



STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

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Transaction ID 60468027  
Case No. OSH 2017-02

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS

Complainant,

and

SUPERIOR DRYWALL SERVICE, INC.,

Respondent.

CASE NO. OSH 2017-02

ORDER NO. 899

ORDER REMANDING CASE FOR  
FURTHER INVESTIGATION

**ORDER REMANDING FOR FURTHER INVESTIGATION**

On February 16, 2017, the HAWAII LABOR RELATIONS BOARD (Board) issued a Notice of Intent to Dismiss (Notice) the above-captioned matter. A hearing for oral arguments was scheduled for March 3, 2017 at 9:00 a.m. in the Board's hearing room. A deadline of February 28, 2017 at 4:30 p.m. was set for the filing of a response to this Notice.

On February 27, 2017, SUPERIOR DRYWALL SERVICE, INC. (Respondent), by and through Mrs. Stephanie Lee (Mrs. Lee), filed with the Board a letter signed by Mrs. Lee and sent to the DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, (Complainant), dated February 23, 2017, declaring, *inter alia*, the following:

We would like to let you know that the citation has been written to the wrong Contractor Superior Drywall Service Inc.

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On 2/9/17, I, Stephanie Lee called Amy Chan to inform her regarding this matter. I have stated that the 'worker' who has received the citation do [sic] work for us, but not for us at time of issued citation on job site Holua Kai and that they were working for some other contractor.

On 2/9/17, Jason Lee with Superior Drywall Service spoke with Project Manager John Mucclloh for Holua Kai Project. Mr. Mucclloh informed Mr. Lee that he has spoken with someone with the Dept. of Labor who has called him regarding this matter and informed Mr. Lee that he stated Superior Drywall Service is not the contractor for Holua Kai Project.

On March 1, 2017, Respondent filed Complainant Director of Labor and Industrial Relations' Motion to Dismiss Respondent Superior Drywall Service, LLC's Contest (Motion to Dismiss), which states, *inter alia*,:

Respondent's argument that the wrong contractor was cited is immaterial, as the Board does not have jurisdiction to hear the case. Nonetheless, it should be pointed out that HIOSH Inspector Charles Clark conducted an opening conference, inspection walk around, and closing conference with a Superior Drywall representative. During the inspection, HIOSH Inspector Clark observed a different individual who was hanging drywall and he identified himself as a Superior Drywall employee. Further, during the inspection, the general contractor of the work site identified Superior Drywall as the drywall contractor and stated that the employees present who were hanging drywall were Superior Drywall employees. Also, HIOSH Inspector Clark was informed that Respondent, Jason Lee, is frequently at the work site to supervise his employees. Given these facts, Superior Drywall was the proper employer cited.

On March 3, 2017 at 9:00 a.m. the Board heard oral arguments on the Board's Notice. Complainant was represented by counsel, Amy Chan, Deputy Attorney General, and Respondent was represented by Mrs. Lee. At the hearing, Respondent raised the issue that on the citation's inspection day, Respondent was not the employer performing the work and the employees who were interviewed were not employed by Respondent. Respondent stated that she would obtain a statement from the two employees interviewed by the Hawaii Occupational Safety and Health Division of the Department of Labor and Industrial Relation. (HIOSH) supporting her argument.

After reviewing the complete record, the HIOSH investigative file, and the parties' oral arguments, the Board finds that the issue of whether Respondent was the controlling employer and liable for the citations issued by the HIOSH inspector on the inspection date is a subject of new evidence and further investigation is needed to verify that the proper employer was cited.

Therefore, IT IS HEREBY ORDERED that the instant case be remanded to HIOSH to establish an investigative record validating that Respondent was the controlling employer who provided the materials, supervised the employees and is liable for the issued citations. Further, Respondent shall submit to the Complainant evidence or declarations that confirm that Respondent was not the controlling employer over the employees responsible for the HIOSH violation that is set forth in the complaint issued on November 4, 2016, Inspection No. 1184841, OSHCO ID—X8851. Further, Complainant's Motion to Dismiss and the Notice of Intent to Dismiss are held in abeyance pending the completion of the additional investigation and its submission to the Board. Further hearings on these matters shall be subject to future Notice and scheduling by the Board.

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Any party may retain counsel if the party so desires, and an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.

As part of the Board's paperless goal, any party may e-file any document with the Board's e-filing service\* or any party may file an original of any document at the Board's office at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813.

**NOTICE REGARDING PROTECTION OF  
SOCIAL SECURITY NUMBERS AND PERSONAL INFORMATION**

Before the parties file/submit any pleadings, correspondence or other documents (Documents) to the Board (whether electronically or manually), it is the submitting party's responsibility to make certain that all social security numbers and personal information are redacted or encrypted. To maintain the integrity of its records and files (especially in the event of an agency appeal), the Board will not redact or encrypt or otherwise modify such Documents once filed or submitted.

DATED: Honolulu, Hawaii, April 12, 2017.

HAWAII LABOR RELATIONS BOARD



*Sesnita A. D. Moepono*  
SESNITA A.D. MOEPONO, Member

*J. N. Musto*  
J. N. MUSTO, Member

Copies sent to  
Amy Chan, Deputy Attorney General  
Mrs. Stephanie Lee

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