

Mayor's Office of Labor
Richard Lazer
Deputy Mayor for Labor
Benefits and Wage
Compliance

CITY OF PHILADELPHIA
JAMES F. KENNEY, Mayor



September 14, 2020

Joe Carvalho, Owner
Carvalho Constructions, LLC

Re: NOTICE OF Determination for Wage Theft Complaint

Dear Joe Carvalho,

As a result of the investigation into the complaint filed with the Office of Benefits and Wage Compliance it has been determined that *Carvalho Construction, LLC* is in violation of Chapter 9-4300 of the Philadelphia Code, entitled "Wage Theft Complaints" and therefore, owes [REDACTED] \$4,822.42 (Four Thousand Eight Hundred and Twenty-Two Dollars and Forty-Two Cents) for unpaid wages.

An investigation of the complaint has been conducted. The findings of facts are as follows:

Mr. [REDACTED] was employed by *Carvalho Construction, LLC*.

The above wages meet the threshold.

On July 27, 2020, our Office spoke with Mr. Carvalho, who identified himself as the owner of *Carvalho Construction, LLC*. Mr. Carvalho told our investigator that *Carvalho Construction* would like to settle the case, and asked for a little time. Our investigator gave Mr. Carvalho a few days to try to settle the case with Mr. [REDACTED]'s counsel, before proceeding with the investigation.

On July 31, 2020, Mr. [REDACTED]'s counsel informed our investigator that *Carvalho Construction* was not responsive, and that similar situations of Mr. Carvalho agreeing to settle the case then not being responsive to Mr. Martinez Cabrera's counsel had occurred previously.

On August 4, 2020, our Office sent Mr. Carvalho a Notice of Violation and Information Request, due back to our Office September 4, 2020. On August 25, our investigator called Mr. Carvalho at the number previously used to speak with him, and when there was no answer, left a voicemail with a reminder about the September 4, 2020 deadline, a reminder that we would proceed without employer records if our Office didn't hear back, and giving their work phone number if Mr. Carvalho would like to call back. That same day, our investigator sent Mr. Carvalho an email with a similar reminder about the Information Request deadline.

To date, our Office has not heard back from Mr. Carvalho or Carvalho Construction, LLC. Given the lack of employer records or communication, our Office is basing our determination on complainant records provided.

According to a copy of a letter sent by Mr. [REDACTED]'s counsel to Mr. Carvalho, provided by Mr. [REDACTED]'s counsel, "Mr. Martinez regularly worked at designated construction sites for 9 hours a day, 6 days a week. You agreed to pay Mr. Martinez at the rate of \$130 per day (or \$780 per week). On occasion, Mr. Martinez was required to work additional hours, for which you agreed to pay him an additional flat rate of \$65. Since April 2019, you have failed to timely pay Mr. Martinez his promised wages. As of September 23, 2019, your company owes Mr. Martinez for at least 17 full days of work, which amounts to \$2,210 in unpaid promised wages—not including overtime wages to which Mr. Martinez may be entitled by law."

Based on this same letter, Mr. Carvalho agreed to pay Mr. [REDACTED] \$130 per nine hours worked, which equals \$14.44 per regular work hour. This works out to \$21.66 per overtime work hour.

Based on this same letter, Mr. [REDACTED] is owed seventeen full days of work; at nine hours per workday, this equals one hundred and fifty-three (153) in total unpaid hours worked. At six days of work per workweek, seventeen workdays span three work weeks. Three work weeks multiplied by forty (40) hours per week of regular time equals one hundred and twenty (120) hours of regular work time, leaving thirty-three (33) hours of overtime. One hundred and twenty (120) hours multiplied by \$14.44 per regular work hour equals \$1,732.80. Thirty-three (33) hours of overtime multiplied by \$21.66 per overtime work hour equals \$714.78. Together, this totals \$2,447.58 in total unpaid wages for seventeen (17) full days of work.

According to this same letter by Mr. [REDACTED]'s counsel, "[d]espite the fact that Mr. Martinez regularly worked more than 40 hours in a week, he was never paid properly for overtime hours worked throughout his employment. On a regular basis, Mr. Martinez worked at least 14 hours of overtime per week, but was only paid his regularly hourly rate of \$14.44 for such work." \$21.66 per overtime work hour minus \$14.44 per regular work hour equals \$7.22 per hour in pay discrepancy; multiplied by fourteen (14) hours this equals \$101.08 per work week in unpaid overtime wages.

