

BRAD AVAKIAN
COMMISSIONER



CHRISTIE HAMMOND
DEPUTY COMMISSIONER

BUREAU OF LABOR AND INDUSTRIES

**BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON**

In the Matter of:

Case No. **25-16**

**ARMIGER ACOUSTICAL &
DRYWALL, INC. and MICHAEL
ARMIGER aka MICHAEL TOBBIN
ARMIGER,**

**FINAL ORDER INCORPORATING
INFORMAL DISPOSITION**

Respondents.

On June 6, 2016, the Commissioner of the Bureau of Labor and Industries (“Commissioner” or the “Agency”) issued a Notice of Intent (“NOI”) against Armiger Acoustical & Drywall, Inc. and Michael Armiger Aka Michael Tobbin Armiger (“Respondents”).

The NOI assessed civil penalties against Respondent Armiger Acoustical & Drywall, Inc. in the amount of \$39,000.00 for violations of Oregon’s prevailing wage rate laws; specifically, ORS 279C.840(1) and OAR 839-025-0040 pertaining to the payment of the prevailing rate of wage on a public works; ORS 279C.840, ORS 279C.540, and OAR 839-025-0050 pertaining to the failure to pay overtime on a public works; ORS 279C.845(3) and OAR 839-025-0010(1) pertaining to filing accurate and incomplete certified statements; and ORS 279C.840(4) and OAR 839-025-0033(1) pertaining to prevailing wage rate posting requirements.

1 The NOI also sought to place both Respondents on the list of contractors
2 ineligible to receive any contract or subcontract for public works for a period of three (3)
3 years from the date of publication of its name on the ineligible list pursuant to ORS
4 279C.860 and OAR 839-025-0085. The name of any firm, corporation, partnership or
5 association in which Respondents have a financial interest would also be published on
6 the list of persons ineligible to receive such contracts or subcontracts.

7 Respondents were duly served with the NOI, along with information about the
8 contested case process. Respondents timely submitted an answer and request for
9 hearing and the case was set for hearing. On March 20, 2017, the Agency filed fully-
10 executed settlement papers ("Agreed Settlement") that fully resolved the issues in this
11 case.

12 By signing the Agreed Settlement, the participants waived their rights to a
13 contested case hearing. This Final Order is not subject to ORS 183.470, is not subject
14 to judicial review under ORS 183.480, and may be set aside only as follows: "Within 60
15 days after such final order is issued, a participant may petition the agency to set aside
16 the order on the ground that the informal disposition was obtained by fraud or duress."
17 OAR 839-050-0220(9)(d).

18 The terms of the Agreed Settlement are hereby adopted by the Commissioner
19 and incorporated into this Final Order in their entirety. Under ORS 183.417(3),
20 Respondents and the Agency having fully executed the attached Agreed Settlement,
21 the hearing set for April 18, 2017, is canceled and the record of this matter is hereby
22 closed.

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**BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON**

In the Matter of:

Case No. 25-16

ARMIGER ACOUSTICAL & DRYWALL,
INC.

AGREED SETTLEMENT

And

MICHAEL ARMIGER AKA MICHAEL
TOBBIN ARMIGER,
Individually

Respondents

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I. RECITALS:

1. On June 6, 2016, the Commissioner of the Bureau of Labor and Industries ("Commissioner" or the "Agency") issued a Notice of Intent ("NOI") against Armiger Acoustical & Drywall, Inc. and Michael Armiger, aka Michael Tobbin Armiger ("Respondents").

2. The NOI assessed civil penalties against Respondent Armiger Acoustical & Drywall in the amount of \$39,000.00 for violations of prevailing wage rate laws; specifically, ORS 279C.840(1) and OAR 839-025-0040 pertaining to the payment of the prevailing rate of wage on a public works; ORS 279C.840, ORS 279C.540 and OAR 839-025-0050 pertaining to the failure to pay overtime on a public works; ORS 279C.845(3) and OAR 839-025-0010(1) pertaining to filing inaccurate and incomplete certified statements; and ORS 279C.840(4) and OAR 839-025-0033(1) pertaining to prevailing rate of wage posting requirements.

3. The NOI also sought to place both Respondents on the list of contractors ineligible to receive any contract or subcontract for public works for a period of three (3)

1 years from the date of publication of their names on the ineligible list pursuant to ORS
2 279C.860 and OAR 839-025-0085. The name of any firm, corporation, partnership or
3 association in which Respondents have a financial interest would also be published on
4 the list of persons ineligible to receive such contracts or subcontracts.

5 5. Respondents were duly served with the NOI, along with information about
6 the contested case process. Respondents timely submitted an answer and request for
7 hearing.

8 6. The matter was given the case number 25-16.

9 7. Pursuant to ORS 183.417(3), and Oregon Administrative Rule 839-050-
10 0220, the Agency and Respondents wish to compromise and settle this matter by the
11 terms contained in this Agreed settlement. Parties stipulate that this settlement
12 agreement is not an admission of liability.

13 **II. NOW, THEREFORE,** in consideration of the mutual covenants and agreements
14 contained herein, each of the parties hereto stipulates and agrees that:

15 1. Respondents waive any and all objections they may have as to the form,
16 manner, or sufficiency of service, and timeliness of the NOI.

17 2. By signing this Agreed settlement, Respondents waive their rights to a
18 hearing for the matters alleged in case number 25-16. This Agreed settlement, when
19 fully executed, will be incorporated into a Final Order Incorporating Informal Disposition
20 ("Final Order") by an administrative law judge.

