

In the Matter of

**WILLIAM GEORGE ALLMENDINGER dba TOP NOTCH CONSTRUCTION &
ROOFING and dba TOP NOTCH CONSTRUCTION, and MARION ALLMENDINGER,
dba TOP NOTCH CONSTRUCTION,**

Case Nos. 90-00, 103-00

December 29, 2000

SYNOPSIS

Respondent William George Allmendinger, a subcontractor on a project subject to Oregon's prevailing wage rate laws, intentionally failed to pay the prevailing rate of wage to two of his employees on that project. Allmendinger also filed two incomplete certified payroll reports and failed to provide payroll records from the project to the Agency upon its request. The commissioner imposed civil penalties totaling \$7500.00 for these five violations of the prevailing wage rate laws. The commissioner also ordered that Respondent William George Allmendinger and any firm, corporation, partnership or association in which William George Allmendinger has a financial interest be placed on the list of those ineligible to receive public works contracts or subcontracts for a period of three years.

The commissioner found the Agency failed to prove that Respondent Marion Allmendinger committed any violations of the prevailing wage rate laws or that she was a partner of William George Allmendinger in the work he did on the project. Although Respondent Marion Allmendinger consented to placement on the List of Ineligibles for a period of three years, the commissioner found that her unilateral consent to such placement was not binding because she had not violated any prevailing wage rate laws and her consent was not part of a settlement agreement of the case with the Agency pursuant to OAR 839-050-0220. Accordingly, the commissioner dismissed the Notice of Intent as to Respondent Marion Allmendinger. ORS 279.350, ORS 279.354, ORS 279.355, ORS 279.361, ORS 279.370, OAR 839-016-0010, OAR 839-016-0030, OAR 839-016-0035, OAR 839-016-0085, 839-016-0090, OAR 839-050-0220, OAR 839-016-0520, OAR 839-016-0530, OAR 839-016-0540.

The above-entitled case came on regularly for hearing before Erika L. Hadlock, 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 June 27, 2000, in the conference room of the Oregon Bureau of Labor and Industries, 165 East Seventh Street, Eugene, Oregon.

The Bureau of Labor and Industries (“BOLI” or “the Agency”) was represented by Linda Lohr, an employee of the Agency. Respondent George Allmendinger did not appear at the hearing and nobody appeared on his behalf. Respondent Marion Allmendinger made a brief appearance through her attorney, Gary Ackley.

The Agency called Rohini Lata, Tyrone Jones, and Cynthia Domas as its witnesses. Respondents called no witnesses.

The forum received into evidence:

- a) Administrative exhibits X-1 to X-20 (generated or filed prior to hearing) and X-21 to X-26 (generated or filed after hearing).
- b) Agency exhibits A-1 through A-23 (submitted prior to hearing with the Agency's case summary) and A-24 to A-28 (submitted during the hearing).
- c) ALJ exhibit ALJ-1.

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 February 29, 2000, the Agency issued a Notice of Intent to Place on List of Ineligibles and to Assess Civil Penalties in which it made the following charges against Respondent William George Allmendinger (“George Allmendinger”):

- a) Between approximately December 5 and December 12, 1998, Respondent provided manual labor on a public works project subject to regulation under Oregon's prevailing wage rate laws and intentionally failed to pay \$1907.24 in prevailing wages to three employees – Robert Russell, Brian Bowen, and Brent Corbin - in violation of ORS 279.350 and OAR 839-016-0035. The Agency sought a \$3000.00 penalty for each of these three alleged violations.
- b) Respondent filed two inaccurate and incomplete certified payroll reports covering the periods September 16 through October 6, 1998 and October 7 through November 10, 1998, in violation of ORS 279.354 and

OAR 839-016-0010. The Agency sought a \$5000.00 penalty for each of these two alleged violations.

c) Respondent did not comply with the Agency's request to provide records necessary to determine if it had paid its employees the prevailing rate of wage, within the time period set by the Agency, in violation of ORS 279.355 and OAR 839-016-0030. The Agency sought a \$3500.00 penalty for this alleged violation.

The Agency also asked that Respondent George Allmendinger and any firm, corporation, partnership or association in which he had a financial interest be placed on the list of those ineligible to receive contracts or subcontracts for public works for a period of three years.

2) The Notice of Intent instructed Respondent George Allmendinger that he was required to make a written request for a contested case hearing within 20 days of the date on which he received the Notice, if he wished to exercise his right to a hearing.

3) The Agency served the Notice of Intent on George Allmendinger by certified mail at 84920 Ridgeway Road, Pleasant Hill, Oregon 97455, together with a document providing information on how to respond to a notice of intent.

4) Respondent George Allmendinger mailed an answer and request for hearing on March 23, 2000, which the Agency received on March 27. In his answer, George Allmendinger stated that his address was 84920 Ridgeway Road, Pleasant Hill, Oregon 97455 and admitted that:

- He was a subcontractor on the South Umpqua High School Reroofing Project ("Project") in Oregon;
- The Project was a public works project conducted by the South Umpqua School District #19 and consisted of construction, reconstruction and/or major renovation;
- The Project cost in excess of \$25,000.00, was not regulated under the federal Davis-Bacon Act, and was subject to regulation under Oregon's prevailing wage rate laws; and
- The Project was first advertised for bid on June 15, 1998, and the February 15, 1998, prevailing wage rate booklet applied to the Project.

George Allmendinger further alleged that two of the workers who claimed unpaid wages had “falsified their hours.”

5) The Agency filed a request for hearing with the Hearings Unit on April 5, 2000.

6) On April 7, 2000, the Hearings Unit served Respondent George Allmendinger with: a) a Notice of Hearing in Case Number 90-00 that set the hearing for May 23, 2000; b) a Summary of Contested Case Rights and Procedures containing the information required by ORS 183.413; c) a complete copy of the Agency's administrative rules regarding the contested case hearing process; and d) a copy of the Notice of Intent.

7) On April 11, 2000, the ALJ ordered the Agency and Respondent George Allmendinger each to submit a case summary including: lists of all persons to be called as witnesses; identification and copies of all documents to be offered into evidence; and any wage, damages, and penalties calculations (for the Agency only). The ALJ ordered the participants to submit their case summaries by May 9, 2000, and notified them of the possible sanctions for failure to comply with the case summary order. The ALJ also provided a form that Respondent could use to prepare a case summary.

