



**In the Matter of:**

**INTERNATIONAL SERVICES,  
INCORPORATED AND OUSAMA  
KARAWIA,**

**ARB CASE NO. 05-136**

**ALJ CASE NO. 2003-SCA-018**

**RESPONDENTS.**

**DATE: December 21, 2007**

**In re Contract Nos. GS-02P-94-CID-0141  
and GS-02P-94-CID-0001 with the U. S. General  
Services Administration, covering upstate New York**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Administrator, Wage and Hour Division:*

**Barbara Eby Racine, Esq., Ford F. Newman, Esq., William C. Lesser, Esq.,  
Steven J. Mandel, Esq., Howard M. Radzely, Esq., Solicitor, U.S. Department of  
Labor, Washington, District of Columbia**

*For the Respondents:*

**Sam Zalman Gdanski, Esq., Suffern, New York**

**FINAL DECISION AND ORDER**

Federal service contractors who violate the McNamara-O'Hara Service Contract Act (SCA or the Act)<sup>1</sup> shall not be awarded federal contracts for three years unless they can prove "unusual circumstances."<sup>2</sup> A United States Department of Labor

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<sup>1</sup> 41 U.S.C.A. §§ 351-358 (West 1994).

<sup>2</sup> *Id.* at § 354(a).

Administrative Law Judge (ALJ) found that International Services, Inc. (ISI) and its President, Ousama Karawia, violated the Act and did not prove “unusual circumstances.” Since a preponderance of the evidence supports the ALJ’s findings, we order ISI and Karawia debarred.

## BACKGROUND

ISI is a corporation with its principal place of business in Torrance, California. It provides security guard services and has six thousand employees. Karawia is the President and Chief Executive Officer of ISI and is responsible for the company’s employment practices and management policies. Karawia’s authority includes negotiating government contracts, third-party contracts and collective bargaining agreements, signing payroll and non-payroll checks, interviewing and hiring job applicants, firing employees, supervising employees, and assigning work and job responsibilities.

The U.S. General Services Administration (GSA) awarded ISI Contract No. GS-02P-94-CID-0141 for security guard services covering GSA-controlled facilities in upstate New York from March 1, 1996, to March 31, 2002. The contract was subject to the SCA, which requires federal contractors to pay prevailing wages and fringe benefits that the Secretary of Labor predetermines or that a collective bargaining agreement specifies.<sup>3</sup> Contractors who violate the wage provisions of the statute are liable for any underpayments owed their employees.<sup>4</sup> During the course of this contract, the Wage and Hour Division, United States Department of Labor, received numerous complaints from ISI employees alleging that ISI had underpaid wages and fringe benefits on this and other federal contracts. The Wage and Hour Division investigated these complaints.

Thereafter, on March 15, 1999, Wage and Hour filed a complaint with the Labor Department against ISI and certain corporate officers, including Karawia, alleging violations of the SCA’s wage and fringe benefits provisions in connection with the 1996 GSA contract and other federal service contracts. The parties settled the matter and entered into a Consent Findings and Order (consent decree) on May 9, 2001. ISI, Karawia, and the other corporate officers agreed to the consent decree without admitting any violation of the SCA.

The consent decree required that ISI establish a wage and hour compliance program. The compliance program required (1) that Karawia meet with all contract employees and inform them of their rights under, inter alia, the SCA; (2) that ISI provide relevant written materials and a description of the compliance program to contract employees; (3) that ISI employ a full-time manager to serve as “ombudsman,” having the responsibility for receiving, investigating, documenting, and resolving wage and fringe

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<sup>3</sup> 41 U.S.C.A. § 351(a).

<sup>4</sup> *Id.* at § 352(a).

benefits complaints; and (4) that ISI obtain and act upon the advice of legal counsel in wage and hour matters.