21 3. The Final Order is not subject to ORS 183.470 or judicial review. Within
22 sixty (60) days of the issuance of the Final Order, any adversely affected or aggrieved
23 party may petition the Agency to have the Final Order set aside on the ground that it
24 was obtained by fraud or duress, as provided by OAR 839-050-0220(9)(d).
25

1 4. The parties waive any and all jurisdictional, procedural, and evidentiary
2 objections and agree that none of them are aware of any fraud or duress herein to date.

3 5. Respondent agrees to pay a total of \$24,164.39 (twenty ^{four} ~~three~~ thousand,
4 one hundred sixty four and 39/100 dollars) in liquidated damages to the Agency.
5 Payment will be made by check payable to BOLI. The check shall be delivered to the
6 Oregon Bureau of Labor and Industries, Fiscal Services, 800 NE Oregon St, Ste 1045,
7 Portland, Oregon 97232-2180. Payment must be received by 5:00 p.m., 30 days after
8 execution of this Agreed Settlement. If the 30th day falls on a weekend, holiday, or any
9 other day on which the Agency's offices are closed, the payment is due by 5:00 p.m. on
10 the following business day.
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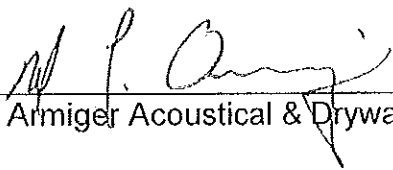
12 6. Time is of the essence with the payments described in paragraph II.5. If
13 Respondent fails to make a payment within 5 days of the due date as provided in
14 paragraph II.5, not only does Respondent agree to be bound by the terms of the
15 "Consent Order" filed on February 25, 2013, but the Agency may also immediately file
16 the Final Order in this matter as a judgment against Respondent for the full amount of
17 the assessed civil penalties and liquidated damages as stated in paragraphs I.2 and I.3
18 of this agreement, as well as less any payments made, plus interest from the date the
19 judgment is filed, and without necessity of a hearing.

20 7. Respondents agree to be placed on the list of contractors ineligible to
21 receive public works contracts, pursuant to ORS 279C.860, for one year starting on
22 June 1, 2017, and ending on May 31, 2018. The name of any firm, corporation,
23 partnership or association in which Respondents have a financial interest will also be
24 published on the list of persons ineligible to ever receive such contracts or subcontracts.
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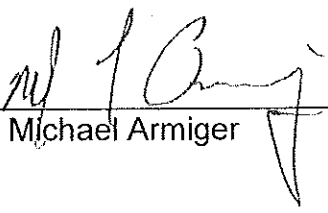
1 Respondents also agree to be placed on probation for a period of three years after the
2 initial year of placement on the debarment list.

3 8. Based upon Respondent's full compliance with this Agreed settlement, the
4 Agency agrees to forego any further or additional action in this matter based on the
5 violations alleged in Charges.

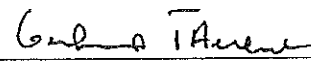
6 9. The Agreed settlement may be executed in counterpart, each of which
7 shall be deemed an original, and all of which, taken together, shall constitute one and
8 the same instrument. In addition, the Agreed settlement may be executed and
9 transmitted via email or facsimile device, which transmission shall be as valid and
10 enforceable as an original.

11
12 By: 
13 Armiger Acoustical & Drywall, Inc.

Date: 3/15/17

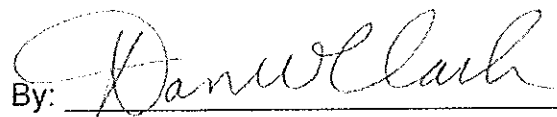
14
15 By: 
16 Michael Armiger

Date: 3/15/17

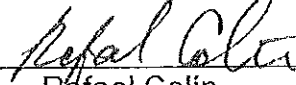
17
18 By: 
19 Gerhard Taeubel, Administrator
20 Wage and Hour Division

Date: 3-20-17

21 APPROVED AS TO FORM AND CONTENT

22 By: 
23 Dan W. Clark
24 Attorney for Respondents

Date: 3/15/17

25 By: 
Rafael Colín
Administrative Prosecutor

Date: 3/20/2017

BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I SERVED A COPY OF THE ATTACHED:

FINAL ORDER INCORPORATING INFORMAL DISPOSITION

In the Matter of:

ARMIGER ACOUSTICAL AND DRYWALL, INC.,
HU#25-16

BY HAND DELIVERING OR PLACING IT IN INTERNAL STATE MAIL SERVICES TO EACH PERSON AT THE ADDRESS LISTED BELOW:

.....

Rafael Colin Administrative Prosecutor Bureau of Labor and Industries 1045 State Office Building 800 NE Oregon Street Portland, OR 97232	Judgment Unit Bureau of Labor and Industries 1045 State Office Building 800 NE Oregon Street Portland, OR 97232	Gerhard Taeubel, Administrator Wage and Hour Division Bureau of Labor and Industries 1045 State Office Building 800 NE Oregon Street Portland, OR 97232
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AND BY PREPARING AND PLACING IT IN THE OUTGOING BUREAU OF LABOR AND INDUSTRIES MAIL TO EACH PERSON OR ENTITY AT THE ADDRESSES LISTED BELOW:

Dan W. Clark
Cole Coalwell Clark, et al
P.O. Box 1205
Roseburg, OR 97470-0303

via Regular Mail

On Thursday, March 30, 2017.



Diane M. Anicker, Contested Case Coordinator, Bureau of Labor and Industries, 971-673-0865