8) On April 21, 2000, the Agency issued a second Notice of Intent to Place on List of Ineligibles and to Assess Civil Penalties, in which it made the following charges against Respondents Marion Allmendinger, dba Top Notch Construction, and John Wardle, dba Top Notch Construction:

a) Between approximately December 5 and December 12, 1998, Respondents provided manual labor on a public works project subject to regulation under Oregon's prevailing wage rate laws and intentionally failed to pay \$1907.24 in prevailing wages to three employees, in violation of ORS 279.350 and OAR 839-016-0035. The Agency sought a \$3000.00 penalty for each of these three alleged violations.

b) Respondents filed two inaccurate and incomplete certified payroll reports covering the periods September 16 through October 6, 1998 and October 7 through November 10, 1998, in violation of ORS 279.354 and OAR 839-016-0010. The Agency sought a \$5000.00 penalty for each of these two alleged violations.

c) Respondents did not comply with the Agency's request to provide records necessary to determine if they had paid their employees the prevailing rate of wage, within the time period set by the Agency, in violation of ORS 279.355 and OAR 839-016-0030. The Agency sought a \$3500.00 penalty for this alleged violation.

The Agency also asked that Respondents Marion Allmendinger and John Wardle and any firm, corporation, partnership or association in which they had a financial interest be placed on the list of those ineligible to receive contracts or subcontracts for public works for a period of three years.

9) This second Notice of Intent instructed Respondents Marion Allmendinger and John Wardle that they were required to make a written request for a contested case hearing within 20 days of the date on which they received the Notice, if they wished to exercise their right to a hearing.

10) The Agency served the second Notice of Intent on Marion Allmendinger and John Wardle by certified mail at 84920 Ridgeway Road, Pleasant Hill, Oregon, together with a document providing information on how to respond to a notice of intent.

11) By letter to the Agency dated April 22, 2000, Respondent Marion Allmendinger asserted that she had "never been a licensed contractor or performed any work as such." She further stated that she "did register for a business name, but never followed through with the licensing," that she "was never involved with the South Umpqua School District or performed any work for them," and that she had "never had any employees." Marion Allmendinger also stated that her son, Respondent Wardle, was serving with the military overseas.

12) The Agency notified Marion Allmendinger that her answer was insufficient because she had not requested a hearing. Marion Allmendinger then requested a hearing.

13) On May 5, 2000, the Agency requested a hearing in the case involving Respondents Marion Allmendinger and John Wardle. The Agency asked that this second case be consolidated with the case against Respondent George Allmendinger.

14) On May 8, 2000, the Hearings Unit served Respondents Marion Allmendinger and John Wardle with: a) a Notice of Hearing in Case Number 103-00 that set the hearing for May 23, 2000; b) a Summary of Contested Case Rights and Procedures containing the information required by ORS 183.413; c) a complete copy of the Agency's administrative rules regarding the contested case hearing process; and d) a copy of the Notice of Intent.

15) That same day, the ALJ granted the Agency's motion to consolidate Case Numbers 90-00 and 103-00. The ALJ extended the deadline for all participants to file case summaries until May 15, 2000.

16) On May 15, 2000, counsel for Respondent Marion Allmendinger filed a motion to postpone the hearing in the consolidated cases. The Agency filed a timely opposition to the motion.

17) The ALJ granted the motion to postpone by motion dated May 17, 2000, because: no previous postponements had been requested or granted; the request was timely; the second Notice of Hearing issued an unusually short time before the scheduled hearing date; Marion Allmendinger's counsel had a previously scheduled vacation; and Marion Allmendinger had not delayed obtaining counsel. Because of these circumstances, particularly the very short time between issuance of the second Notice and the scheduled hearing date, the ALJ found that the scheduling conflict of

Marion Allmendinger's attorney constituted good cause for postponement. The ALJ requested that the participants confer on mutually acceptable hearing dates.

18) By letter dated May 23, 2000, case presenter Lohr notified the forum that she and Marion Allmendinger's attorney had determined that all participants other than John Wardle would be available for hearing during the week of June 26, 2000. Accordingly, the ALJ reset the hearing to commence on Tuesday, June 27, 2000, and changed the deadline for filing case summaries to June 13, 2000.

19) By letter dated June 7, 2000, the Agency moved to "delete John Wardle as a respondent in * * * Case No. 103-00," based on its satisfaction that Wardle was "in the military serving overseas." The ALJ granted the motion, noting that the hearing as to Respondents George Allmendinger and Marion Allmendinger remained scheduled to commence at 9:00 a.m. on Tuesday, June 27, 2000. The ALJ also reminded the participants that case summaries were due on June 13.

20) The Agency filed a timely case summary on June 13, 2000. Neither Respondent filed a case summary.

21) Respondent George Allmendinger did not appear at the scheduled time and place for hearing. The ALJ waited one-half hour for George Allmendinger to make an appearance. When he still had not appeared after the half-hour, the ALJ declared George Allmendinger to be in default.

22) Pursuant to ORS 183.415(7), the ALJ verbally advised the Agency and counsel for Respondent Marion Allmendinger of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

23) After case presenter Lohr made an opening statement for the Agency, Gary Ackley, counsel for Respondent Marion Allmendinger, made a brief statement in which he asserted that Marion Allmendinger would consent to being debarred for three

years but contested the civil penalties sought by the Agency. Ackley also asserted that Respondent Marion Allmendinger had been a registrant only of Top Notch Construction, not of Top Notch Construction & Roofing, which he asserted was the subcontractor in the case. Finally, Ackley presented a document to Lohr and asserted that it was a bankruptcy petition that Marion Allmendinger recently had filed. Ackley did not formally offer the petition as evidence, but the ALJ received it into evidence as Exhibit ALJ-1 at the close of the hearing.

24) After making his statement on behalf of Respondent Marion Allmendinger, Ackley stated that he would not be presenting evidence or making further argument. Ackley left the hearing before the Agency called its first witness.

25) The ALJ issued a proposed order on July 10, 2000, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. On July 18, 2000, the Agency filed exceptions. On July 19, 2000, Respondent Marion Allmendinger filed exceptions. These exceptions are addressed in the Opinion section of this Final Order.