Despite the compliance program, contract employees continued to complain to Wage and Hour that ISI did not pay them their prevailing wages and fringe benefits. Even so, ISI successfully rebid the contract with GSA when the 1996 contract expired on March 31, 2002. GSA awarded ISI Contract No. GS-02P-94-CID-0001, covering April 1, 2002, to March 31, 2003.

Wage and Hour investigated the complaints that had arisen since the May 9, 2001 consent decree. These investigations involved underpayments totaling \$630,081.07 affecting 1,943 contract employees employed under both the 1996 and the 2002 contracts. After notice to ISI, GSA cancelled the contract, and October 18, 2002, was the last workday thereunder. About a month later, on November 14, Wage and Hour requested that GSA withhold funds due ISI. GSA withheld a total of \$136,967.00 in contract payments due ISI.<sup>5</sup>

From October 2002 through January 2003, ISI paid the overdue wages and fringe benefits it owed to the employees. On January 31, 2003, after determining that ISI had paid the employees, Wage and Hour directed GSA to release all withheld funds to ISI.

Nevertheless, though ISI paid the back wages and fringe benefits, Wage and Hour filed another complaint against ISI, Karawia, and other corporate officers. This complaint, the subject of this case, requested an order debaring ISI, Karawia, and the others because of numerous and repeated violations of the SCA.<sup>6</sup>

ISI responded to the complaint and requested a hearing. The ALJ held a hearing on November 22 and 23, 2004, and January 4 and 5, 2005. The ALJ found that ISI and Karawia (hereinafter “the Respondents”) had violated the Act and ordered that they be debarred. The Respondents filed a Petition for Review with the Administrative Review Board (ARB or the Board).<sup>7</sup>

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<sup>5</sup> See 41 U.S.C.A. § 352(a); 29 C.F.R. § 4.187 (Labor Department may request that contracting agency withhold payment due service contractor in amount equal to compensation owed to employees).

<sup>6</sup> The complaint named three corporate officers in addition to Karawia: Richard E. Long, Vice President of Operations; William Pedrick, contract manager for New York; and Peggy Orlando, Chief Financial Officer. All three settled their cases prior to the hearing. The ALJ dismissed them from the case.

<sup>7</sup> See 29 C.F.R. § 6.20.

## JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to decide this case.<sup>8</sup> In rendering its decisions, “the Board shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters.”<sup>9</sup>

The Board’s review of an ALJ’s decision is an appellate proceeding.<sup>10</sup> The Board shall modify or set aside an ALJ’s findings of fact only when it determines that those findings are not supported by a preponderance of the evidence.<sup>11</sup> But conclusions of law are reviewed de novo.<sup>12</sup>

## DISCUSSION

### 1. The Legal Standard

Under Section 5(a) of the SCA, persons or firms that violate the Act are subject to debarment, that is, ineligible to receive federal contracts for a period of three years “[u]nless the Secretary otherwise recommends because of unusual circumstances.”<sup>13</sup> Debarment is presumed once violations of the Act have been found, unless the violator is able to show that “unusual circumstances” exist.<sup>14</sup> “Section 5(a) is a particularly unforgiving provision of a demanding statute. A contractor seeking an ‘unusual circumstances’ exemption from debarment, must, therefore, run a narrow gauntlet.”<sup>15</sup>

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<sup>8</sup> See 29 C.F.R. § 8.1(b).

<sup>9</sup> 29 C.F.R. § 8.1(c).

<sup>10</sup> 29 C.F.R. § 8.1(d).

<sup>11</sup> 29 C.F.R. § 8.9(b). See *Dantran, Inc. v. U.S. Dep’t of Labor*, 171 F.3d 58, 71 (1st. Cir 1999).

<sup>12</sup> *SuperVan, Inc.*, ARB No. 00-008, ALJ No. 1994-SCA-014, slip op. at 3 (ARB Sept. 30, 2002); *United Kleenist Org. Corp. & Young Park*, ARB No. 00-042, ALJ No. 1999-SCA-018, slip op. at 5 (ARB Jan. 25, 2002).

