

3. On or about March 31, 2011, the contracting agency, New York City Department of Design and Construction (“DDC”) awarded Contract No. 20111441267 (Project ID: HWM1159 (HWMWTCA7D)) to MFM as prime contractor (“the Peck Slip Contract”). The Peck Slip Contract was for the cobblestone reconstruction of Peck Slip from Pearl Street to South Street, Front Street from Peck Slip to Dover Street, Water Street from Beekman Street to Dover Street, and Beekman Street from Front Street to South Street, including sewer, water main, street lighting, traffic and private utility work in New York City (“the Peck Slip Project”).

4. The Peck Slip Contract was for \$20,400,629.37.

5. The Peck Slip Project was partially funded by the Federal-Aid Highways Acts, 23 U.S.C. § 101 et seq., a Davis-Bacon Related Act, and was subject to the Federal-Aid Highways Acts’ Davis-Bacon labor standards provision, 23 U.S.C. § 113, and the Contract Work Hours and Safety Standards Act (“CWHSSA”), 40 U.S.C. §§ 3701-3708 (“the Acts”), and 29 C.F.R. Part 5.

6. The Davis-Bacon Wage Determination NY 20100003, Modification 3, dated April 23, 2010 was part of the Peck Slip Contract.

7. MFM entered into a subcontract for “uniformed certified Flagperson” on the Peck Slip Project with Schwartz acting as first-tier subcontractor (“the Subcontract”).

8. Respondents assert that section 6.52 of the Peck Slip Contract applied to Schwartz employees on the Subcontract.

9. The Administrator asserts that the prevailing wage and fringe benefit rates in Davis-Bacon Wage Determination NY 20100003, Modification 3, dated April 23, 2010 applied to work on the Peck Slip Project by laborers and mechanics employed on the site of the work within the meaning of the Davis-Bacon and Related Acts and applicable regulations at 29 C.F.R. Part 5.

10. The Administrator asserts that the Peck Slip Contract and the Subcontract were performed through the use of laborers and mechanics employed on the site of the work within the meaning of the Davis-Bacon and Related Acts and applicable regulations at 29 C.F.R. Part 5.

11. The Wage and Hour Division of the U.S. Department of Labor ("WHD") conducted an investigation of Schwartz on the Peck Slip Project and alleges that for the period from approximately August 16, 2011 to approximately January 24, 2014, Schwartz failed to pay 31 laborers and mechanics employed in the performance of the Subcontract on the Peck Slip Project the minimum monetary wages, fringe benefits (or cash payments in lieu of fringe benefits), and overtime wages for all hours of work, and further alleges that Schwartz misclassified laborers and mechanics, in violation of the Acts, the applicable regulations at 29 C.F.R. Part 5, and the Peck Slip Contract.

12. Schwartz asserts that the alleged failure to pay and misclassification described in paragraph 11 was unintentional, and WHD did not find that such violations were willful.

13. The Administrator alleges that 31 laborers and mechanics employed by Schwartz on the Subcontract are owed a total of \$431,356.31 in back wages.

14. In order to resolve this matter, and without admitting or denying the Administrator's allegations, the City of New York, through DDC, agrees to pay the sum of \$431,356.31 in back wages ("the Settlement Amount") to the employees of Schwartz listed in Exhibit A attached hereto ("the Employees").

15. Respondents assert that DDC's payment of the Settlement Amount is pursuant to a June 15, 2015 Amendment to the Peck Slip Contract between DDC and MFM ("the Amendment"). The undersigned counsel for Respondents and the City of New York represents

that the City of New York, through DDC, acknowledges that its payment of the Settlement Amount is pursuant to the Amendment.

16. The provisions of this Consent Findings and Order relative to the payment of the Settlement Amount shall be deemed satisfied when, within 60 days of the date that an Administrative Law Judge approves this Order, the City of New York delivers a check in the amount of \$431,715.77 (equal to \$431,356.31 and \$359.46 in interest computed at the current value of funds rate determined by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)) to the Administrator for payment to the Employees for their work on the Peck Slip Project. The check shall be made payable to "**Wage and Hour-Labor**" with the notation "**Case No. 1707970**" and be sent to:

**United States Department of Labor, Wage and Hour Division
The Curtis Center, Suite 850 West
170 S. Independence Mall West
Philadelphia, PA 19106-3317
Attention: Mary Doughty**

The undersigned counsel for Respondents represents that the City of New York, through DDC, agrees to make the payment of the Settlement Amount as set forth herein, and that he is authorized to make this representation on behalf of the City of New York.

