



NEW YORK CITY COMPTROLLER SCOTT M. STRINGER



PREVAILING WAGE NEWS

FALL 2017

Contractor that Cheated Immigrant Workers out of \$1.7 Million in Prevailing Wages and Benefits Debarred

K.S. Contracting Corporation employed a kickback scheme that preyed on at least 36 immigrant workers

In February 2017, Comptroller Stringer assessed \$3.2 million in unpaid wages, interest, and civil penalties against K.S. Contracting Corporation and its owner, Paresh Shah, and barred them from bidding on New York City and State contracts for five years. K.S. Contracting was named as one of the worst wage theft violators in New York in a report by the Center for Popular Democracy in 2015.

"With President Trump taking clear aim at immigrants across the country, we need to stand up and protect the foreign-born New Yorkers who keep our City running. Every New Yorker has rights, and my office won't back down in defending them," Comptroller Stringer said. "Contractors might think they can take advantage of immigrants, but today we're sending a strong message: my office will fight for every worker in New York City. This is about basic fairness and accountability."

K.S. Contracting was awarded more than \$21 million in contracts by the City Departments of Design and Construction, Parks and Recreation, and Sanitation between 2007 and 2010. Projects included the

Morrisania Health Center in the Bronx, the 122 Community Center in Manhattan, the Barbara S. Kleinman Men's Residence in Brooklyn, the North Infirmary Command Building on Rikers Island, Bronx River Park, the District 15 Sanitation Garage in Brooklyn, and various City sidewalks in Queens.

The Comptroller's Bureau of Labor Law began investigating the company after an employee filed a complaint with the office in May 2010. The multi-year investigation used subpoenas, check-cashing and bank records, video evidence, union records, and City agency data to uncover a kickback scheme that preyed on immigrant workers.

After a four-day administrative trial in May 2016, Comptroller Stringer found that K.S. Contracting routinely issued paychecks to just half of its workforce and then required those employees to cash the checks and surrender the money to company supervisors. The Comptroller further

found that those supervisors would then redistribute the cash to all of the employees on a job site, paying them at rates significantly below prevailing wages, and that K.S. Contracting falsely reported to the City agencies that all employees on the job site who received checks were paid the prevailing wage.

Between August 2008 and November 2011, the company cheated at least 36 workers out of \$1.7 million in wages and benefits on seven New York City public works projects. K.S. Contracting reported that it paid its workers combined wage and benefit rates starting at \$50 per hour but actually paid daily cash salaries starting at \$90 per day. The majority of the workers impacted were immigrants of Latino, South Asian, or West Indian descent.



DID YOU KNOW?

The first prevailing wage law in New York was passed in 1897.

Comptroller Stringer Beats “Hustler’s” Defamation Suit

In October 2017, a defamation lawsuit against Comptroller Stringer filed by Metrosearch Recoveries, LLC in state court in Manhattan was dismissed. The court also fined the company \$5,000 and the cost of attorneys’ fees for filing a frivolous lawsuit.

The case concerned Comptroller Stringer’s 2015 public announcement that his office was holding millions of dollars in prevailing wage awards that workers had failed to claim, and that workers could search for their names on his website to see if they were owed money. Comptroller Stringer also called on the media and the public to help: “Thousands of hard-working individuals, many of whom are immigrants, have been cheated out of their rightfully-earned wages, but they may not know these funds exist. Help us get the word out about unclaimed wages—recovering thousands of dollars may only be a phone call or email away.”

Metrosearch sent letters to workers who were listed on the website, giving the impression that it was fulfilling a request made by Comptroller Stringer and that the workers were required to complete paperwork that granted Metrosearch a right to 20 percent of the funds recovered for each worker.

Upon learning of this, the Comptroller’s office sent Metrosearch a cease-and-desist letter that said:

“There are no expenses to the workers in securing these wages: the procedure is simple and administered entirely by the

Comptroller’s Office. We were therefore disturbed by Metrosearch’s invocation of Comptroller Stringer’s name and Office in Metrosearch’s unscrupulous solicitation of workers, as evidenced by the attached letter...The letter seeks to mislead workers into thinking they need an intermediary such as Metrosearch...This money is for the workers who earned it.”