<sup>13</sup> 41 U.S.C.A. § 354(a); 29 C.F.R. § 4.188(a), (b).

<sup>14</sup> *Hugo Reforestation, Inc.*, ARB No. 99-003, ALJ No. 1997-SCA-020, slip op. at 9 (ARB Apr. 30, 2001).

<sup>15</sup> *Sharipoff dba BSA Co.*, No. 1988-SCA-032, slip op. at 6 (Sec’y Sept. 20, 1991). *Accord Colorado Sec. Agency*, No. 1985-SCA-053, slip op. at 2-3 (Sec’y July 5, 1991); *Able Bldg. Maint. & Serv. Co.*, No. 1985-SCA-004 (Dep. Sec’y Feb. 27, 1991); *A to Z Maint. Corp. v. Dole*, 710 F.Supp. 853, 855-856 (D.D.C. 1989). See also *Vigilantes Inc. v. Adm’r of*

The SCA does not define “unusual circumstances.” Relevant regulations, however, establish a three-part test that states the criteria for determining when relief from debarment is appropriate. The contractor has the burden of proving “unusual circumstances” and must meet all three parts of the test to be relieved from the debarment sanction.<sup>16</sup> Under the first part of this test, the contractor must establish that the conduct giving rise to the SCA violations was not willful, deliberate, aggravated, or the result of culpable conduct. Moreover, the contractor must demonstrate the absence of a history of similar violations, an absence of repeat violations of the SCA, and that any previous violations were not serious.<sup>17</sup>

If the contractor succeeds on the first part, the second part of the test requires that it demonstrate a good compliance history, cooperation in the investigation, repayment of the moneys due, and sufficient assurances of future compliance. If successful, the third part lists other factors that must be considered, including whether the contractor has previously been investigated for violations, whether the contractor has committed recordkeeping violations which impeded Wage and Hour’s investigation, and whether the determination of liability was dependent upon the resolution of bona fide legal issues of doubtful certainty.<sup>18</sup>

## **2. Karawia and ISI Violated the Act**

At the outset, we note two errors in the ALJ’s Decision and Order (D. & O.). First, the ALJ found that the Respondents admitted violating the Act.<sup>19</sup> The record contains no such admission. Secondly, the ALJ also erred in concluding that the Respondents violated the Act when they failed to fulfill their obligations under the May 2001 consent decree.<sup>20</sup> But the SCA’s debarment sanction does not apply to those who violate consent decrees. It applies only to persons or firms “found to have violated this chapter.”<sup>21</sup>

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*Wage & Hour Div., U.S. Dep’t of Labor*, 968 F.2d 1412, 1418 (1st Cir. 1992) (“The legislative history of the SCA makes clear that debarment of a contractor who violated the SCA should be the norm, not the exception, and only the most compelling of justifications should relieve a violating contractor from that sanction.”).

<sup>16</sup> 29 C.F.R. § 4.188(b)(1); *Hugo Reforestation*, slip op. at 12-13.

<sup>17</sup> 29 C.F.R. § 4.188(b)(3)(i).

<sup>18</sup> See 29 C.F.R. § 4.188(b)(3)(ii).

<sup>19</sup> D. & O. at 2-3.

<sup>20</sup> *Id.* at 4, 5, 7, 8.

<sup>21</sup> 41 U.S.C.A. § 354(a).

Nevertheless, the record contains ample evidence that the Respondents violated the Act. Several contract employees and Wage and Hour investigators and their supervisors testified that ISI had not paid the proper wages and fringe benefits.<sup>22</sup> The record establishes that at one point after the May 2001 consent decree, ISI had underpaid \$631,081.07 in wages and fringe benefits to 1,943 contract employees. We find that a preponderance of the evidence demonstrates that ISI violated the SCA when it underpaid contract employees the wages and fringe benefits due them. Therefore, ISI and Karawia are subject to debarment.

