

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
C.A. NO. 09-1181COMMONWEALTH OF
MASSACHUSETTS ex. rel.
LARRY COLE,

Plaintiff

v.

PETRICCA INDUSTRIES, INC.,
PETRICCA CONSTRUCTION CO.,
PERRI PETRICCA, ROBERT PETRICCA,
and BRUCE MILLER,

Defendants.

HAMPDEN COUNTY
SUPERIOR COURT
FILED

NOV 10 2014


CLERK OF COURTS

FINAL JUDGMENT BY CONSENT AS TO DEFENDANTS
PETRICCA CONSTRUCTION CO., PETRICCA INDUSTRIES, INC.,
PERRI PETRICCA, AND ROBERT PETRICCA

WHEREAS, Plaintiff, the Commonwealth of Massachusetts, by and through its Attorney General Martha Coakley ("the Commonwealth"), and Defendants Petricca Construction Co. ("PCC"), Petricca Industries, Inc. ("PII"), Perri Petricca, and Robert Petricca (collectively the "Defendants") consent to the entry of this Final Judgment by Consent ("Consent Judgment") and its provisions without trial or adjudication, to resolve the Commonwealth's Second Amended Complaint in the above-captioned case.

WHEREAS, Relator Larry Cole ("Cole" or "Relator") filed this *qui tam* action in Hampden County Superior Court on December 10, 2009, pursuant to the Massachusetts False Claims Act, G.L. c. 12 § 5A *et seq.* ("MFCA"), alleging PCC submitted false claims for payment in connection with multiple public construction projects on which it acted as the general

contractor. Cole alleged PCC engaged in an ongoing scheme to avoid compliance with contractual provisions requiring it make a good faith effort to employ Minority-owned, Woman-owned, or Disadvantaged Business Entities (collectively "M/WBE"s) for specific percentages of subcontract work.

WHEREAS, after investigating Relator's allegations, the Commonwealth intervened as plaintiff on October 5, 2010 and filed a Second Amended Complaint ("SAC") on July 22, 2011 alleging the Defendants violated the MFCA by making false claims relating to M/WBE participation and/or compliance in connection with nine public construction projects ("the Projects");

WHEREAS, the Defendants denied the allegations in their answer to the SAC and throughout the litigation of the action, and asserted various defenses, including, but not limited to, that PII had not executed any of the contracts at issue and there was no basis to pierce the corporate veil and hold PII liable for any actions of PCC;

WHEREAS, without making any admissions of wrongdoing and continuing to deny liability, Defendants acknowledge this Court has subject matter jurisdiction over this case and personal jurisdiction over them, and consent to the entry of this Consent Judgment in the above-captioned case to fully and finally resolve the allegations raised in the SAC;

WHEREAS, the Commonwealth and the Defendants (collectively, the "Parties") agree there is no just reason for delay, and that the Court's execution of this Consent Judgment constitutes an entry of a final judgment as to each of the Defendants.

NOW, THEREFORE, it is ADJUDGED, ORDERED, and DECREED:

1. Parties subject to Consent Judgment. This Consent Judgment, which constitutes a continuing obligation, is binding upon the Defendants.

2. Jurisdiction. This Court has jurisdiction over the persons and subject matter of this action pursuant to G.L. c. 12, §§ 5C & 10 and G.L. c. 223A, § 3.

3. Venue. Venue is proper in Hampden County pursuant to G.L. c. 12, § 5C and G.L. c. 223, § 5.

4. Definitions. For purposes of this Consent Judgment, the term "Contract" shall mean any Contract between one or more of the Defendants and a "political subdivision" as that term is defined in G.L. c. 12, § 5A.