Comptroller Stringer also expressed his opinion to the press: “Metrosearch Recoveries is nothing more than a bunch of hustlers trying to shake down hard working New Yorkers. Let me make it clear: my office has zero tolerance for anyone who tried to cheat workers out of their wages...We are on to them and investigating them. This is your money and you can get it from us for free, no strings attached.”

Metrosearch sued Comptroller Stringer for defamation. The court found that Comptroller Stringer’s comments were protected by the law because they addressed “specific misconduct” by Metrosearch over its misleading statements about its supposed coordination with the Comptroller’s Office and the purported 20 percent fee required to reclaim the money illegally withheld from workers in the first place. The court further stated that “The Comptroller was performing the duties of his office, and acting in the public interest, by informing members of the public of Metrosearch’s potentially fraudulent or misleading statements.”

Construction Minimum Average Hourly Wage on 421-a Projects – Update!

The well-informed readers of the Prevailing Wage News were already aware of the proposed law (the new RPTL section 421-a) requiring a minimum average hourly wage rate for construction work on projects with 300 or more rental dwelling units in Manhattan south of 96th Street (\$60 per hour) and in Brooklyn and Queens near the East River (\$45 per hour). In our last newsletter, we reported that the legislature was considering whether to pass the proposed law. We also reported that “The New York City Comptroller would not have a role in investigation or enforcement of the minimum average hourly wage rate under the proposal.”

We have two updates: They passed the law, and the Comptroller has been given the authority to investigate and enforce the minimum average hourly wage for construction work. The minimum average hourly wage provisions now appear in the new subsection 16(c) of RPTL section 421-a. To reiterate:

Covered contractors are required to submit certified payroll reports to an independent monitor hired by the project developer, who must submit a project-wide certified payroll report to the Comptroller. If the total compensation paid to all construction workers on site divided by all hours worked is less than the minimum average hourly wage as reported in the project-wide certified payroll report, then payment of the deficiency must be made by the project developer to a third-party fund administrator. If the deficiency was the result of fraud, mistake, negligence or inaccurate certified payroll reports on the part of a contractor, as determined by the Comptroller, then the contractor must pay the

deficiency. The third-party fund administrator will create a plan to distribute the payment to the affected workers, which must be approved by the Comptroller. The proposed law also provides for penalties based on the size of the deficiency and for delays in submitting certified payroll reports and paying deficiencies.

In addition, the New York City Department of Housing Preservation and Development (HPD), which has the authority to promulgate regulations under 421-a, updated its regulations on September 26, 2017 to add new provisions governing minimum average hourly wage. The regulations are published in Title 28 of the Rules of the City of New York, Chapter 50. Among other things, the regulations require contractors to submit employee daily sign-in logs along with certified payroll reports to the independent monitor, in the form provided on the Comptroller’s website. In addition, the updated regulations provide guidelines for how payments will be distributed to workers where the minimum average wage requirement has not been met, or where contractor certified payroll reports are inaccurate or have not been submitted.



Bureau of Labor Law Enforcement Highlights in 2017

Debarments

Contractor	Total Violation	Workers	Agency
K.S. Contracting Corp.	\$3,293,014.82	36	DDC/DPR/DOS
ZHN Contracting Corp.	\$311,892.81	4	DCAS/SBS
Viable Holdings, Inc.	\$145,330.06	6	HHC
Moving Maven, Inc.	\$142,443.07	70	HRA
Professional Pavers Corp.	\$96,866.35	5	DPR
Atwal Mechanicals, Inc.	\$84,110.73	5	NYCTA
Atlas Restoration Corp.	\$56,114.17	2	DDC
Sukhmany Construction, Inc.	\$80,932.59	3	SCA