26) On October 19, 2000, the forum issued an interim order reopening the record for the purpose of obtaining the Agency's statement on whether or not the Agency intended to accept Marion Allmendinger's consent to debarment for three years in settlement of the charges against her in the Agency's second Notice of Intent.

27) On October 31, 2000, the Agency responded to the forum's interim order. The Agency stated that it did not intend to accept Marion Allmendinger's voluntary consent to debarment as an informal disposition of the Agency's charges against her and repeated its request that Marion Allmendinger be held jointly responsible for the violations found and jointly liable for civil penalties assessed.

FINDINGS OF FACT – THE MERITS

1) The Respondent in Case Number 90-00 is William George Allmendinger, who sometimes signs his name “George Allmendinger” and sometimes calls himself “William Allmendinger.” The forum finds that the documents in this recordⁱ referring to William George Allmendinger, George William Allmendinger, George Allmendinger, or William Allmendinger all relate to the Respondent in Case Number 90-00. The order refers to this Respondent as “George Allmendinger,” as that appears to be a name he frequently used.

2) On June 15, 1998, South Umpqua School District No. 19 advertised for bid the “South Umpqua High School 1998 Reroofing Project” in Myrtle Creek, Oregon (“the Project”). The Project was a public works project that was not regulated under the federal Davis-Bacon Act, cost in excess of \$25,000.00, and was subject to regulation under Oregon’s prevailing wage rate laws.

3) Harmon Construction was the prime contractor on the Project.

4) Because the Project was first bid in June 1998, the Agency’s February 1998 prevailing wage rate book set forth the prevailing wage rates that were to be paid on the project. The applicable prevailing wage rate for roofers was \$17.64 per hour plus \$5.78 per hour in fringe benefits.

5) Respondent George Allmendinger registered the assumed business name “Top Notch Construction & Roofing” in 1996. That assumed business name failed on April 24, 1998, before the Project was bid.

6) Respondent George Allmendinger also registered with the Construction Contractors’ Board (“CCB”) in 1996 and was assigned CCB number 0117960. Allmendinger’s CCB status became inactive when his bond lapsed in December 1997.

7) George Allmendinger was a subcontractor on the Project.

8) George Allmendinger employed Robert Russell, Brian Bowen, Robert Ward, and Brent Corbin as roofers on the Project.

9) Robert Russell filed a wage claim and a prevailing wage rate complaint with the Agency on December 24, 1998, claiming unpaid wages for work performed on the Project from December 2 to December 11, 1998. In his wage claim, Russell identified his employer as "George Allmondener" and "George Almondinger" and the name of his employer's business as "Top Notch" and "Top Notch Con."

10) Russell performed 54 hours of work for Respondent George Allmendinger on the Project from December 2, 1998, to December 11, 1998. Russell did not work more than 8 hours on any one day but did work two hours one Saturday. George Allmendinger had agreed to pay Russell \$10.00 per hour for the work he did on the Project but paid him only \$130.00.

11) To comply with the prevailing wage rate law, Respondent George Allmendinger would have had to pay Russell a total of \$1282.32 for the work he performed on the Project [54 total hours x (\$17.64 + \$5.78)/ hour + 2 overtime hours x (0.5 x \$17.64/overtime hour)].

12) Brian Bowen filed a wage claim and a prevailing wage rate complaint with the Agency on December 24, 1998, claiming unpaid wages for work performed on the Project from December 2 to December 11, 1998. In his wage claim, Russell identified his employer as "George Almendinger" and the name of his employer's business as "Top-Notch Construction" and "Top Notch Con."

13) Bowen also performed 54 hours of work for Respondent George Allmendinger on the Project from December 2, 1998, to December 11, 1998. Bowen did not work more than 8 hours on any one day but did work two hours one Saturday. George Allmendinger had agreed to pay Bowen \$10.00 per hour for the work he did on

the Project but paid him only \$70.00. To comply with the prevailing wage rate law, George Allmendinger would have had to pay Bowen \$1282.32 for the work he performed on the Project.

14) Harmon Construction paid \$400.00 each to Russell and Bowen as partial compensation for the wages George Allmendinger had not paid them.

15) On January 1, 1999, the architect for the Project, acting on behalf of South Umpqua School District No. 19, completed and submitted to the Agency a form entitled "Contracting Agency Information." One of the questions on the form requests "Names of known subcontractors." The handwritten answer includes the names "Top Notch Roofing, Custom Roofing, Harvey & Price Co., Bower Mechanical Contractors, Kunert Electric."

16) On January 13, 1999, Harmon Construction provided copies of two certified payroll reports ("CPRs") to the Agency. One of those CPRs was for the period of September 16, 1998, to October 6, 1998. Its author was George Allmendinger, who identified himself as the "owner" of the subcontractor, which he identified as "Top Notch Const." Allmendinger stated that his CCB registration number was 117960. The CPR listed only one employee, Robert Ward, who had worked as a roofer. The document did not state how many hours Ward had worked each day, only that he had worked a total of 80 hours. The CPR stated that Ward had been paid \$17.64 per hour, plus \$5.78 per hour in fringe benefits, for a total of \$1873.61.

17) The second CPR was for the period October 9, 1998, to November 10, 1998. The subcontractor again was identified as "Top Notch Const.," CCB number 117960. George Allmendinger identified himself as the owner of Top Notch Construction. The CPR listed two employees who had worked as roofers – Robert Ward and Brent Corbin. The document stated that Ward had worked 99 hours, for

which he been paid \$2318.58, and that Corbin had worked 30 hours, for which he had been paid \$702.60. The statement did not indicate how many hours these employees had worked each day.

18) The contract between Harmon Construction Company and South Umpqua School District No. 19 for the Project was offered and received into the record. A subcontract between Harmon Construction and George Allmendinger or Marion Allmendinger for work on the Project was not offered or produced at hearing.

19) Respondent Marion Allmendinger has the same address as Respondent George Allmendinger. In July 1998, Marion Allmendinger registered the assumed business name "Top Notch Construction." She remained the registrant for the assumed business name until January 29, 1999.