### **3. Karawia and ISI Do Not Pass Part 1 of the Debarment Test**

As already noted, unless the Respondents can meet the first part of the three-part test, they must be debarred. Therefore, they must prove that their conduct in causing or permitting violations of the Act was not willful, deliberate, aggravated, or the result of culpable conduct.

“Culpable conduct” includes “culpable neglect to ascertain whether practices” violate the Act.<sup>23</sup> Culpable neglect is conduct “beyond negligence, but short of specific intent.”<sup>24</sup> The ALJ used slightly different terminology in describing ISI’s conduct. He concluded that the “astounding number” of violations after the May 2001 consent decree evidenced “extreme irresponsibility amounting to culpable neglect.”<sup>25</sup> The Respondents argue that underpaying the employees was not intentional and does not amount to culpable neglect.<sup>26</sup> But like the ALJ, we cannot ignore the fact that underpaying 1,943 employees is “astounding.” Also astounding is \$631,081.07 in underpayments. Therefore, we too conclude that ISI’s conduct, whether described as beyond negligent or extremely irresponsible, amounts to culpable neglect.

Moreover, the record plainly demonstrates that the Respondents repeatedly violated the Act after Wage and Hour had provided specific guidance on how to comply with the Act. In the consent decree that the Respondents entered into with Wage and

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<sup>22</sup> Hearing Transcript (T.) at 43-46, 65, 72-73, 75, 83-84, 92-101, 114, 128-132, 138, 139, 141-142, 157, 670 (Weeks); 188-199, 207-208, 212-224, 242-245, 248-251 (LaCroix); 267, 272-276, 279, 290-293, 325, 329 (Quinn); 333-341 (Martin); Administrator’s Exhibits 5, 26-29, 32, 33, 38-42, 44A, 44B, 46, 71, 72, 79, 82, 88, 91, 109, 110, 111, 114A, 114B, 114C, 114D.

<sup>23</sup> 29 C.F.R. § 4.188(b)(3)(i).

<sup>24</sup> *J & J Merrick’s Enters., Inc.*, BSCA No. 94-09, slip op. at 5 (Oct. 27, 1994).

<sup>25</sup> D. & O. at 8-9.

<sup>26</sup> Respondents’ Brief at 1.

Hour in May 2001, they agreed to “establish a comprehensive, ongoing wage/hour compliance program for a four year period ending on August 31, 2005.”<sup>27</sup> The Respondents agreed to “use information and experience gained from the compliance program to develop procedures and an institutional knowledge base to help assure wage/hour compliance on a permanent basis.”<sup>28</sup> The Respondents’ numerous and repeated underpayment of wages and fringe benefits, especially after agreeing with Wage and Hour to establish a compliance program to prevent such underpayments, constitutes not only culpable neglect, but willful, intentional, and deliberate conduct as well.<sup>29</sup>

Therefore, like the ALJ, we find that the Respondents did not satisfy the first part of the three-part test for determining whether “unusual circumstances” exist to warrant relief from debarment. Accordingly, we need not examine whether the Respondents met the second and third parts of the test.<sup>30</sup>

#### **4. The Respondents’ Additional Arguments**

##### *Personal Jurisdiction*

ISI contends that the Labor Department lacks personal jurisdiction because International Protective Services, the corporate entity doing business as ISI, was never a party to the litigation and was never served. The company therefore argues that we should dismiss the complaint against ISI.<sup>31</sup> The ALJ found that the issue of personal jurisdiction had been waived because ISI answered the complaint, filed motions, and fully defended against the complaint at the hearing.<sup>32</sup>

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<sup>27</sup> Administrative Law Judge’s Exhibit 1 (Consent Findings and Order, Attachment A at 10).

<sup>28</sup> *Id.* at 12.