Willful Violations

Contractor	Total Violation	Workers	Agency
Clarke Fabricators, Inc.	\$16,919.71	2	HHC
Perfetto Enterprises Co., Inc.	\$19,402.90	7	DPR
Perfetto Contracting Co., Inc.	\$5,471.59	10	SBS
Richmond Elevator Co., Inc.	\$60,706.20	9	HHC/NYCTA
Superior Steel Door & Trim Co., Inc.	\$102,413.88	9	NYCTA

Non-Willful Violations

Contractor	Total Violation	Workers	Agency
Access Staffing, LLC	\$405,379.68	147	HHC

Repeat Offender Debarred for Cheating Immigrant Workers Out of Over \$263,000 in Prevailing Wages

In October 2017, Comptroller Stringer reached a settlement with ZHN Contracting Corporation and its owner Zakir Naseem for over \$263,000 in unpaid prevailing wages and benefits, plus interest and civil penalties. The settlement agreement provides that ZHN, Naseem and the related corporate entity Great Estate Construction, Inc. are barred from public works in the State of New York for the next five years for the willful failure to pay prevailing wages and the falsification of payroll records.

The Comptroller's Bureau of Labor Law previously investigated ZHN and found that it willfully underpaid over \$167,000 to four immigrant workers. The Comptroller's July 2009 settlement agreement warned ZHN that a further willful violation of prevailing wage law over the next six years would result in debarment. ZHN and Naseem did not heed the warning.

The Bureau of Labor Law commenced a new investigation of ZHN in 2013 after workers complained about

being underpaid. Comptroller Stringer determined that the company cheated four South Asian immigrant workers out of rightfully-earned prevailing wages and benefits for masonry work performed at 253 Broadway and the Brooklyn Navy Yard between 2011 and 2013 — barely two years after being warned about debarment. The Comptroller reached the settlement with ZHN and Naseem following six days of trial at the New York City Office of Administrative Trials and Hearings.

Court Rejects Challenge to Comptroller Stringer's Prevailing Rate Determination for Elevator Repair and Maintenance Work

In May 2017, a state court upheld Comptroller Stringer's methodology and interpretation of data in setting prevailing wage and benefit rates for elevator repair and maintenance work. The prevailing rates are based upon the collective bargaining agreement of the International Union of Elevator Constructors Local No. 1 (Local 1). The Elevator Industries Association, Inc., (EIA) an association of elevator service, repair and modernization companies, filed the lawsuit in Manhattan, claiming that the Comptroller should have based the prevailing rates upon the collective bargaining agreement of the International Brotherhood of Electrical Workers Local 3 Elevator Division (Local 3). EIA members are parties to the Local 3 agreement.

The EIA claimed that Local 3 members performed more elevator repair and maintenance work than Local 1 members, who also perform elevator construction. To support its claim, EIA submitted copies of elevator testing and work applications it had obtained from NYC Building Department. EIA had then asked the Comptroller's Bureau of Labor Law to infer, based upon the number and nature of the applications filed by Local 1 versus Local 3 companies, that Local 3 members performed more of the relevant work.

In response, the Bureau of Labor Law asserted that the number of workers performing repair and maintenance work within New York City determines the rate, not the amount of repair and maintenance work performed by each worker or employer. The Bureau of Labor Law then requested extensive information directly from both unions about the number of active members performing repair and maintenance work, including annuity contribution records. Although Local 1 members perform both construction and repair/maintenance work, their annuity contributions are different for the two different types of work. After reviewing the records, the Bureau of Labor Law determined that



Local 1 had substantially more members that performed repair and maintenance work during the relevant time period. When EIA complained that some of work Local 1 members performed was outside of New York City, the Bureau of Labor Law eliminated employers that were not licensed to work in New York City, based on NYC Building Department records. The Bureau's reanalysis showed that Local 1 still had substantially more members doing repair and maintenance work.

The court found that "these actions evidence a rational decision by [the Comptroller's Office] reached after listening to [EIA's] concerns rather than completely disregarding these issues." The court further noted that Comptroller Stringer had, in response to the court's criticism of the survey method employed by prior Comptrollers, "changed [the office's] methodology and now solicits information directly from the unions rather than from the employers."