20) There is no evidence that Respondent Marion Allmendinger contracted or subcontracted to perform work on the Project, actually performed work on the Project, or employed any workers on the Project. There is no evidence in the record that Marion Allmendinger received or had a right to receive a share of any profits George Allmendinger may have made from subcontracting on the Project. There is no evidence in the record that Marion Allmendinger or George Allmendinger had expressed intent to form a partnership that would engage in work on the Project. There is no evidence in the record that Marion Allmendinger participated or had a right to participate in controlling the business that engaged in work on the Project. There is no evidence in the record that Marion Allmendinger and George Allmendinger shared or agreed to share losses of the business that engaged in work on the Project or liability for claims by third parties against that business. There is no evidence in the record that Marion Allmendinger contributed or agreed to contribute money or property to that business.

21) On February 9, 1999, Agency compliance specialist Rohini Lata sent a letter addressed to “Mr. Marion Allmendinger, Top Notch Construction, 84920 Ridgeway, Pleasant Hill, Oregon 97455” by certified mail in which Lata stated the Agency had received wage claims alleging that Top Notch Construction had failed to pay the prevailing wage on the South Umpqua High School Reroofing Project. Lata requested all time records, payroll records, and certified payroll records for all persons who performed work on the Project, including the number of hours worked each day. She asked that the records be submitted no later than February 23, 1999, and stated that a failure to respond would result in additional enforcement action according to the prevailing wage rate laws. Lata explained at hearing that she had addressed the letter to “Mr. Marion Allmendinger” because that was the name of the current registrant for Top Notch Construction.

22) The post office returned Lata’s February 9 letter as “unclaimed.” Lata later resent the letter by regular mail and it was not returned.

23) On March 2, 1999, the Agency sent a Notice of Claim to Harmon Construction and the South Umpqua School District, informing them that there were pending prevailing wage claims on the Project. This Notice included Lata’s preliminary determinations that the workers were owed unpaid wages as shown in the following chart. The amounts for Ward and Corbin were based on the hours worked as reported in the certified payroll reports, with no amount credited as having been paid, as Lata had not yet received any evidence that those workers had received wages.

| <u>Employee</u> | <u>Wages earned</u> | <u>Wages paid</u> | <u>Wages due</u> |
|-----------------|---------------------|-------------------|------------------|
| Ward | \$4192.26 | \$0.00 | \$4192.26 |
| Corbin | \$702.60 | \$0.00 | \$702.60 |

| | | | |
|---------|-----------|----------|-----------|
| Russell | \$1307.70 | \$130.00 | \$1177.70 |
| Bowen | \$1282.32 | \$70.00 | \$1212.32 |

24) On March 16, 1999, Lata sent a second letter by regular first class mail to “Mr. Marion Allmendinger” at “84920 Ridgeway, Pleasant Hill, Oregon 97455” in which she stated her conclusion that Allmendinger had violated the prevailing wage rate laws. Lata stated the amounts of wages she then believed were owing to Allmendinger’s employees and explained that Allmendinger owed the workers those amounts, plus liquidated damages. She further explained the commissioner’s ability to assess civil penalties and to debar subcontractors for prevailing wage rate violations. Lata asked Allmendinger to pay the individual workers the amounts they were owed by March 29, 1999.

25) On March 29, 1999, Respondent George Allmendinger sent Lata a letter stating that work on the Project had been performed by “Top Notch Construction & Roofing not Top Notch Construction.” He further asserted that “Top Notch Construction & Roofing is owned by G. William Allmendinger, who is responsible for this, NOT Top Notch Construction.” Respondent George Allmendinger acknowledged that he owed some wages to Bowen and Russell, stating that he had paid only \$130.00 to Russell and only \$70.00 to Bowen. He denied the workers’ claims that they had worked 54 hours, stating they had worked only 40 hours and denied owing any wages to Ward or Corbin. He asserted that he had paid \$702.60 to Corbin for work performed from October 7 through November 10. He also asserted that he had paid Ward \$1873.60 for work performed from September 16 to October 6 and \$2318.58 for work performed from October 7 through November 10.

26) Lata never received any information contradicting George Allmendinger’s assertions regarding the amounts of money he had paid these four workers. The

amounts Allmendinger claimed to have paid Corbin and Ward were the amounts required by the prevailing wage rate law, assuming the employees did not work overtime hours.

27) Lata wrote letters to Ward and Corbin asking them to contact her if Allmendinger owed them money. She received no response to those letters.

28) Lata sent another letter to "G. William Allmendinger, Top Notch Construction & Roofing, 84920 Ridgeway, Pleasant Hill, Oregon 97455" on April 21, 1999, again asking for all time records, payroll records, and certified payroll records for all persons who performed work for Allmendinger's company on the Project, including records of daily hours worked. She also asked for the names, addresses, and telephone numbers of all of Allmendinger's workers. Lata again explained the actions the Agency could take against Allmendinger for violations of the prevailing wage rate laws.

29) By May 21, 1999, Lata had received no response from Respondent George Allmendinger. Lata sent Allmendinger another letter stating that he owed unpaid wages of \$342.60 to Corbin, \$752.32 to Russell, and \$812.32 to Bowen.ⁱⁱ Lata asked Allmendinger to pay these individuals the amounts owed by May 28, 1999. Lata never received any further communications from Allmendinger, who never paid the employees.

30) Lata's last day of employment with BOLI was May 31, 1999, and BOLI compliance specialist Tyrone Jones was assigned to complete the Allmendinger investigation.

31) As part of a settlement with BOLI, Harmon Construction paid the unpaid wages of George Allmendinger's workers by sending checks to BOLI in the amounts of

\$752.32 for Russell, \$812.32 for Bowen, and \$342.60 for Corbin. BOLI distributed that money to the three workers.

32) The forum finds the claims of Bowen and Russell to be credible. Each worker admitted that he had received a small payment from Respondent George Allmendinger and each further admitted that he had received \$400.00 from Harmon Construction. In the absence of any credible evidence to the contrary, the forum has no reason to disbelieve that Bowen and Russell worked the number of hours they claimed.

