

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

In the matter of the
Debarment Proceeding Against:

RUSSELL / THOMPSON, Inc., James Jean
Russell & Valery Alena Thompson, Individually,

Respondents.

) Case No. SC 5309

) ORDER OF DEBARMENT
) OF RESPONDENTS FROM
) PUBLIC WORKS PROJECTS

The attached proposed Statement of Decision and Order of Debarment making RUSSELL/THOMPSON, INC., JAMES JEAN RUSSELL & VALERY ALENA THOMPSON, 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 October 31, 2013

IT IS SO ORDERED

Dated: September 17, 2013



JULIE A. SU
Labor Commissioner and Chief of the California
Division of Labor Standards Enforcement

ORDER OF DEBARMENT

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
BY: SUSAN A. DOVI, CA Bar #145543
1515 Clay Street, Suite 801
Oakland, California 94612
Telephone: (510) 622-3246 Fax: (510) 622-3258

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:

RUSSELL /THOMPSON, Inc., James Jean
Russell & Valery Alena Thompson, Individually,

Respondents.

) Case No. SC 5309

) 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 May 17, 2013, by the filing and service of a Statement of Alleged Violations against the following named respondents: RUSSELL/THOMPSON, INC., JAMES JEAN RUSSELL & VALERY ALENA THOMPSON, individually, (hereinafter "Respondents").

The hearing on the alleged violations was held on August 5, 1013, at the Oakland Office of the Labor Commissioner. Susan A. 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

[PROPOSED] STATEMENT OF DECISION RE DEBARMENT

California. None of the Respondents appeared for the hearing although they were duly 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. All notices were subsequently returned as undeliverable. Title 8 CCR section 16801(a)(2)(A) provides that notice of the hearing and Statement of Alleged Violations shall be complete when mailed, by first class postage, to the last address of record for the Respondent listed with the State Contractors License Board. Present as a witness for Complainant was Deputy Labor Commissioner Amie Bergin.

The hearing was tape recorded. Witness Bergin 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 August 5, 2013, hearing. The proof of service for the Notice of Hearing and Statement of Alleged Violations indicate that notice was served both by First Class and Certified Mail to the last address of record for the Respondents listed with the State Contractors License Board as provided for in 8 CCR section 16801(a)(2)(A).

II. VIOLATIONS OF THE PUBLIC WORKS LAW

1. Russell/Thompson Inc. is a business that was licensed by the Contractor's State Licensing Board under license number 915036.

2. Respondent James Jean Russell is an owner of Russell/Thompson Inc. and is the Responsible Managing Officer of the corporation at all relevant times for purposes of these proceedings.

3. Respondent Valery Alena Thompson is an owner of Russell/Thompson Inc. and is Chief Executive Officer and President of the corporation at all relevant times for

purposes of these proceedings.

4. Respondents were subcontractors on two public works projects, namely the Tercero Student Housing U.C. Davis project in Yolo County, California and the Vacaville Intermodal Station project in Solano County, California (hereinafter "projects"), during the periods, September, 2009 through February, 2010 and November, 2009 through August, 2010, respectively.

5. Deputy Labor Commissioner Amie Bergin, for all relevant time periods was assigned to the Public Works Unit and was a Deputy Labor Commissioner for three and one half years. She is now a Special Investigator with the Department of Industrial Relations. Deputy Bergin testified that on the Tercera Student Housing project her investigation revealed that respondents violated Labor Code §§ 1771, 1774, 1777.5, 1776(a) and 1815 by failing to pay the prevailing wage rates to employees, failing to pay overtime in all instances, failure to make contributions to the training fund, some workers were paid in cash without deduction statements, failure to maintain accurate certified payroll reports, and failure to accurately report the classifications of the workers. Ms. Bergin testified that Respondent misclassified carpenters as laborers and underreported the number of workers on the certified payroll reports and that the certified payroll reports were false by underreporting the number of workers who actually worked on the project.

6. Deputy Bergin testified that on the Vacaville Intermodal Station project, her investigation revealed that Respondents violated Labor Code §§ 1771, 1774, 1775, 1776, 1777 and 1813 by failing to pay the applicable prevailing wage rates and travel payments to employees, failure to make training fund contributions and failure to report all hours worked on the certified payroll records.

9. DLSE issued two Civil Wage and Penalty Assessments against Respondents based on the violations on the projects listed in paragraph 4 above. DLSE exercised its

discretion and assessed penalties pursuant to Labor Code § 1775 due to the egregious nature of the violations.

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.)

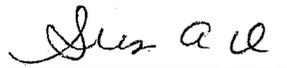
The credible and unrefuted evidence presented by Deputy Bergin established that Respondents failed to pay the proper prevailing wage rates, including the failure to make contributions for the crafts of Carpenter and Operating Engineer, failure to maintain accurate certified payroll reports, and failure to accurately report the classifications and hours of the workers. Ms. Bergin testified that Respondent misclassified carpenters as laborers and underreported the number of workers on the certified payroll reports and that the certified payroll reports were false by underreporting the number of workers who actually worked on the project. Furthermore, respondents failed to pay the applicable prevailing wage rates and travel payments to employees and failed to make training fund contributions. The testimony of Deputy Bergin, corroborated by documentary evidence, establishes that Labor Code §§ 1774, 1776 and 1815 were violated with an intent to defraud Respondents’ workers and the awarding bodies. Furthermore, the violations were willful within the meaning of Labor Code § 1777.1(c) and 8 CCR § 16800. Further, 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 RUSSELL/THOMPSON, INC., JAMES JEAN RUSSELL & VALERY ALENA THOMPSON, individually, 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 October 31, 2013. A three year period is appropriate under these circumstances where Respondents, experienced contractors, willfully and fraudulently prepared false certified payroll records and certifications, underpaid workers on two separate projects within a two year period and where the underpayments were substantial, justifying a three year period of debarment.

Dated: September 17 2013



SUSAN A. DOVI
Hearing Officer

1 **PROOF OF SERVICE**

2
3 **STATE OF CALIFORNIA**)
4 **COUNTY OF ALAMEDA**) **ss.**

5 I, am employed in the County of Alameda, State of California, I am over the age of 18
6 and not a party to the within action or proceeding. My business address is DIVISION OF
LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, 1515 Clay
Street, Ste. 801, Oakland, California 94612

7 On September 17, 2013, I served the following document(s):

- 8 1. PROPOSED STATEMENT OF DECISION RE DEBARMENT OF
9 RESPONDENTS FROM PUBLIC WORKS PROJECTS [Labor Code §
10 1777.1]
2. ORDER OF DEBARMENT OF RESPONDENTS FROM PUBLIC
WORKS PROJECTS

11 on the interested parties in this action by placing

12 X by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

13
14 Russell Thompson
4864 Oak Glen Drive
Redding, CA 96001

15
16 James Jean Russell
4864 Oak Glen Drive
Redding, CA 96001

17
18 Valery Alena Thompson
4864 Oak Glen Drive
Redding, CA 96001
19

20 X BY FIRST CLASS MAIL. I am readily familiar with the firm's business practice of
21 collection and processing of correspondence for mailing with the United States Postal Service
and said correspondence is deposited with the United States Postal Service the same day.

22
23 Executed on September 17, 2013 at Oakland, California. I declare under penalty of
perjury the foregoing is true and correct.

24
25 *Christine Montgomery*
Christine Montgomery