



**New Jersey Department of Labor
and Workforce Development,**
Petitioner,

**STATE OF NEW JERSEY
DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT**

v.

**American Asphalt & Milling
Services, LLC, Hugo Patricio
Ortiz and Monica Zaruma,**
Respondents.

**FINAL ADMINISTRATIVE ACTION
OF THE
COMMISSIONER**

**OAL DKT. NOS (CONSOLIDATED)
LID 01024-22
LID 01025-22
LID 03167-22**

**AGENCY DKT. NOS PC-55-0219-MOR
PC-149-0422-LIP**

Issued: June 5, 2023

By agreement, dated February 12, 2021, the New Jersey Department of Labor and Workforce Development (the Department or petitioner) settled a then pending assessment and related debarment action against American Asphalt & Milling Services, LLC, Hugo Patricio Ortiz, and Monica Zaruma (American Asphalt or respondents). The assessment was for unpaid wages in the amount of \$20,003.12, an administrative penalty in the amount of \$11,000.00 and an administrative fee in the amount of \$2,000.31. Within the settlement agreement, it stated that, as of February 12, 2021, American Asphalt had remitted to the Department the full amounts due for unpaid wages and the administrative fee. As to the administrative penalty, American Asphalt agreed to pay the \$11,000.00 due in six installments, beginning March 15, 2021, and ending August 15, 2021. In turn, the Department withdrew the debarment action against respondents, provided American Asphalt agreed to “a voluntary prohibition from public works projects for a period of six

months, effective May 1, 2021, through October 31, 2021.” The agreement specified that this meant American Asphalt would be prohibited from bidding on or engaging in public work for the entire period from May 1, 2021, through October 31, 2021.

American Asphalt did ultimately pay the \$11,000.00 administrative penalty through the agreed upon six-month installment arrangement. However, the Department discovered that respondents had breached the February 12, 2021, settlement agreement when it repeatedly bid on public work during the period of prohibition from May 1, 2021, through October 31, 2021. This discovery prompted the Department to serve separate notices on respondents seeking the following:

(1) Debarment, pursuant to N.J.S.A. 34:11-56.37, on the basis of the violations that had given rise to the earlier assessment and debarment action; that is, the violations that had resulted in the now breached settlement agreement. Specifically, the violations listed in the debarment notice were (a) unpaid wages/late payment (N.J.S.A. 34:11-4.2), (b) failure to pay prevailing wage (N.J.S.A. 34:11-56.27), (c) records – inaccurate certified payroll (N.J.S.A. 34:11-56.29 and N.J.A.C. 12:60-2.1), and (d) obstruction/hindering (N.J.S.A. 34:11-56.35);

(2) Suspension pending debarment, pursuant to N.J.A.C. 12:60-7.3(d), on the basis of aggravating factors, including respondents’ breach of the February 12, 2021, settlement agreement;

(3) Revocation of American Asphalt’s public works contractor registration certificate, pursuant to N.J.S.A. 34:11-56.56 and N.J.A.C. 12:62-2.4, on the basis that American Asphalt had bid on public work during the period from May 1, 2021 through October 31, 2021 while they were prohibited from doing so, in violation of the February 12, 2021 settlement agreement; and

(4) Immediate suspension of the public works contractor registration certificate of America Asphalt pending revocation of that certificate, also on the basis that American Asphalt had bid on public work during the period from May 1, 2021 through October 31, 2021 while they were prohibited from doing so, in violation of the February 12, 2021 settlement agreement.

Respondents requested a hearing with regard to the debarment; the suspension pending debarment; the revocation of the public works contractor registration certificate; and the suspension of the public works contractor registration certificate pending revocation. The matters were transmitted to the Office of Administrative Law (OAL), where they were consolidated for hearing before Administrative Law Judge (ALJ) Thomas R. Betancourt.

Following the hearing, the ALJ concluded that respondents had violated the settlement agreement by bidding on seven public works projects with the following public bodies during the period from May 1, 2021 through October 31, 2021: Cranford;

Hawthorne (2); Jefferson; Perth Amboy; Scotch Plains; and Teaneck. The ALJ concluded that these actions by respondents had been in clear violation of the law. He added as to the seriousness of the violations, that “no sooner had the ink dried on the settlement agreement” than American Asphalt began bidding on and signing contracts for public works, illustrating that respondents never had any intention of complying with agreement. The ALJ concluded that the appropriate sanctions for respondents on the basis of these violations were debarment for three years pursuant to N.J.S.A. 34:11-56.37 and 56.38, and revocation of the contractor registration certificate for five years pursuant to N.J.S.A. 34:11-56.56 and N.J.A.C. 12:62-2.4.¹ Although a revocation in some cases may be imposed for less than five years, the ALJ found no facts that would warrant a revocation time-period of less than five years. Exceptions to the Initial Decision were filed by respondents. Petitioner filed a reply.

In their exceptions, respondents argue exclusively that the ALJ did not “take into account” the fact that respondents were suspended from public contracting for over one year and four months before the ALJ imposed “maximum” sanctions of three years for debarment and five years for revocation. They maintain that the period of their immediate suspensions pending debarment/revocation combined with the periods of their debarment and revocation would exceed the statutory maximums for debarment (three years) and revocation (five years), which they claim would be “unfair.” Respondents assert that they have already been substantially harmed from loss of business, and that they did adhere to the “most important part” of the settlement agreement which in their view was paying the wages, administrative fee and administrative penalty to the Department.