33) The forum disbelieves those statements of Respondent George Allmendinger that conflict with other credible evidence, particularly his claim that Russell and Bowen each worked only 40 hours. The forum disbelieves Allmendinger's claim primarily because it is not supported by any payroll records, which employers are legally obliged to maintain. Allmendinger never provided such records to the Agency, despite Lata's requests. Second, Allmendinger's claim conflicts with the assertions of Bowen and Russell, which the forum has concluded are credible. The forum's determination that certain statements of Respondent George Allmendinger are not credible is *not* based on Exhibits A-24 and A-25, records of two felony convictions of a "George William Allmendinger." Those records do not contain any information, such as a social security number or address, confirming that the subject of the records is the William George Allmendinger who is a respondent in this case. Accordingly, the forum gives them no weight.

ULTIMATE FINDINGS OF FACT

1) The Project was a construction, reconstruction or major renovation project carried out by the South Umpqua School District, a public agency, to serve the public interest. The Project was not regulated under the federal Davis-Bacon Act and had a cost of more than \$25,000.00.

2) Respondent George Allmendinger was a subcontractor on the Project.

3) Respondent George Allmendinger failed to pay two of his employees – Russell and Bowen -- the prevailing rate of wage for the roofing work they did on the Project. Harmon Construction, the prime contractor on the Project, paid those wages because George Allmendinger had not.

4) Respondent George Allmendinger's failure to pay Russell and Bowen the prevailing rate of wage for all hours they worked on the Project was intentional.

5) The Agency did not meet its burden of proving that Respondent George Allmendinger failed to pay Corbin the prevailing rate of wage for the work he performed on the Project.

6) The two CPRs that Respondent George Allmendinger submitted for work on the Project were incomplete in that they did not specify the number of hours Corbin and Ward worked each day.

7) Respondent George Allmendinger knew or should have known that the CPRs were incomplete. It would not have been difficult for him to file complete CPRs.

8) By letter dated April 21, 1999, Agency compliance specialist Lata asked Respondent George Allmendinger to provide time records, payroll records, and CPRs for all persons who performed work on the Project for his company, including records of daily hours worked. Lata asked George Allmendinger to provide the documentation by April 30, 1999. George Allmendinger did not respond to that letter and never supplied the requested records.

9) The Agency must know the daily hours worked by employees on public works projects to determine whether those employees have been paid or are being paid the prevailing rate of wage and any overtime wages that are due.

10) Respondent Marion Allmendinger was not a contractor or subcontractor on the Project and was not a partner of George Allmendinger in his work on the Project.

CONCLUSIONS OF LAW

- 1) ORS 279.348(3) provides:

“Public works’ includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.”

See also OAR 839-016-0004(17) (similar). ORS 279.348(5) provides:

“Public agency’ means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.”

See also OAR 839-016-0004(16) (same). The Project was a public works project.

- 2) ORS 279.357 provides, in pertinent part:

“(1) ORS 279.348 to 279.380 do not apply to:

“(a) Projects for which the contract price does not exceed \$25,000.

“(b) Projects regulated under the Davis-Bacon Act (40 U.S.C. 276a). * *

*)”

The Project did not fall within the exemptions created by ORS 279.357.

- 3) ORS 279.350 provides, in pertinent part:

“(1) 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. The obligation of a contractor or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in cash, by the making of contributions of a type referred to in ORS 279.348(4)(a), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in ORS 279.348(4)(b), or any combination thereof, where the aggregate of any such payments, contributions and costs is not less than the prevailing rate of wage.”

OAR 839-016-0035 provides, in pertinent part:

“(1) 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.

“(2) Every person paid by a contractor or subcontractor in any manner for the person’s labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.”

Respondent George Allmendinger was required to pay the prevailing rate of wage to all workers he employed on the Project. George Allmendinger committed two violations of ORS 279.350 and OAR 839-016-0035 by failing to pay Russell and Bowen the prevailing wage rate for each hour they worked on the Project. The Agency did not meet its burden of proving that Respondent George Allmendinger failed to pay Corbin the prevailing rate of wage.

4) ORS 279.354(1) provides:

“The contractor or the contractor’s surety and every subcontractor or the subcontractor’s surety shall file certified statements with the public contracting agency in writing in form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the contractor or the subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of the contractor or the contractor’s surety or subcontractor or the subcontractor’s surety that the contractor or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the contractor or subcontractor’s knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker’s correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.”

OAR 839-016-0010 provides, in pertinent part:

“(1) The form required by ORS 279.354 shall be known as the Payroll and Certified Statement, Form WH-38. The Form WH-38 shall accurately and completely set out the contractors or subcontractor’s payroll for the work week immediately preceding the submission of the form to the public contracting agency by the contractor or subcontractor.”

The two CPRs Respondent George Allmendinger filed were incomplete because they did not state the daily hours worked by Corbin and Ward. Respondent George Allmendinger committed two violations of ORS 279.354(1) by submitting those incomplete CPRs.

5) ORS 279.355(2) provides:

"Every contractor or subcontractor performing work on public works shall make available to the commissioner for inspection during normal business hours and, upon request made a reasonable time in advance, any payroll or other records in the possession or under the control of the contractor or subcontractor that are deemed necessary by the commissioner to determine if the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works."

OAR 839-016-0030(1) and (2) provide:

"(1) Every contractor and subcontractor performing work on a public works contract shall make available to representatives of the Wage and Hour Division records necessary to determine if the prevailing wage rate has been or is being paid to workers upon such public work and records showing contract prices and sums paid as fees to the bureau. Such records shall be made available to representatives of the Wage and Hour Division for inspection and transcription during normal business hours.

"(2) The contractor or subcontractor shall make the records referred to in section (1) of this rule available within 24 hours of a request from a representative of the Wage and Hour Division or at such later date as may be specified by the division."

Respondent George Allmendinger violated ORS 279.355(2) and OAR 839-016-0030 by failing to provide payroll and time records, specifically records indicating daily hours worked by each of his employees on the Project, after the Agency's April 21, 1999, request.

6) ORS 279.370 provides, in pertinent part:

"(1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$5,000 for each violation of any provision of ORS 279.348 to 279.380 or any rule of the commissioner adopted pursuant thereto."

OAR 839-016-0520 provides:

"(1) The commissioner shall consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed against a contractor, subcontractor or contracting agency and shall cite those the commissioner finds to be applicable:

"(a) The actions of the contractor, subcontractor, or contracting agency in responding to previous violations of statutes and rules.