In this same letter, counsel asserts that Mr. [REDACTED] worked for Carvalho Construction "from April 2019 through September 23, 2019." An exact start date in April was not provided by either Mr. [REDACTED] or Mr. Carvalho. Therefore, we are using April 22, 2020, the last full week of April, as a starting date. From April 22, 2020 until September 23, 2019, there were twenty-two (22)

Full workweeks. \$101.08 per work week in unpaid overtime wages multiplied by twenty-two full workweeks equals \$2,223.76 total in unpaid overtime wages.

Mr. [REDACTED] has also testified to our Office that he is owed \$50 in unreimbursed expenses.

This brings the total in unpaid wages to \$4,721.34.

According to screenshots of texts between Mr. Carvalho and Mr. [REDACTED] provided by Mr. [REDACTED]'s counsel, Mr. Martinez Cabrera asked Mr. Carvalho for payment for work performed on 8/19/19, 8/20/19, 8/26/19, 9/7/19, 9/10/19, 9/14/19, 9/25/19, 9/27/19, 10/1/19, 10/4/19. These requests were either ignored or outright denied by Mr. Carvalho.

On 10/4/19, Mr. Carvalho texts that there is no money, and that he spent the money on other things including materials such as paint.

Chapter 9-4300 of the Philadelphia Code, entitled "Wage Theft Complaints" imposes the burden of proof, by a preponderance of the evidence, on the complainant to present sufficient evidence of days/hours worked and lack of compensation for those days/hours. The Ordinance further provides that lack of employer records of days/hours worked and/or compensation, which the employer has a legal obligation to keep, raises to a rebuttable presumption that the wages complained of were not paid. It is the Office of Benefits and Wage Compliance's legal determination that Mr. [REDACTED] has done so by providing sufficient evidence. The employer has the burden to present evidence to negate the reasonableness of the inference drawn. *Carvalho Construction, LLC* has not provided this office with any records to negate this, despite there being ample opportunity to do so. Furthermore, Mr. [REDACTED]'s counsel has informed our Office that Mr. Carvalho indicated multiple times a willingness to settle the wage theft case before Mr. [REDACTED] filed a complaint with our Office, but that Mr. Carvalho then became unresponsive. In addition, while on the phone with our investigator, Mr. Carvalho had expressed willingness to settle the wage theft case with our Office, but then Mr. Carvalho became unresponsive.

Therefore, it is the Office of Benefits and Wage Compliance's legal determination that due to the failure of *Carvalho Construction* to provide adequate and precise records, and because Mr. [REDACTED]'s evidence meets the burden, that *Carvalho Construction* owes Mr. [REDACTED] for unpaid wages of \$4,721.34.

Payment in full is due to Mr. [REDACTED] within 60-days of the date of this determination. The Office of Benefits and Wage Compliance may allow the parties to enter a payment plan for good cause.

Lack of payment can result in penalties and licensing actions as allowed by §9-4303 of "Wage Theft Complaints." Please supply this office with record of payment within 60 days.

This final decision by this office may be appealed within 30 days of receipt of this determination to the board of Labor Standards, for adjudication pursuant to the procedures established for the adjudication of complaints pursuant to § 17-107(7) of the Code (Contractors: Labor-Management Relationships: Board of Labor Standards) 1160.5 and any regulations established by the Board of concerning procedures specific to the claims under this chapter. (§ 9-4303(5)(e).) You will need to reference the file number for your complaint: W05 – 07142020.

Please mail your Request for Appeal to:

Broad of Labor Standards
Attn: Erieka Kisleiko
City Hall
1400 JFK Blvd. Room 204
Philadelphia, PA. 19107

Finally, any form of retaliation against any employee who exercises their rights under Chapter 9-4303 of the Philadelphia Code, entitled “Wage Theft Complaints” is unlawful; should you have any questions please feel free to contact our office.

Regards,

Yessenia Gutierrez
Compliance Investigator
Mayor’s Office of Labor
Office of Benefits & Wage Compliance
Email: Yessenia.Gutierrez@phila.gov