In its reply to respondents’ exceptions, petitioner notes that respondents do not contest the merits of the debarment or revocation, but only assert that the periods of debarment and revocation should relate back to September 3, 2021, when respondents were suspended pending debarment; and back to March 22, 2022 when respondents were suspended pending revocation. Petitioner argues there is no legal authority for application of elapsed suspension time toward the prospective period of debarment or revocation. Petitioner maintains that both the debarment and revocation “should commence upon the filing of the Department’s final agency decision.”

¹ In the ALJ’s Initial Decision, he did not address the violations that had been the basis for the Department’s debarment; namely, unpaid wages/late payment (N.J.S.A. 34:11-4.2), failure to pay prevailing wage (N.J.S.A. 34:11-56.27), records – inaccurate certified payroll (N.J.S.A. 34:11-56.29 and N.J.A.C. 12:60-2.1), and obstruction/hindering (N.J.S.A. 34:11-56.35), choosing instead to focus exclusively on respondents’ breach of the settlement agreement as the basis for all of the sanctions imposed by the Department on respondents, including debarment. However, in my view, and presumably in the view of the ALJ, no dispute of material fact existed regarding those violations, since respondents had already paid the full amounts due in unpaid wages, administrative fee, and administrative penalties. Thus, respondents had essentially conceded that the assessments were justified and that the underlying violations upon which both the assessments and the debarment were based had, in fact, occurred.

CONCLUSION

An agency head need not defer to the findings of an ALJ. In re Kallen, 92 N.J. 14, 20 (1983). Indeed, he need not adopt any of the findings reached by an ALJ in his Initial Decision. Application of the County of Bergen, 268 N.J. Super. 403, 414 (App. Div. 1993). However, the agency head may not ignore an ALJ's abundantly supported conclusions. P.F. v. New Jersey Division of Disability, 139 N.J. 522, 530 (1995); Department of Health v. Tegnaxzian, 194 N.J. Super. 435, 450 (App. Div. 1984). Rather, where there is substantial evidence on all sides of the issues addressed, no findings made or conclusions reached that are based on that evidence and are otherwise within the ALJ's discretionary authority will be seen to be arbitrary, capricious or unreasonable. Application of the County of Bergen, *supra*, at 411; Application of N.J. Bell Telephone Co., 219 N.J. Super. 77, 89 (App. Div. 1996).

In the present case, the ALJ has produced a convincing decision as to the debarment and revocation wherein the credibility of each witness and the nature and quality of the evidence presented at the OAL hearing was carefully weighed. I will, therefore, accord to the ALJ the deference due him as the trier of fact and the person who directly observed the witnesses, their demeanor and deportment, as well as the quality of their individual testimony and evidence produced in support of their testimony. In addition, having considered the ALJ's Initial Decision, as well as the exceptions filed by respondents and petitioner's reply to respondents' exceptions, and having conducted an independent evaluation of the record, I hereby accept the ALJ's findings of fact and conclusions of law as well as his recommendation that respondents be debarred for three years and have their contractor registration certificate revoked for five years.

Debarment is for an inalterable period of three years. Although revocation may be for less than five years, if a lesser time is warranted, nothing in the ALJ's view justified a revocation of less than five years in this case based upon the conduct of respondents in immediately and repeatedly violating and undermining the February 12, 2021, settlement agreement. Contrary to respondents' argument in their exceptions, respondents having paid the wages, administrative fee and administrative penalty due under the settlement agreement does not excuse respondents' flagrant disregard of the other agreed upon provision, which was a prohibition from "bidding on or engaging in public work" for the period from May 1, 2021 through October 31, 2021.

In addition, although the ALJ neither reached a conclusion, nor made a recommendation, with specific regard to the immediate suspensions pending debarment and revocation, each of which was also appealed by respondents, I find that there is more than sufficient evidence in the record to support both immediate suspensions. That is, respondents' breach of the settlement agreement was not a mistake; it was not inadvertent. Rather, as noted by the ALJ and as mentioned above, almost immediately upon signing the February 12, 2021, settlement agreement and throughout the entirety of the six-month period during which respondents had agreed to neither bid on, nor engage in public work, respondents, in fact, **did on seven separate occasions** bid on public

work. In several of those instances, the record reflects that respondents were also awarded contracts for the performance of public work. That is, respondents were awarded contracts on the Cranford, Jefferson, and Perth Amboy public work projects. Consequently, respondents' violation of the February 12, 2021, settlement agreement not only undermined the Department's enforcement authority under both the New Jersey Prevailing Wage Act and the New Jersey Contractor Registration Act, but also adversely impacted law-abiding contractors who might otherwise have successfully bid on the Cranford, Jefferson and Perth Amboy projects. These are precisely the types of aggravating factors that justify the sanction of immediate suspension pending debarment and immediate suspension pending revocation.

The time periods for debarment and revocation shall commence today, on the date that I issue this final administrative action. The administrative case was not finalized until this point in time, and there is no statutory or regulatory authority for commencing either the debarment or the revocation earlier while the administrative case was still ongoing. Furthermore, neither the period of debarment, nor the period of revocation, will be reduced by the period of respondents' suspension pending debarment or respondents' suspension pending revocation.

ORDER

Therefore, it is ordered that respondents' suspension pending debarment and suspension pending revocation are affirmed, that respondents be placed on the debarment list for a period of three years, and that respondents' public works contractor registration certificate be revoked for the maximum period of five years.

This is the final administrative decision in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY
THE COMMISSIONER, DEPARTMENT
OF LABOR AND WORKFORCE DEVELOPMENT



Robert Asaro-Angelo, Commissioner
Department of Labor and Workforce Development

Inquiries & Correspondence:

David Fish, Executive Director
Legal and Regulatory Services
Department of Labor and Workforce Development
PO Box 110 – 13th Floor
Trenton, New Jersey 08625-0110