"(b) Prior violations, if any, of statutes and rules.

"(c) The opportunity and degree of difficulty to comply.

"(d) The magnitude and seriousness of the violation.

"(e) Whether the contractor, subcontractor or contracting agency knew or should have known of the violation.

"(2) It shall be the responsibility of the contractor, subcontractor or contracting agency to provide the commissioner with evidence of any mitigating circumstances set out in subsection (1) of this rule.

"(3) In arriving at the actual amount of the civil penalty, the commissioner shall consider the amount of the underpayment of wages, if any, in violation of any statute or rule.

"(4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the contractor, subcontractor or contracting agency for the purpose of reducing the amount of the civil penalty to be assessed."

OAR 839-016-0530 provides, in pertinent part:

"(1) The commissioner may assess a civil penalty for each violation of any provision of the Prevailing Wage Rate Law (ORS 279.348 to 279.380) and for each violation of any provision of the administrative rules adopted under the Prevailing Wage Rate Law.

"(2) Civil penalties may be assessed against any contractor, subcontractor or contracting agency regulated under the Prevailing Wage Rate Law and are in addition to, not in lieu of, any other penalty prescribed by law.

"(3) The commissioner may assess a civil penalty against a contractor or subcontractor for any of the following violations:

"(a) Failure to pay the prevailing rate of wage in violation of ORS 279.350;

“* * * * *

"(e) Filing inaccurate or incomplete certified statements in violation of ORS 279.354[.]”

OAR 839-016-0540 provides, in pertinent part:

“(1) The civil penalty for any one violation shall not exceed \$5,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.

“(2) For purposes of this rule ‘repeated violations’ means violations of a provision of law or rule which has been violated on more than one project within two years of the date of the most recent violation.

“(3) Notwithstanding any other section of this rule, when the commissioner determines to assess a civil penalty for a violation of ORS 279.350 regarding the payment of the prevailing rate of wage, the minimum civil penalty shall be calculated as follows:

“(a) An equal amount of the unpaid wages or \$1,000, whichever is less, for the first violation;

“(b) Two times the amount of the unpaid wages or \$3,000, whichever is less, for the first repeated violation;

“(c) Three times the amount of the unpaid wages or \$5,000, whichever is less, for second and subsequent repeated violations.

“* * * * *

“(5) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-016-0530.

“(6) The civil penalties set out in this rule shall be in addition to any other penalty assessed or imposed by law or rule.”

The commissioner’s imposition of the penalties in this case is an appropriate exercise of his discretion.

7) ORS 279.361 provides, in pertinent 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 contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed upon public works, a subcontractor has failed to pay to its employees amounts required by ORS 279.350 and the contractor has paid those amounts on the subcontractor’s behalf, or a contractor or subcontractor has intentionally failed or refused to post the prevailing wage rates as required by ORS 279.350(4), the contractor, subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest shall be ineligible for a period not to exceed three years from the date of publication of the name of the contractor or subcontractor on the ineligible list as provided in this section to receive any contract or subcontract for public works. The commissioner shall maintain a written list of the names of those contractors and subcontractors determined to be

ineligible under this section and the period of time for which they are ineligible. A copy of the list shall be published, furnished upon request and made available to contracting agencies.”

OAR 839-016-0085 provides, in pertinent part:

“(1) Under the following circumstances, the commissioner, in accordance with the Administrative Procedures Act, may determine that for a period not to exceed three years, a contractor, subcontractor or any firm, limited liability company, corporation, partnership or association in which the contractor or subcontractor has a financial interest is ineligible to receive any contract or subcontract for a public work:

“(a) The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed on public works as required by ORS 279.350;

“(b) The subcontractor has failed to pay its employees the prevailing rate of wage required by ORS 279.350 and the contractor has paid the employees on the subcontractor’s behalf[.]

“* * * * *

“(4) The Wage and Hour Division shall maintain a written list of the names of those contractors, subcontractors and other persons who are ineligible to receive public works contracts and subcontracts. The list shall contain the name of contractors, subcontractors and other persons, and the name of any firms, corporations, partnerships or associations in which the contractor, subcontractor or other persons have a financial interest. Except as provided in OAR 839-016-0095, such names will remain on the list for a period of three (3) years from the date such names were first published on the list.”

OAR 839-016-0090 provides, in pertinent part:

“(1) The name of the contractor, subcontractor or other persons and the names of any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest whom the Commissioner has determined to be ineligible to receive public works contracts shall be published on a list of persons ineligible to receive such contracts or subcontracts.

“(2) The list of persons ineligible to receive contracts or subcontracts on public works shall be known as the List of Ineligibles.”

Respondent George Allmendinger intentionally failed to pay the prevailing wage rate to Russell and Bowen for all the work they did on the Project. In addition, because of Respondent’s failure to pay the prevailing wage rate to these employees, Harmon Construction, the prime contractor on the Project, paid those wages on Respondent’s

behalf. For both of these reasons, the commissioner must place Respondent George Allmendinger on the List of Ineligibles for a period not to exceed three years. The commissioner's decision to place Respondent on the list for the entire three-year period is an appropriate exercise of his discretion.

8) Respondent Marion Allmendinger was not a contractor or subcontractor on the Project and was not a partner of George Allmendinger in his work on the Project. Accordingly, the charges against Marion Allmendinger are dismissed.

OPINION

DEFAULT

Respondent George Allmendinger failed to appear at hearing and the forum held him in default pursuant to OAR 839-050-0330. When a respondent defaults, the Agency must establish a prima facie case to support the allegations of the charging document. *In the Matter of Belanger General Contracting*, 19 BOLI 17, 25 (1999). The Agency met that burden with regard to most of the charges against George Allmendinger, as discussed *infra*.

LIABILITY OF RESPONDENT GEORGE ALLMENDINGER

A. The violations

1. Failure to pay the prevailing rate of wage

To establish a violation of ORS 279.350(1), which requires payment of the prevailing rate of wage on public works contracts, the Agency must prove:

- 1) The project at issue was a public work, as that term is defined in ORS 279.348(3);
- 2) The respondent was a contractor or subcontractor that employed workers on the public works project whose duties were manual or physical in nature;
- 3) The respondent failed to pay those workers at least the prevailing rate of wage for each hour worked on the project.