<sup>29</sup> See *Nationwide Bldg. Maint., Inc. & William W. Johnson*, BSCA No. 92-04, slip op. at 12 (Oct. 30, 1992) (“Violations which are committed more than once - after proper notice - can also be seen as intentional, deliberate and willful.”); see also *A to Z Maint. Corp.*, 710 F.Supp 853, 857-859 (D.D.C. 1989) (contractor’s repeated violations of SCA even after receiving advice from Labor Department Compliance Officer is one of the aggravating factors which preclude a finding of “unusual circumstances” under 29 C.F.R. § 4.188(b)(3)(i)).

<sup>30</sup> See *Integrated Res. Mgmt., Inc. of Or.*, ARB No 99-119, ALJ No. 1997-SCA-014, slip op. at 6 (ARB June 27, 2002).

<sup>31</sup> Respondents’ Brief at 8-9.

<sup>32</sup> D. & O. at 6.

The preponderance of the evidence supports the ALJ's findings. Karawia testified that International Protective Services is the corporate entity doing business as ISI.<sup>33</sup> ISI answered the complaint without raising this issue.<sup>34</sup> ISI appeared at the hearing and actively defended itself against the Administrator's request for debarment. Therefore, ISI cannot now object to the Labor Department's jurisdiction.<sup>35</sup>

*Karawia not a "party responsible"*

Karawia maintains that he is not personally responsible for the SCA violations and therefore should not be subject to debarment.<sup>36</sup> The ALJ found that Karawia is subject to debarment because he is President and Chief Executive Officer of the holding company that owns both International Protective Services and ISI and because he exercises significant control over ISI's business operations. ISI argues that Peggy Orlando and William Pedrick, who settled their respective cases with the Labor Department before the hearing and agreed to be debarred, are responsible.<sup>37</sup>

Section 3(a) imposes liability on "the party responsible" for violations of the Act.<sup>38</sup> Liability is not limited to the officers of a contracting firm or to signatories to the service contract. Rather, "party responsible" includes "all persons, irrespective of proprietary interest, who exercise control, supervision, or management over the performance of the contract, including the labor policy or employment conditions regarding the employees engaged in contract performance, and who, by action or inaction, cause or permit a contract to be breached."<sup>39</sup>

Karawia testified that he negotiated government contracts, third-party contracts, and collective bargaining agreements, ensured that contract procedures were being followed, assigned job responsibilities, managed subordinate employees, hired specialized lawyers, hired a public relations firm, represented ISI in the press, and

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<sup>33</sup> T. at 631-32.

<sup>34</sup> Administrative Law Judge's Exhibit 19.

<sup>35</sup> See *Continental Bank, N.A. v. Meyer*, 10 F.3d 1293, 1297 (7th Cir. 1993) (personal jurisdiction defense waived where defendants participated in litigation); see also *McDonald v. Mabee*, 243 U.S. 90 (1917) (court has jurisdiction when party appears regardless of the power of the State to serve process).

<sup>36</sup> Respondents' Brief at 8-9.

<sup>37</sup> *Id.* at 9.

<sup>38</sup> 41 U.S.C.A. § 352(a).

<sup>39</sup> 29 C.F.R. § 4.187(e)(4).



arranged contract financing.<sup>40</sup> Therefore, Karawia is a party responsible within the meaning of the regulations and is subject to the debarment sanction. Furthermore, Karawia and ISI cannot avoid debarment by arguing that Orlando or Pedrick are responsible.<sup>41</sup>

### *Discrimination*

The Respondents claim that Robert Soden, the GSA contracting officer's technical representative, used racial epithets against Karawia during the course of contract performance. They argue that Soden "sabotaged [the contract] and did all he could to have [it] terminated." This discrimination, contend the Respondents, constitutes "unusual circumstances," thus precluding debarment.<sup>42</sup> But though Soden was in a position to affect the timeliness of GSA payments to ISI, the Respondents adduced no evidence that his alleged racism and sabotage caused ISI to underpay its employees. Therefore, the alleged racism and sabotage do not constitute "unusual circumstance" here.