5. Injunctive Relief. The following permanent injunction shall be binding upon Defendants and those otherwise bound pursuant to Mass. R. Civ. P. 65(d):

a. In connection with any current and future Contracts signed by a corporate defendant, or an individual defendant (on his own behalf or on behalf of any entity), such signatory defendant shall:

i. comply with applicable statutory, regulatory and contractual provisions governing M/WBE participation including, without limitation, provisions concerning:

1. waiver, reduction, or adjustment of M/WBE participation goals;
2. notification of changes in M/WBE work; and
3. the amount of M/WBE participation credit that can properly be claimed for equipment or materials supplied but not installed by an M/WBE.

ii. maintain records identifying whether and to what extent all payment-related requests and submissions to political subdivisions relate to M/WBE work.

- b. With respect to paragraph 5(a)(i)(3) herein, written pre-approval from the applicable political subdivision's Affirmative Marketing Construction Officer and/or Contract Compliance Office and/or similarly designated individual/s that M/WBE credit can properly be claimed for a particular M/WBE shall support a rebuttable presumption of Defendants' compliance with the terms of this Consent Judgment.

6. Notice of Final Judgment. Upon entry of this Consent Judgment, the Defendants shall provide a copy of this Consent Judgment to their officers, directors, supervisors, and managers, as well as any other employees who are responsible for signing Contract-related submissions concerning M/WBE participation and/or compliance. The Defendants shall provide the Commonwealth with signed acknowledgements of receipt from all such officers, directors, supervisors, managers and employees within 30 business days of entry of the Consent Judgment.

7. Monetary Relief. Upon entry of this Consent Judgment, Defendant Petricca Construction Company ("PCC") shall pay the following amounts:

- a. To the Commonwealth, a \$120,000 payment (the "Settlement Amount") to be allocated as follows:
- i. A 16.5% share (or \$19,800) shall be paid to Relator, pursuant to G.L. c. 12, § 5F(1); and
 - ii. The remaining balance (\$100,200) shall be paid to the Attorney General to be allocated in her sole discretion, pursuant to G.L. c. 12, § 5B, consistent with the MFCA.

b. To Relator's counsel, a \$2,500 payment, pursuant to G.L. c. 12, §§ 5F(3) and 5H(2). Amounts paid to Relator and Relator's counsel pursuant to this Paragraph shall be the exclusive recovery paid to Relator and Relator's counsel in this proceeding.

8. Method of Payment. PCC shall pay the Settlement Amount by certified or bank check payable to the "Commonwealth of Massachusetts – Office of the Attorney General" and delivered to Gillian Feiner, Assistant Attorney General, Consumer Protection Division, Office of the Attorney General, One Ashburton Place, Boston, MA 02108 or by wire transfer according to wiring instructions to be provided by the Commonwealth at PCC's request. PCC shall pay the amount due pursuant to paragraph 7(b) directly to Relator's counsel after the Defendants receive a release from Relator and Relator's counsel pursuant to their separate agreement.

9. Notices. All notices and documents required by this Final Judgment shall be provided via first class mail and email to the parties as follows:

a. If to the Attorney General:

Gillian Feiner
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200 ext. 2571
gillian.feiner@state.ma.us

b. If to Defendants Petricca Construction Co., Petricca Industries, Inc., Perri Petricca, Robert Petricca:

David Valicenti, Esq.
Cohen Kinne Valicenti & Cook LLP
28 North St.
Pittsfield, MA 01201
dvalicenti@cohenkinne.com

c. If to the Relator:

Carolyn Cole, Esq.
3212 Grant Street
McKinney, TX 75071
carolyncole@onlinetaxassociates.com

10. Release. This Consent Judgment fully and finally resolves and releases the Defendants from MFCA liability for civil penalties, damages, attorneys' fees and costs arising from the Projects identified in the SAC, including, but not limited to, the claims expressly raised therein

11. Waiver of Appeal and Findings and Rulings. The Defendants waive all rights of appeal, and also waive the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure. The Parties will not challenge or appeal the entry of the Consent Judgment, or the Court's jurisdiction to enter and enforce the Consent Judgment.

