

OAR 839-016-0085 provides, in part:

“(1) When the Commissioner, in accordance with the Administrative Procedures Act, determines that a * * * subcontractor has intentionally failed or refused to pay the prevailing rate of wages to workers employed upon public works, * * * the * * * subcontractor * * * shall be ineligible to receive any contract or subcontract for public works for a period not to exceed three (3) years.

”(2) When the contractor or subcontractor is a corporation, the provisions of subsection (1) of this rule shall apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing wage rates.

“(3) As used in section (2) of this rule, any corporate officer or corporate agent responsible for the failure to pay or post the prevailing wage rates include, but are not limited to the following individuals when the individuals knew or should have known the amount of the applicable prevailing wages or that such wages must be posted:

“(a) The corporate president;

“ * * * * *

“(c) The corporate secretary * * *.”

Respondent Bruce D. Huhta, the company’s corporate president, knew the Scholls Ferry Project was a public work and required the payment of prevailing wages to the company employees. He also knew the amount of the applicable prevailing wage. Accordingly, ORS 279.361(1) applies to Respondent Bruce D. Huhta and he shall be ineligible for a period not to exceed three years from the date of publication of their names on the ineligible list to receive any contract or subcontract for public works.

4) Pursuant to ORS 279.361, and based on the facts set forth herein, the Commissioner has the authority to place the name of Respondent Bruce D. Huhta and any firm, corporation, partnership, or association in which he has a financial interest, on the list of persons who are ineligible to receive any contract or subcontract for public works for a period not to exceed three years from the date of publication of his name on that list. Under the facts and circumstances in this record, the Commissioner’s placement of Respondent Bruce D. Huhta’s name on the list for a period of three years is appropriate.

OPINION

DEFAULT

Neither of the Respondents appeared at the hearing in this matter nor did counsel appear on their behalf. As a result, Respondents were found by the forum to be in default pursuant to OAR 839-050-0330. The Agency, therefore, needed only to establish a prima facie case on the record to support the allegations in its charging document as they pertained to each Respondent. *In the Matter of Sealing Technology, Inc.*, 11 BOLI 241 (1993). Respondents' only contribution to the record was their respective answers filed with their request for hearing. Where default occurs, the forum may give some weight to unsworn assertions contained in an answer unless other credible evidence controverts them. If a respondent is found not to be credible the forum need not give any weight to the assertions, even if they are uncontroverted. *In the Matter of Keith Testerman*, 20 BOLI 112, 127 (2000). Having considered all of the evidence in the record, the forum concludes the Agency presented a prima facie case that was not contradicted or overcome by the assertions in Respondents' answers.

By Final Order (On Default), issued November 16, 2000, Respondents' company, Black Hawk, Inc. dba Columbia Contracting has already been adjudged to be liable for intentionally failing to pay four workers the prevailing wage rate on a public works project. In the same Order, the Commissioner also found the prime contractor, WCC, paid the unpaid prevailing wages. The Commissioner assessed \$50,000 in civil penalties against the company and placed it on the list of those ineligible to receive public works contracts or subcontracts. The only remaining issue is whether Respondents are individually responsible as corporate officers of the company for its failure to pay four workers the prevailing wage and, thus, also subject to being placed on the list of ineligibles.

RESPONDENT BRUCE D. HUHTA

Pursuant to ORS 279.361(1), a corporate officer who is responsible for a corporation's failure to pay the prevailing wage to workers shall also be ineligible for up to three years to receive any public works contracts or subcontracts. Respondent B. Huhta, who was president of the company at times material, is responsible if he "knew or should have known the amount of the applicable prevailing wages." OAR 839-016-0085(3). Here, the Agency established Respondent B. Huhta actually knew the amount of the applicable prevailing wages.