In the Matter of Keith Testerman, 20 BOLI 112, 126-27 (2000). With regard to Respondent George Allmendinger, only the third element is in dispute.

The Agency presented persuasive evidence that George Allmendinger failed to pay Russell and Bowen the prevailing rate of wage for each hour they worked on the Project. George Allmendinger admitted in his March 29, 1999, letter to the Agency that he had paid only \$130.00 to Russell and only \$70.00 to Bowen – far less than the prevailing wage, even if the two men had worked only 40 hours each, as George Allmendinger asserted. This admission corroborates the claims of Russell and Bowen that George Allmendinger did not pay them all wages due. The evidence in the record is sufficient to establish that Respondent George Allmendinger committed two violations of ORS 279.350(1) by failing to pay Russell and Bowen the prevailing rate of wage for each hour they worked on the Project.

The Agency did not meet its burden of proving that George Allmendinger committed a third violation of ORS 279.350(1) by failing to pay Corbin the prevailing wage rate. The only evidence in the record concerning Corbin's work on the Project is the CPR stating that Corbin worked 30 hours and George Allmendinger's uncontroverted assertion that he paid Corbin \$702.60 for that work – the exact amount Lata calculated Corbin should have been paid under the prevailing wage rate laws. Corbin never claimed that Respondent had not paid him the wages he was due and there simply is no explanation in the record for Lata's conclusion that Respondent owed Corbin \$342.60 in unpaid wages.

2. Failure to provide documents

The Agency established that Respondent George Allmendinger did not respond to the Agency's April 21, 1999, request for payroll records the Agency deemed necessary to determine whether George Allmendinger had paid the prevailing wage rate

to his employees on the Project. George Allmendinger violated ORS 279.355(2) and OAR 839-016-0030 by failing to provide the records upon the Agency's request.

3. Filing inaccurate or incomplete certified payroll reports

The two CPRs that Respondent George Allmendinger completed do not state the hours Corbin and Ward worked each day, as required by ORS 279.354(1). George Allmendinger committed two violations of ORS 279.354(1) by filing the two incomplete CPRs.

B. Civil Penalties

The commissioner may impose a civil penalty up to \$5000.00 for each violation of the prevailing wage rate laws. OAR 839-016-0540(1).

The Agency seeks a \$3000.00 penalty for each of Respondent George Allmendinger's three alleged violations of ORS 279.350(1). For violations of ORS 279.350(1), which requires payment of the prevailing wage, the minimum civil penalty is \$1000.00 or the amount of unpaid wages, whichever is less. OAR 839-016-0540(3).

The forum finds that George Allmendinger's two violations of ORS 279.350(1) are similar in severity to the violations committed by the subcontractor in the *Testerman* case. *Testerman*, 20 BOLI 112. In that case, Testerman, a subcontractor, failed to pay each of three employees all the wages they were due under the prevailing wage laws and the prime contractor paid the wages on Testerman's behalf. *Id.* at 128. The forum imposes the same penalty on Respondent George Allmendinger that it imposed on the *Testerman* subcontractor – a \$1000.00 penalty for each violation of ORS 279.350(1), for a total of \$2000.00.

The Agency seeks a \$3500.00 penalty for George Allmendinger's violation of ORS 279.355, which requires subcontractors on public works projects to provide the Agency with certain records upon the Agency's request. In determining the appropriate

penalty, the forum considers: the subcontractor's actions in responding to previous violations, if any; the opportunity and degree of difficulty to comply; the magnitude and seriousness of the violation; and whether the subcontractor knew or should have known of the violation. OAR 839-016-0520(1).

In this case, each of the factors listed above suggests that a large penalty is appropriate. Respondent George Allmendinger provided very few payroll records to the Agency, only casual statements of gross and net wages purportedly paid to Corbin and Ward. He provided *no* records related to the work performed by Russell and Bowen on the Project. It should not have been difficult for George Allmendinger to provide the records requested by the Agency, as he was legally required to make and maintain them. See OAR 839-016-0025. George Allmendinger had ample opportunity to comply with the Agency's request and did not do so. He knew or should have known of the violation because the Agency's April 1999 request for records was addressed to him personally. Finally, the forum finds George Allmendinger's violation of ORS 279.355(2) to be serious. The failure of subcontractors to provide requested records to the Agency undermines the Agency's ability to ensure that laborers on Oregon public works projects are paid the wages to which they are statutorily entitled.

The single factor mitigating the seriousness of this violation is the lack of evidence that George Allmendinger committed violations of the prevailing wage rate laws on previous occasions. That absence of previous violations does not outweigh the several aggravating factors in this case, discussed above. In light of those aggravating circumstances, the forum agrees with the Agency that a civil penalty of \$3500.00 is appropriate for George Allmendinger's violation of ORS 279.355(2).

The forum also penalizes Respondent George Allmendinger for his two violations of ORS 279.354(1), which requires subcontractors to file complete and accurate

certified payroll reports. The forum finds these violations to be similar in magnitude to the violations committed by the subcontractor in *Testerman* and imposes the same penalty as it did in that case -- \$1000.00 for each violation, for a total of \$2000.00. The forum disagrees with the Agency's assertion that the maximum \$5000.00 penalty for each violation is appropriate. The forum imposes that penalty in cases where the violations are widespread and the CPRs include intentional falsification of hours worked and wages paid. See, e.g., *In the Matter of Larson Construction Co., Inc.*, 17 BOLI 54, 79 (1998). Those aggravating factors are not present in this case.

C. Placement on the List of Ineligibles

When the commissioner determines that a contractor or subcontractor has intentionally failed to pay the prevailing rate of wage, the commissioner must place the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has an interest on the list of those ineligible to receive public works contracts or subcontracts (the "List of Ineligibles") for a period not to exceed three years. ORS 279.361(1); *In the Matter of Southern Oregon Flagging*, 18 BOLI 138, 169 (1999). The commissioner must also place on the List of Ineligibles any subcontractor that has failed to pay the prevailing rate of wage, whether or not that failure was intentional, if the contractor has paid the wages on the subcontractor's behalf. ORS 279.361(1). In this case, Respondent George Allmendinger must be placed on the List of Ineligibles both because his failure to pay the prevailing wage rate was intentional and because Harmon Construction paid wages to Russell and Bowen on his behalf.