12. Continuing Jurisdiction. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of enforcing or modifying the terms of this Consent Judgment, or granting such further relief as the Court deems just and proper, and the provisions of this Consent Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

13. Ongoing Obligation to Comply with the Law. Consent to this Consent Judgment does not constitute an approval by the Commonwealth of the Defendants' business acts and practices, and the Defendants shall not make any representations to the contrary. Nothing in this Consent Judgment shall be construed as relieving the Defendants of their duty to comply with applicable federal, state, and local laws, regulations, rules, and permits or contractual obligations.

14. Failure to Comply with Consent Judgment. Nothing in this Consent Judgment shall preclude the Commonwealth from commencing an action to pursue any remedy or sanction that may be available to the Commonwealth upon its determination that the Defendants have failed to comply with any of the requirements of this Consent Judgment; provided, however, the Commonwealth will provide the Defendants ten (10) business days' written notice of its intent to

initiate an action pursuant to this Paragraph to afford Defendants a reasonable opportunity to provide the Commonwealth a good faith written response.

15. Complete Agreement. This Consent Judgment contains the complete agreement between the Commonwealth and the Defendants relating to the matters discussed herein. No promises, representations or warranties other than those set forth in this Consent Judgment have been made by any of the Parties. This Consent Judgment supersedes all prior communications, discussions, or understandings, if any, of the Parties, whether oral or in writing. This Consent Judgment supersedes all orders of this Court as to the Parties, which are hereby dissolved.

16. Severability. The provisions of this Consent Judgment shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Consent Judgment shall remain in full force and effect.

17. Modification. This Consent Judgment may not be changed, altered, or modified, except by further order of the Court.

18. Effective date. This Consent Judgment becomes effective upon entry by the Court, and all periods of time described herein commence as of that date.

APPROVED AND ORDERED:


Justice of the Superior Court

Dated: Nov. 10, 2014

COMMONWEALTH OF MASSACHUSETTS**HAMPDEN, ss.****SUPERIOR COURT
C.A. NO. 09-1181****COMMONWEALTH OF
MASSACHUSETTS ex. rel.
LARRY COLE,****Plaintiff****v.****PETRICCA INDUSTRIES, INC.,
PETRICCA CONSTRUCTION CO.,
PERRI PETRICCA, ROBERT PETRICCA,
and BRUCE MILLER,****Defendants.****HAMPDEN COUNTY
SUPERIOR COURT
FILED****NOV - 7 2014**
CLERK OF COURTS**CONSENT OF DEFENDANTS PETRICCA CONSTRUCTION CO., PETRICCA
INDUSTRIES, INC., PERRI PETRICCA, AND ROBERT PETRICCA
TO ENTRY OF FINAL JUDGMENT BY CONSENT**

1. Petricca Construction Co., Petricca Industries, Inc., Perri Petricca, Robert Petricca (collectively "Defendants") admit to the continuing jurisdiction and venue of the Superior Court, and hereby consent to the entry of the Consent Judgment in the form submitted herewith. In so consenting, the Defendants certify they have reviewed and understand each of the sections, paragraphs, and subparagraphs in the Consent Judgment.

2. The Defendants waive entry of the findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure and waive all rights of appeal.

3. The Defendants understand that any violation of this Final Judgment could result in a finding of contempt.

4. The Defendants acknowledge they are represented by David Valicenti, Esq., of Cohen Kline Valicenti & Cook LLP, with whom they have consulted concerning the proposed Consent Judgment.

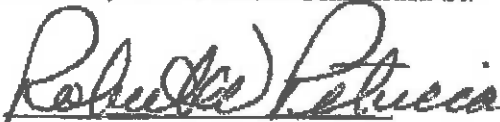
5. Defendant Perri Petricca agrees and acknowledges he is duly authorized to consent to entry of this Consent Judgment on behalf of defendants Petricca Industries, Inc. and Petricca Construction Co.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL:



Perri Petricca, Individually and on behalf of Petricca Industries, Inc. and Petricca Construction Co.

Dated: 11/4/14



Robert Petricca

Dated: 11/5/14