

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into among the Commonwealth of Massachusetts (the “Commonwealth”), by and through the Office of Attorney General Andrea Joy Campbell (the “AGO”), and Defendants Avatar Construction Corp. (“Avatar”) and Nazar Vincent (collectively the “Defendants”), each through their authorized representatives. The foregoing parties are hereinafter collectively referred to as the “Parties.”

PREAMBLE

WHEREAS, the Commonwealth conducted an investigation in the public interest and, on March 14, 2023, filed a civil action against Defendants (the “Complaint”) in Suffolk County Superior Court, alleging that Defendants, licensed public contracting company Avatar Construction Corp. and its owner, Nazar Vincent, violated the Massachusetts False Claims Act (M.G.L. c. 12, § 5B(a)(1) and (2)), by knowingly causing and/or making false claims for payment when they: (1) endorsed and submitted 66 false payroll records prepared by a subcontractor on five different public construction projects in the Commonwealth; and (2) obscured the underpayment of workers on those five different public construction projects by Avatar’s subcontractor, in violation of the Massachusetts Prevailing Wage Act (G.L. c. 149 § 26).

WHEREAS, Defendants neither admit nor deny the allegations made by the Commonwealth but nevertheless agree to enter into this Settlement Agreement to avoid the expense and uncertainty of litigation and to make the affected workers whole.

NOW THEREFORE, in consideration of the mutual promises and obligations of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to fully and finally settle all claims, allegations, and causes of action raised in the Complaint pursuant to the terms and conditions below:

BACKGROUND

1. Defendant Avatar is a Massachusetts corporation with a principal place of business in Waltham, Massachusetts.
2. Defendant Nazar Vincent owns and operates Avatar and resides at

in Arlington, MA 02474.

3. In 2020, Avatar acted as prime contractor on five public construction projects (collectively, the “Projects”) awarded by four different Massachusetts political subdivisions (collectively, the “Political Subdivisions”) including the Cities of Watertown, Cambridge, and Lawrence and the Town of Stoughton.

4. Each of the Projects required that Avatar pay its employees the prevailing wage rate set by the Department of Labor Standards.

5. Pursuant to contracts and Massachusetts prevailing wage laws, Avatar was required to submit weekly payroll reports (“Certified Payroll Reports”) to each awarding Political Subdivision to certify that Avatar paid its workers the required prevailing wage.

6. Avatar subcontracted labor for the Projects to third-party Gonza Construction, Inc. (“Gonza”) who also prepared the corresponding Certified Payroll Reports.

7. Based on its investigation, the AGO alleged in its Complaint that, at all times on The Projects, the Defendants knowingly submitted the Gonza Certified Payroll Reports to the Political Subdivisions that misrepresented hourly wages paid to those workers.

8. Based on its investigation, the AGO alleged that, at all times on the Projects, Gonza paid workers a rate far below the requisite prevailing wage and falsified the wage information reported on the Gonza Certified Payroll Reports.

9. Based on its investigation, the AGO alleged that Avatar failed to make a minimal inspection of the fraudulent Gonza Certified Payroll Reports before submitting them to the Political Subdivisions as support for payment requests in violation of G.L. c. 12 § 5B.

TERMS AND CONDITIONS

Payment of the Settlement Amount

13. Defendants agree to pay to the AGO a total of \$320,000 (the "Settlement Amount") to be paid within ten days of the execution of this Agreement.

14. Defendants shall pay the Settlement Amount by wire transfer in accordance with wiring instructions provided by the AGO.

15. The Settlement Amount comprises all damages and penalties, as well as all of the AGO's attorney's fees and costs, attributable to the claims released herein.

16. The Defendants agree that they will not claim, assert, or apply for a tax deduction or tax credit on any State, Commonwealth of Massachusetts or City tax return respecting any portion of the Settlement Amount.

The Commonwealth's Release of the Defendants

17. In consideration of the obligations of the Defendants set forth in this Agreement, conditioned upon the full payment by Defendants of the Settlement Amount, and except to enforce the obligations set forth in this Agreement, the Commonwealth, together with its agencies, officers, employees, servants, attorneys, agents, and the Political Subdivisions, fully and finally release the Defendants, together with their current and former owners, officers, directors, agents, employees and affiliates, and the successors and assigns of any of them, from all allegations which the Commonwealth has set forth in the Complaint or arise from the facts alleged in the Complaint and from the Commonwealth's investigations and prosecution thereof .