Credible evidence in the record shows Respondent B. Huhta administered a painting subcontract on behalf of the company on the Scholls Ferry Project between March and September of 1999. He demonstrated his awareness that the project was a public work and that he had to pay the prevailing wages when he certified the wage reports described in Finding of Fact – The Merits 7 and provided them to the prime contractor, WCC. By his signature on the wage reports, he represented that 1) he was the self described "manager" of the company for the Scholls Ferry Project, 2) the workers were classified as painters, and 3) the workers were purportedly paid the applicable prevailing wage rate of \$22.68 per hour, including fringe benefits. This forum has long acknowledged the presumption that a person is familiar with the contents of any document bearing his or her signature. *Sealing Technology*, 11 BOLI at 251, *citing Broad v. Kelly's Olympian Co.*, 156 Or 216 (1937). From the certified wage reports, the forum infers Respondent B. Huhta was aware the company employed painters and knew the applicable prevailing wage rate for that classification. There is also credible evidence in the record showing that the workers were not paid the amounts certified by Respondent B. Huhta and were, in fact, never paid the prevailing wage rate for any of the manual labor they performed during the course of the project. Moreover,

Respondent B. Huhta chastised the prime contractor's vice-president, Barry Stenlund, for having paid the workers' unpaid wages, telling Stenlund he was "stupid" to have made the payment and that he purposely did not provide the Agency investigator with payroll records to avoid having to pay more money to his workers. From these facts, the forum infers the company's failure to pay the prevailing wage rate was intentional and Respondent B. Huhta was responsible for this failure.

Accordingly, pursuant to ORS 279.361(2) and OAR 839-016-0085(3), Respondent B. Huhta is ineligible for a period of up to three years from the date of publication of his name on the ineligible list to receive any public works contract or subcontract. Based on the facts in this record, the forum finds it appropriate to make Respondent B. Huhta ineligible for a period of three years.

RESPONDENT TERESA G. HUHTA

Respondent T. Huhta is also subject to ORS 279.361(2) and OAR 839-016-0085(3). As the company's corporate secretary, she would be ineligible for up to three years to receive any public works contracts or subcontracts if she knew or should have known the amount of the applicable prevailing wages. Contrary to her denial that she was ever a corporate officer of the "corporation or company," the evidence is conclusive that Respondent T. Huhta was the company's corporate secretary during times material.

The evidence, however, falls short of establishing Respondent T. Huhta knew or should have known the applicable prevailing wage on the Scholls Ferry Project. To show that knowledge or constructive knowledge, there must be some evidence showing she had awareness of the actual subcontract and that it was a public work. Although evidence establishes she was Respondent B. Huhta's wife, the company's bookkeeper, and appeared as a corporate officer on the company's Washington and Oregon construction contractor's licenses, there is a dearth of evidence connecting her in any

way to the project at issue. While the corporate minutes of the company's April 1998 annual meeting of stockholders clearly spell out Respondent B. Huhta's authority as president to "enter into contracts to perform work or services on behalf of the corporation," including the authority to "obtain and/or to secure loans," there is no similar specific delegation of authority or duties of any kind to the corporate secretary. Respondent T. Huhta's signature does not appear on the certified wage reports and there is no documentary or testimonial evidence that she prepared or signed payroll checks on the project or any other project involving the company.ⁱⁱ Evidence shows all of WCC's contacts with the company were through Respondent B. Huhta, and despite testimony that Respondent T. Huhta was the company bookkeeper, it was Respondent B. Huhta who prepared the few records provided to the Agency during the investigation. Absent evidence that Respondent T. Huhta was more than a mere figurehead during times material, the forum will not infer she was cognizant of all subcontracts involving the company, and, in particular, the project at issue.

The record does not establish Respondent T. Huhta knew or should have known the amount of the applicable prevailing wage on the Scholls Ferry Project. Accordingly, the forum finds she is not responsible for the company's failure to pay four workers the applicable prevailing wages.

ORDER

NOW, THEREFORE, as authorized by ORS 279.361, it is hereby ordered that **Bruce D. Huhta** or any firm, partnership, corporation, or association in which Bruce D. Huhta has a financial interest, shall be ineligible to receive any contract or subcontract for public works for a period of three years from the date of publication of his name on the list of those ineligible to receive such contracts maintained and published by the Commissioner of the Bureau of Labor and Industries.

ⁱ Respondents Black Hawk, Inc. dba Columbia Contracting, Steven W. Francis, and Kylemac never requested nor were they ever granted relief from default.

ⁱⁱ *Cf. In the Matter of Sealing Technology, Inc.*, 11 BOLI 241 (1993) (finding that respondent's corporate secretary knew or should have known the amount of the applicable prevailing wage based on facts demonstrating the corporate secretary did all of the payroll for respondent, personally recorded in respondent's payroll records prevailing wage "bonuses" paid out on the project at issue, and prepared all the payroll reports from the home she shared with her husband, respondent's corporate president).