

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

In the matter of the
Debarment Proceeding Against:

JEFFREY ALAN MOTT and MICHELLE MOTT,
individuals dba INTEGRITY LANDSCAPE,

Respondents.

) Case No. SC 5160

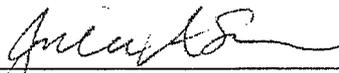
) DECISION RE DEBARMENT
) OF RESPONDENTS FROM
) PUBLIC WORKS PROJECTS
) [Labor Code § 1777.1]

The attached proposed Statement of Decision and Order of Debarment making JEFFREY ALAN MOTT and MICHELLE MOTT 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 March 29, 2012.

IT IS SO ORDERED

Dated: February 8, 2012



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

DECISION RE DEBARMENT

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

I am employed in the County of Alameda, State of California, I am over the age of 18 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.

On February 8, 2012, I served the following document(s):

**Decision Re: Debarment of Respondents From Public Works Projects
[Labor Code § 1777.1]**

on the interested parties in this action by placing

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

Jeffrey Alan Mott and Michelle Mott, individuals
dba Integrity Landscape
3756 Independence Avenue
Sanger, CA 93657

Jeffrey Alan Mott
3756 Independence Avenue
Sanger, CA 93657

Michelle Mott
3756 Independence Avenue
Sanger, CA 93657

David Cross, Esq.
DLSE - Legal
2031 Howe Avenue, #100
Sacramento, CA 95825

 X BY FIRST CLASS MAIL. I am readily familiar with the firm's business practice of 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.

Executed on February 8, 2012, at Oakland, California. I declare under penalty of perjury the foregoing is true and correct.



Victoria Wilferd

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
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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:

JEFFREY ALAN MOTT and MICHELLE MOTT,
individuals dba INTEGRITY LANDSCAPE,

Respondents.

) Case No. SC 5160

) 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 November 22, 2011, by the filing and service of a Statement of Alleged Violations against the following named respondents: JEFFREY ALAN MOTT and MICHELLE MOTT, individuals dba INTEGRITY LANDSCAPE, (hereinafter "Respondents").

The hearing on the alleged violations was held on January 24, 2012, at the Fresno 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. Neither 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. The signature on the certified mail receipts and a letters to the Hearing Officer and Mr. Cross from Jeffrey Mott indicate that both Mr. Mott and Michelle Mott received the Notice of Hearing and Statement of Alleged Violations. Present as witnesses for Complainant were Deputy Labor Commissioner Sherry Gentry and Antonio Crecencio, an employee of Integrity Landscape, who worked on three public works projects at issue in this proceeding.

The hearing was tape recorded. Witnesses Gentry and Crecencio 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 January 24, 2012, 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 and the letters to the hearing officer and Mr. Cross from Jeffrey Mott are on file in this proceeding and indicate that Notice of Hearing was received by all Respondents.

II. VIOLATIONS OF THE PUBLIC WORKS LAW

1. INTEGRITY LANDSCAPE is a business licensed by the Contractors State Licensing Board under license number 774222.

2. Respondent JEFFREY ALAN MOTT is an owner of INTEGRITY LANDSCAPE at all relevant times for purposes of these proceedings.

3. Respondent MICHELLE MOTT is an owner of INTEGRITY LANDSCAPE at all relevant times for purposes of these proceedings.

4. Respondents were subcontractors on four public works projects, namely the Sewage Treatment/Water Reuse Facility Hardscape, Landscape & Irrigation Improvements project in Fresno County, California; Sugar Pine Trail Completion project PW 00431 project, in Fresno County, California; the Landscape Improvement at Historic Old Administration Building-Fresno City College project in Fresno County, California; and the Multipurpose Buildings at Fairmont/John Wash Elementary School project in Fresno County, California (hereinafter "projects"), during the periods, October 5, 2009 through September 7, 2010; August 3, 2010 through November 14, 2010; June 11, 2010 through August 3, 2010; and August 17, 2009 through September 17, 2010, respectively.

5. Deputy Labor Commissioner Sherry Gentry is assigned to the Public Works Unit and has been a Deputy Labor Commissioner for fifteen years. Deputy Gentry testified that on the Sewage Treatment/Water Reuse Facility project, her investigation revealed that respondents violated Labor Code §§1774, 1776 and 1815 by failing to pay the prevailing wage rates to employees, failing to maintain accurate certified payroll reports, failing to pay the correct overtime or Saturday rates and failure to provide certified payroll reports timely, upon request by the Labor Commissioner. Ms. Gentry testified that Respondents paid some workers wages much lower than the prevailing rate and in some instances only \$11.00, \$12.00 and \$13.00 per hour and then reported on the certified payroll reports a higher wage rate. Respondents misclassified workers as Landscape Tradesmen 1 instead of Operating Engineers, failed to maintain the proper ratio of workers in the proper classification by failing to employ a Journeyman Pipefitter, failed to incorporate new prevailing rates that went into effect during the course of the project and submitted four different sets of certified payroll records for the same time

periods, which varied by the number of employees and the hours. In addition, for the same time period, multiple time cards were also provided which also differed by the number of employees and the hours worked. In addition, Mr. Mott listed himself on at least one set of certified payrolls as working on the job as a Journeyman Pipefitter but the awarding body's representative told Ms. Gentry, and Mr. Crecencio testified that Mr. Mott did not work on the Sewage Treatment/Water Reuse facility project. Mr. Crecencio also testified that he was usually paid \$10.00 per hour, sometimes a little more, was not paid the correct rate for work on Saturdays, and that nothing was paid on his behalf for health insurance or vacation. In addition, Mr. Crecencio was not listed on the certified payroll reports as working on the Sewage Treatment project.