Although the commissioner must place a contractor or subcontractor who commits such violations on the List of Ineligibles for a period not to exceed three years, he may consider mitigating factors in determining whether the debarment should last

less than the entire three-year period. See *In the Matter of Southern Oregon Flagging*, 18 BOLI 138, 169 (1999). In this case, there are no mitigating factors except for the lack of evidence that George Allmendinger previously has violated the prevailing wage rate laws. Despite that fact, the forum finds George Allmendinger's current violations of the prevailing wage rate laws sufficiently serious to warrant a three-year debarment. Accordingly, this Order places George Allmendinger and any firm, corporation, partnership or association in which he has a financial interest on the List of Ineligibles for the entire three years permitted by law.

LIABILITY OF RESPONDENT MARION ALLMENDINGER

Respondent Marion Allmendinger, through counsel, consented to being placed on the List of Ineligibles for a period of three years. Based on that concession, the ALJ recommended in the Proposed Order that Marion Allmendinger and any firm, corporation, partnership or association in which she has a financial interest should be ineligible to receive any contract or subcontract for public work for a period of three years from the date of publication of her name on the list of those ineligible to receive such contracts. The ALJ declined to assess any civil penalties against Marion Allmendinger, finding that she was not a subcontractor on the Project or a partner with George Allmendinger in work performed on the Project.

In its exceptions, the Agency contends that Respondent Marion Allmendinger should be placed on the List of Ineligibles and held jointly and severally liable for the civil penalties imposed on George Allmendinger because she was the owner, or alternatively, co-owner, of the "Top Notch" business that did roofing work on the Project.

The Agency argues that circumstantial evidence consisting of the pre-Project failure of George Allmendinger's assumed business nameⁱⁱⁱ and Marion Allmendinger's subsequent registration under the assumed business name of "Top Notch Construction"

during the performance of the Project^{iv} create an inference that Marion Allmendinger was a sole proprietor and the actual owner of the business. In contrast, Respondent George Allmendinger admitted he was the subcontractor and actual owner of the business, two employees identified him as the subcontractor and their employer, and the contracting agency identified “Top Notch Roofing” as a subcontractor on the Project. Under these circumstances, the forum declines to draw the inference sought by the Agency.^v

In the alternative, the Agency argues that George and Marion Allmendinger were co-owners and partners in the business that did roofing work on the Project. The only evidence in the record connecting Marion Allmendinger with the Project is the fact that she was the registrant of Top Notch Construction, the assumed business name that George Allmendinger used in completing the two certified payroll statements, and she has the same address as George Allmendinger. Those two facts alone are not sufficient to establish a partnership.

In the absence of any evidence that Marion Allmendinger and George Allmendinger intended to form a partnership, that Marion Allmendinger invested in George Allmendinger’s business, that she had a right to receive profits from or to control the business, or that she was involved in any way in George Allmendinger’s work on the Project, the forum will not infer that a partnership existed.^{vi} Furthermore, because Marion Allmendinger was not a partner of George Allmendinger in his work on the Project, she could not have been a contractor or subcontractor on the Project.

In conclusion, the forum overrules the Agency’s exceptions and will not hold Marion Allmendinger jointly and severally liable for the penalties imposed on George Allmendinger for his violations of the prevailing wage rate laws. Since Marion Allmendinger was not a contractor or subcontractor who intentionally failed or refused to

pay the prevailing rate of wage to workers employed upon public works, the forum lacks authority to place her on the List of Ineligibles unless her consent to such placement was part of a settlement agreement arrived at pursuant to OAR 839-050-0220. That is not the case.^{vii} The forum therefore dismisses the charges against her.

ORDER

NOW, THEREFORE, as authorized by ORS 279.370 and as payment of the penalty assessed as a result of Respondent William George Allmendinger's violations of ORS 279.350, ORS 279.354, ORS 279.355, OAR 839-016-0010, OAR 839-016-0030, and OAR 839-016-0035, the Commissioner of the Bureau of Labor and Industries hereby orders Respondent **William George Allmendinger** to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232, a certified check payable to the Bureau of Labor and Industries in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7500.00), plus any interest that accrues at the legal rate on that amount from a date ten days after issuance of the Final Order in this case and the date Respondent complies with the Final Order.

FURTHERMORE, as authorized by ORS 279.361, the Commissioner of the Bureau of Labor and Industries hereby orders that Respondent **William George Allmendinger** and any firm, corporation, partnership or association in which he has a financial interest shall be ineligible to receive any contract or subcontract for public work 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.

. The commissioner further dismisses the Notice of Intent as to Respondent Marion Allmendinger.

ⁱ Other than Exhibits A-24 and A-25. See Finding of Fact – the Merits 30, *infra*.

ⁱⁱ Lata gave George Allmendinger credit for the \$400.00 Harmon Construction had paid to Bowen and to Russell. There is no explanation in the record for Lata’s conclusion that George Allmendinger owed Corbin \$342.60 in unpaid wages.

ⁱⁱⁱ See Finding of Fact – The Merits 5, *supra*.

^{iv} See Finding of Fact – The Merits 19, *supra*.

^v The forum notes that if the Agency’s argument prevailed, the forum would have to dismiss the charges against Respondent George Allmendinger. The forum is only authorized to assess civil penalties or place on the List of Ineligibles an actual contractor or subcontractor. Where the contractor or subcontractor is a sole proprietor, only that individual can be held liable.

^{vi} *Cf. In the Matter of Harold Zane Block*, 17 BOLI 150, 161 (1998) (Agency failed to establish a prima facie case of partnership where there was no evidence that the respondents intended to form a partnership or that the respondent whom the Agency sought to prove was a partner of the liable employer “owned any assets of the business, shared in any of the business’s losses, or controlled the business’s operations.”). *Compare In the Matter of Scott A. Andersson*, 17 BOLI 15 (1998) (existence of partnership proved by evidence that respondent “had the right to share in the profits, the liability to share losses, * * * the right to exert some control over the business” and “characterized herself as an ‘owner’ of the business in her answer.”).

^{vii} See Findings of Fact – Procedural 23, 26, 27, *supra*.