

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 18 April 2006**

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In the Matter of:

Disputes concerning the payment  
of prevailing wage rates by:

Case Number: 2004-DBA-00013

PEOPLE BUSINESS NETWORK, INC.  
Prime Contractor

With respect to laborers and  
mechanics employed by:

PEOPLE BUSINESS NETWORK, INC.  
Respondent

on Metropolitan Council contract  
number 01Po87P, Coon Rapids,  
Minnesota.

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**ORDER REINSTATING DEFAULT JUDGMENT**

This case arises under the Reorganization Plan No. 14 of 1950 (64 Stat. 1267), the Davis-Bacon Act (DBA), as amended, and the applicable regulations issued thereunder at 29 C.F.R. Part 5.

Background

By letter dated May 3, 2004, the Department of Labor (DOL) notified Respondent that it had breached a contract with the United States Government by violating the above-mentioned Acts and regulations. By letter dated June 1, 2004, Respondent filed a request for a hearing. DOL filed an "Order of Reference" in this Office on August 10, 2004. This Office issued a "Pre-Hearing Order" on August 25, 2004 which required DOL to furnish the Prime Contractor and any subcontractor certain information regarding this matter. After service of this information, Respondent had twenty days to file an answer admitting or denying the allegations. DOL filed the required information in this Office on September 14, 2004.

On November 8, 2004, this Office issued an "Order to Respondent to Show Cause" why a default judgment should not be entered in this case for failure to comply with the "Pre-Hearing Order." On January 31, 2005, DOL filed a "Motion for Default

Judgment” in this Office. On March 22, 2005, this Office issued a “Decision and Order of Default Judgment” against Respondent for failure to respond to the Pre-Hearing Order or the Show Cause Order.

Thereafter, on December 29, 2005, Respondent filed a pleading titled “Administrators (sic) Motion for Objection to the Default Judgment,” which stated “I did not understand the nature of the pre-hearing statement. I would like to reopen case number 2004-DBA-00013.” On February 2, 2006, this Office issued an Order vacating the March 22, 2005 Decision and Order of Default Judgment and giving Respondent until February 28, 2006 to respond to the Pre-Hearing Order.

On February 16, 2006, DOL filed a “Motion for Reconsideration.” DOL filed a “Supplement to its Motion for Reconsideration” on February 27, 2006. DOL stated that Respondent did not respond to any orders prior to the Decision and Order of Default Judgment and did not timely file a petition for review of the Default Judgment pursuant to 29 CFR §6.34.

On February 23, 2006, Respondent filed an “Order to Show Cause/Counterclaim” as a response to the “Pre-Hearing Order.” On February 28, 2006, DOL filed a “Motion to Strike Respondent’s Order to Show Cause/Counterclaim.” Respondent filed an objection to DOL’s “Motion to Strike Show Cause Order/Counterclaim” on March 7, 2006. On March 16, 2006, Respondent filed an “Objection to Acting Administrator’s Motion for Reconsideration.” Finally, on March 28, 2006, the Acting Administrator filed a “Motion to Strike Respondent’s Objections to Acting Administrator’s Motion for Reconsideration and Respondent’s Admenda (sic) Order of Show Cause/Counterclaim.”

In his “Motion for Reconsideration,” the Acting Administrator notes that Respondent has been properly served with all notices and orders issued in this proceeding, including the August 25, 2004 Pre-Hearing Order and March 22, 2005 order of default judgment, yet failed to file any type of response until December 29, 2005, *after* withheld funds had been released in July 2005 to two employees in accordance with the default judgment order. Indeed, Respondent does not allege non-receipt of the notices and orders in this matter; she merely states that she did not understand the “nature of the pre-hearing statement.”

#### Discussion and conclusions

Based on documents filed by the parties, the undersigned Administrative Law Judge agrees with the position of the Acting Administrator that this Office is without authority to revisit this case. First, the regulatory provisions at 29 C.F.R. § 6.34 afforded Respondent 40 days from the date of the March 22, 2005 default judgment order to file an appeal with the Administrative Review Board (ARB) and Respondent failed to do so. Moreover, citing to *Thomas & Sons Building Contractors, Inc.*, ARB Case No. 98-164, 1996-DBA-33 (ARB, June 8, 2001), the Acting Administrator argues that a motion for reconsideration must be filed within a “reasonable time” and the ARB has held that five months after issuance of a judgment was too long to be deemed reasonable.

Importantly in this case, however, the regulations at 29 C.F.R. § 18.54 provide that “[o]nce the record has been closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record.”

Here, Respondent’s recent filings do not present “new and material evidence” that “was not readily available prior to the closing of the record.” In Respondent’s December 29, 2005 pleading titled “Motion for Objection to the Default Judgment,” Respondent merely stated that she “did not understand the nature of the pre-hearing statement.” Although the undersigned Administrative Law Judge sought to afford a *pro se* Respondent the benefit of the doubt, subsequent pleadings reveal that she is not entitled to a reopening of the record in this matter.

Respondent cites to her February 2006 “Order to Show Cause/Counterclaim” alleging that she obtained “new information” on January 4, 2006 that was not available prior to entry of default judgment in this case:

On January 4, 2006, I received package from City of Minneapolis attorney showing the payment of Samuel Richmond dated on April 14, 2003, for \$3,953.18 related to the right job Heritage Park project.

The Acting Administrator, however, asserts that Respondent is citing to payment for an unrelated matter. He attached evidence to his “Motion for Reconsideration” showing that the March 22, 2005 default judgment order resulted in the July 2005 disbursement of funds to two employees. One of the employees was Samuel Richmond who received \$3,013.79 in withheld funds. However, the Acting Administrator states that this payment of funds was for work performed on the Coons Rapids Project.

Further, in his March 28, 2006 Motion to Strike, the Acting Administrator correctly notes that Respondent submitted copies of checks dating from 2002 made payable to Samuel Richmond, which “do not constitute new evidence that would warrant reopening the case . . .” These checks were clearly in existence prior to entry of the March 2005 default judgment order. Moreover, the Acting Administrator properly notes that “[t]here is no evidence that the checks made out to Samuel Richmond were for work performed during the time period” that was at issue in this case.

Thus, Respondent’s submissions are untimely and present no new material evidence specifically related to this matter that was unavailable prior to entry of default judgment on March 22, 2005. Accordingly,

### **ORDER**

Respondent’s “Motion for Objection to the Default Judgment,” “Order to Show Cause/Counterclaim,” and “Objection to Acting Administrator’s Motion for Reconsideration” are **DENIED**. The Department of Labor’s “Motion for Reconsideration,” “Motion to Strike Respondent’s Order to Show Cause/Counterclaim,”

and “Motion to Strike Respondent’s Objections to Acting Administrator’s Motion for Reconsideration and Respondent’s Admenda (sic) Order of Show Cause/Counterclaim” are **GRANTED**. The March 22, 2005 “Decision and Order of Default Judgment” is **REINSTATED**.

**So ORDERED,**

**A**  
Thomas M. Burke  
Associate Chief Judge

TMB/lmr