### *GSA's Late Payments and Withholding Contract Funds*

GSA admitted that it was in arrears on payments due to ISI.<sup>43</sup> And, as noted, GSA withheld some contract payments after the Labor Department requested it to do so. The Respondents argue that these "unusual circumstances" warrant relief from debarment because GSA's actions created a cash flow problem, preventing ISI from paying wages and fringe benefits.<sup>44</sup>

We reject ISI's argument about the withheld funds because the evidence contradicts it. The last workday on ISI's contract with GSA was October 18, 2002. GSA did not withhold contract funds until after November 14, 2002, when Wage and Hour first requested that GSA do so.<sup>45</sup> Thus, these withheld funds could not have affected

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<sup>40</sup> T. at 375, 402, 403, 405, 413, 421, 424, 427, 428-429, 432-433, 437, 441, 442-443, 445-446, 531-532, 633-635, 636-638.

<sup>41</sup> See 29 C.F.R. § 4.188(b)(5) (attempting to shift responsibility to subordinate employees does not relieve contractor from debarment).

<sup>42</sup> Respondents' Brief at 2, 18, 21.

<sup>43</sup> Respondents' Exhibits 33, 34. These exhibits, dated November 2002, are GSA's responses to ISI's request that GSA pay invoices still outstanding after the contract ended.

<sup>44</sup> Respondents' Brief at 3, 4-6, 11-13, 18-21, 27.

<sup>45</sup> Administrator's Exhibits 26, 28, 29, 32.

ISI's ability to pay wages and fringe benefits that were owed before, on, or shortly after October 18, the last workday on the contract.

We also reject the late payments argument. Addressing this issue in *Kleen-Rite Corp.*, the Board of Service Contract Appeals (BSCA) wrote, "The purpose of the Act is to protect the rightful wages of service employees. There is no provision in the statute or the regulations which permits an employer to wait until being reimbursed by another party before fulfilling its obligations to its employees."<sup>46</sup>

### *De Facto Debarment*

The Respondents argue that ISI has been, in effect, debarred since GSA cancelled the contract and then removed ISI from the Federal Supply Schedule, a list of contractors pre-qualified to do business with the United States Government. They assert that adding a formal debarment to this de facto debarment "will spell the death knell of the company" and will cause it to lose contracts that it currently has. Therefore, they argue, the de facto debarment preempts our authority to order debarment or should at least operate as a mitigating circumstance.<sup>47</sup>

This argument lacks merit because contractors cannot receive credit against the three-year debarment period.<sup>48</sup> The statute prescribes that the three-year debarment period begins to run from the date that the list distributed by the Comptroller General of those persons or firms found to have violated the SCA is published.<sup>49</sup> Further, the ARB has held that "[d]ebarment is the statutorily required sanction for SCA violators and its adverse effects [on the contractor's business] should not be considered a reason to excuse a contractor for its wrongdoing."<sup>50</sup>

## CONCLUSION

The preponderance of evidence demonstrates that ISI and Karawia, who is a "party responsible," violated the Act when they underpaid employees SCA wages and fringe benefits due under the GSA contracts. The record also proves that this conduct

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<sup>46</sup> BSCA No. 92-09, slip op. at 3 (Oct. 13, 1992).

<sup>47</sup> Respondents' Brief at 5, 25.

<sup>48</sup> *The Swanson Group, Inc.*, BSCA No. 94-05, slip op. at 3 (May 31, 1995).

<sup>49</sup> 41 U.S.C.A. § 354(a).

<sup>50</sup> *Integrated Res. Mgmt., Inc. of Or.*, slip op. at 7 n.2.

was willful, intentional, deliberate, and culpable. Therefore, “unusual circumstances” do not exist. As a result, we **AFFIRM** the ALJ’s decision and order that ISI and Karawia be debarred.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**