17. WHD shall distribute the Settlement Amount and interest, less the appropriate deductions for social security and withholding taxes, to the Employees, or their legal representatives, in the amounts set forth in Exhibit A. Any such amounts which remain undistributed for three (3) years because of the parties' inability to locate the employee or representative shall be deposited with the Treasurer of the United States.

18. Within 30 days of the date that an Administrative Law Judge approves this Order, Schwartz will provide the undersigned counsel for the Administrator with a list of the social

security numbers and last known addresses and telephone numbers for each of the Employees listed on Exhibit A.

19. The parties, the Administrator of the WHD and Respondents MFM and Schwartz, agree that an Order disposing of this proceeding against all Respondents in accordance with these Consent Findings and Order shall have the same force and effect as an order made after full hearing (29 C.F.R. § 6.32(b)(1)).

20. The entire record on which this Order is based consists solely of the provisions contained in the Order of Reference and these Consent Findings and Order (29 C.F.R. § 6.32(b)(2)).

21. The parties, the Administrator of WHD and Respondents MFM and Schwartz, agree to waive any further procedural steps before an Administrative Law Judge of the U.S. Department of Labor and the Administrative Review Board regarding this matter (29 C.F.R. § 6.32(b)(4)).

22. The parties, the Administrator of WHD and Respondents MFM and Schwartz, agree to waive any right to challenge or contest the validity of this Order and the findings set forth herein. (29 C.F.R. § 6.32(b)(5)).

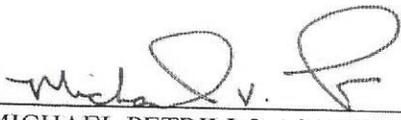
23. Notwithstanding payment of the Settlement Amount, Respondents MFM and Schwartz do not admit liability for the back wages which the Administrator alleges in these proceedings to be due the Schwartz Employees, liability being expressly denied by the Respondents.

24. This Consent Findings and Order may be executed in counterparts, each of which shall be deemed to be an original as against the party whose signature appears thereon, all of which shall together constitute the same instrument.

25. Each party agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

DATED: _____, 2016
_____, New York

DATED: June 2, 2016
New York, New York



MICHAEL PETRILLO AS PRESIDENT AND OWNER OF MFM CONTRACTING CORP.

JENNIFER S. BRAND
Associate Solicitor of Labor for Fair Labor Standards

JEFFREY S. ROGOFF
Regional Solicitor

BY: 

JUDITH MARBLESTONE
Senior Trial Attorney

SAMUEL SCHWARTZ AS PRESIDENT AND CHIEF EXECUTIVE OFFICER OF SAM SCHWARTZ ENGINEERING, D.P.C. and SAM SCHWARTZ ENGINEERING PLLC



LEWIS R. LEAR, ESQ.
Attorneys for Respondents MFM Contracting Corp., Sam Schwartz Engineering, D.P.C., and Sam Schwartz Engineering PLLC, and the City of New York

U.S. Department of Labor
Attorneys for
DR. DAVID WEIL
Administrator, Wage and Hour
Division
Complainant

POST OFFICE ADDRESS:
Corporation Counsel of the City of New York
100 Church Street, Room 3-244
New York, NY 10007
Tel. (212) 356-2615

POST OFFICE ADDRESS:
Jeffrey S. Rogoff
Regional Solicitor
U.S. Department of Labor
201 Varick Street, Room 983
New York, New York 10014
Tel. (646) 264-3678

SO ORDERED:

Honorable Adele H. Odegard
Administrative Law Judge

Date

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DATED: _____, 2016
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New York, New York

JENNIFER S. BRAND
Associate Solicitor of Labor for
Fair Labor Standards

JEFFREY S. ROGOFF
Regional Solicitor

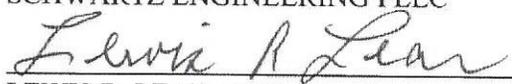
BY: 

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SCHWARTZ ENGINEERING PLLC



LEWIS R. LEAR, ESQ.
Attorneys for Respondents MFM Contracting
Corp., Sam Schwartz Engineering, D.P.C., and
Sam Schwartz Engineering PLLC, and the City of
New York

POST OFFICE ADDRESS:
Corporation Counsel of the City of New York
100 Church Street, Room 3-244
New York, NY 10007
Tel. (212) 356-2615

U.S. Department of Labor
Attorneys for
DR. DAVID WEIL
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Date