The Defendants' Release of the Commonwealth

18. The Defendants, together with their current and former owners, officers, directors, members, agents, employees and affiliates and the successors and assigns of any of them, fully and finally release the Commonwealth, its Political Subdivisions, agencies, officers, employees, servants, attorneys and agents, including specifically the AGO, from any existing civil and

administrative claims, known and unknown, as of the Effective Date, which the Defendants have asserted, could have asserted, or may assert against the Commonwealth, its Political Subdivisions, agencies, officers, employees, servants, attorneys, agents and assigns arising from the allegations of the Complaint and from the Commonwealth's investigations and prosecution thereof.

Stipulation of Dismissal

19. In consideration of the obligations of the Defendants as set forth in this Agreement and subject to the exceptions set forth in this Agreement, within seven (7) days after the payment of the Settlement Amount, the AGO file a Stipulation of Dismissal dismissing with prejudice the Complaint.

ADDITIONAL TERMS

General Terms

20. Each party represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly and fully approved, and that execution of this Agreement by the undersigned counsel, and any other signatories on behalf of the persons and entities appearing on their respective signature pages, is duly and fully authorized.

21. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

22. This Agreement is not intended for use by any third party in any other proceeding, nor shall it create any rights on the part of any third party.

23. This Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any Party that may be found to have been the drafter.

24. This Agreement constitutes the complete agreement between and among the Parties concerning resolution of the Complaint and may not be amended except by an instrument in writing signed on behalf of all the Parties to this Agreement. No promises, representations, or warranties other than those set forth in this Agreement have been made by any of the Parties. This Agreement supersedes all prior communications, discussions, or undertakings, if any, of the Parties, whether made orally or in writing.

25. Consent to this Agreement does not constitute an approval by the Commonwealth of any of the Defendants' business acts and practices, and the Defendants shall make no representations to the contrary.

26. The Defendants acknowledge that they were represented by Joseph Brodigan, Jr., Esquire, with whom they have consulted concerning this Agreement.

27. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective successors and assigns, provided that the Defendants may not assign, delegate or otherwise transfer any of their rights or obligations under this Agreement without the prior written consent of the Commonwealth.

28. Nothing contained herein shall be construed at any time in the future as an admission of liability on the part of any Party of any facts or allegations. The Parties agree this Agreement and its terms shall not be admissible in any court for any purpose, except to enforce this Agreement.

29. In the event that any one or more of the provisions contained in this Agreement, other than provisions concerning payment and release, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

30. All communications from any Party concerning the subject matter of this Agreement shall be addressed as follows:

The Commonwealth: Jeff Walker
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
jeffrey.walker@mass.gov

The Defendants: Joseph Brodigan Jr.
Brodigan & Gardiner
40 Broad St. #220
Boston, MA 02109
jbrodiganjr@brodiganlaw.com

31. All communications from any Party to another Party concerning this Agreement shall be sent by either: 1) United States mail with a return receipt requested or 2) overnight delivery service with a signature required, and addressed to the signatory counsel for each Party, unless such communications are sent by email and a reply is written without written objection to the electronic means of communication.

32. All headings, titles and subtitles contained in this Agreement are solely for the purpose of reference, are not part of this agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

33. This Agreement is effective on the date of signature of the last signatory of the Agreement (the "Effective Date"). Scans and PDFs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

34. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
ATTORNEY GENERAL


Date: Oct. 17, 2024

Jeffrey Walker BBO # 673328
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jeffrey.walker@mass.gov

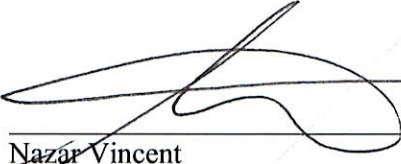
DEFENDANTS AVATAR CONSTRUCTION, CORP. AND NAZAR VINCENT

Avatar Construction Corp.

Date: 10-17-24


Name: NAZAR VINCENT
Title: President

Date: 10-17-24


Nazar Vincent