6. Deputy Gentry testified that on the Sugar Pine Trail project, her investigation revealed that Respondents violated Labor Code §§ 1774, 1776 and 1815 by failing to pay the prevailing wage rates to employees, failing to maintain accurate certified payroll reports, failing to pay the correct overtime and Saturday rates and misclassified workers as Landscape Tradesmen 1 instead of Operating Engineers. Ms. Gentry testified Respondent reported fewer hours on the certified payroll reports than workers actually worked. When the Awarding Body investigated, it demanded that Mr. Mott pay the workers the difference. Mr. Mott produced checks and check stubs that were never issued to the workers. Checks and check stubs could not be matched up with the hours reported and check stubs that indicated workers received a certain amount of pay were never received by the workers. The certified payroll reports therefore did not list all workers who worked on the project nor all the hours they worked. In addition, Ms. Gentry's investigation revealed that Integrity Landscape failed to maintain the proper ratio of workers in the proper classification by failing to employ a Journeyman Pipefitter. Multiple certified payroll reports were prepared which differed. On the third submission of

certified payroll reports, Mr. Mott listed himself as working on the job but the awarding body's representative told Ms. Gentry that Mr. Mott did not work on the Sugar Pine Trail project. This third set of Certified Payroll Reports was provided to DLSE after the Civil Wage and Penalty Assessment was issued.

7. Deputy Gentry testified that on the Historic Old Administration Building – Fresno City College project, her investigation revealed that Respondents violated Labor Code §§ 1774, 1776 and 1815 by failing to pay the prevailing wage rates to employees, failing to maintain accurate certified payroll reports by not reporting some workers and under reporting others, and misclassifying workers as Landscape Tradesmen 1 instead of Operating Engineers. Ms. Gentry testified that Respondent Michelle Mott signed a certification to the California Apprenticeship Council indicating that training fund monies were paid but none of the training fund monies were paid. In addition, Ms. Gentry testified that Michelle Mott signed certified payroll reports for this project. Finally, Ms. Gentry's investigation revealed that Integrity Landscape failed to maintain the proper ratio of workers in the proper classification by failing to employ a Journeyman Pipefitter. Again, Mr. Mott listed himself on the certified payroll reports as working on the job but the awarding body's representative told Ms. Gentry that Mr. Mott did not work on the project.

8. Deputy Gentry testified that on the Multipurpose Buildings at Fairmont/John Wash Elementary School project, her investigation revealed that Respondents violated Labor Code §§ 1774, 1776 and 1815 by failing to pay the prevailing wage rates to employees, failing to maintain accurate certified payroll reports, and misclassifying workers as Landscape Tradesmen 1 instead of Operating Engineers. Ms. Gentry testified that Michelle Mott signed some of the certified payroll reports for this project. Finally, Ms. Gentry's investigation revealed that Integrity Landscape failed to maintain the proper ratio of workers in the proper classification by failing to employ a Journeyman Pipefitter.

Again, Mr. Mott listed himself on the certified payrolls as working on the job but the awarding body's representative told Ms. Gentry that Mr. Mott did not work on the project. Finally, Ms. Gentry testified that Respondent Jeff Mott signed a certification to the California Apprenticeship Council indicating that training fund monies were paid but none of the training fund monies were paid.

9. DLSE issued four 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. Respondents settled all four Civil Wage and Penalty Assessments and paid penalties in each settlement.

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 and witness Crecencio established that Respondents failed to pay the proper prevailing wage rates, including the failure to pay the proper overtime rate, falsified the certified payroll reports and failed to pay the correct overtime or Saturday rates and failed to provide certified payroll reports timely upon request by the Labor Commissioner. Ms. Gentry testified that Respondent paid some workers less than the wages reported on the Certified Payroll Reports, misclassified workers as Landscape Tradesmen 1 instead of Operating Engineers, failed to maintain the proper ratio of workers in the proper

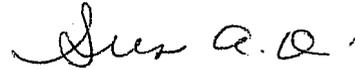
classification by failing to employ a Journeyman Pipefitter, failed to incorporate new prevailing rates that went into effect during the course of the project and submitted four different sets of certified payroll reports and time cards for the same time periods, which all differed. In addition, Mr. Mott listed himself on at least one set of certified payrolls as working on the job as a Journeyman Pipefitter but the awarding body told Ms. Gentry and Mr. Crecencio testified that Mr. Mott did not work on the Sewage Treatment/Water Reuse facility project. Mr. Crecencio also testified that he was usually paid \$10.00 per hour, was not paid the correct rate for work on Saturdays and that nothing was paid on his behalf for health insurance or vacation nor was he listed at all on one project he worked on. Finally, certified payroll reports and certifications to the California apprenticeship Council were falsified because the multiple certified payroll reports differed and because money was never paid into a Training Fund although both Jeffrey Mott and Michelle Mott certified otherwise. The testimony of Deputy Gentry and witness Crecencio, corroborated by documentary evidence, establishes that Labor Code §§ 1774 and 1776 were violated with an intent to defraud Integrity Landscape's 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 JEFFREY ALAN MOTT and MICHELLE MOTT, both individually and dba INTEGRITY LANDSCAPE, 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 March 29, 2012. 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 four separate projects and where the underpayments were substantial, justifying a three year period of debarment.

Dated: February 8, 2012



SUSAN A. DOVI
Hearing Officer

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

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2031 Howe Avenue, #100
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Executed on February 8, 2012, at Oakland, California. I declare under penalty of perjury the foregoing is true and correct.


Victoria Wilferd