

February 1, 2005

Hon. Joel I. Klein  
Chancellor  
New York City Public Schools  
Department of Education  
52 Chambers Street, Room 314  
New York, NY 10007

Re: MGC Restoration Services, Inc.  
SCI Case #2002-3156

Dear Chancellor Klein:

An investigation conducted by this office has substantiated that Michael G. Capous and MGC Restoration Services, Inc. ("MGC"), a company owned and operated by Capous, failed to pay prevailing wages and supplemental benefits to the individuals who completed work under various MGC contracts with the Department of Education ("DOE"). Moreover, Capous filed false documents with the DOE and purposely listed names of individuals, not employed by MGC, on the certified payrolls which were submitted to the DOE for payment. As a result, Capous, through MGC, received hundreds of thousands in public funds to which he was not entitled.

On January 5, 2005, investigators from this office arrested Capous and charged him with Offering a False Instrument for Filing in the First Degree, a class E Felony, and Failure to Pay Wages in Accordance with the Labor Law, a class A misdemeanor. MGC was charged with Grand Larceny in the Fourth Degree, a class E felony, and Failure to Pay Wages in Accordance with the Labor Law, a class A misdemeanor.

On February 1, 2005, in Queens County Supreme Court, both defendants pled guilty to all charges. In accordance with a plea agreement negotiated by the New York State Attorney General's Office, Capous and MGC are barred from submitting a bid on or being awarded any public work contracts or subcontracts within the State of New York and will not submit a bid or be awarded any public work contracts or subcontracts within the City of New York for a period of five years. The defendants, Capous and MGC, will be placed on the New York State Department of Labor Debarred Contractor List, the New York City Department of Education Contractors and Subcontractors Not Eligible for Awards List and the VENDEX Caution List for the City of New York. Capous and MGC will pay over \$300,000 to the individuals who were not given prevailing wages and supplemental benefits and will return \$81,000 to the City of New York through the Office of the Special Commissioner of Investigation for the New York City School District.<sup>1</sup>

This investigation began in December 2002, in the course of an unrelated investigation by this office in which it was discovered that Capous had submitted certified payroll information to the DOE which listed workers with corresponding inaccurate social security numbers.

Capous and MGC entered into contracts with the DOE beginning in December 1998. From 1998 to 2003, the DOE paid MGC several million dollars. During this period, as owner and president of MGC, Capous submitted fraudulent paperwork in order to receive payment from the DOE.<sup>2</sup>

Investigators interviewed a number of individuals whose names were listed on the payroll documentation which Capous had submitted to the DOE. It was determined that Capous had not paid any of the individuals, in fact, unbeknownst to the DOE, Capous had hired subcontractors to provide workers.<sup>3</sup> Under the illegal agreement, Capous was responsible for purchasing paint and other supplies, while the subcontractors were responsible for supplying the labor. Capous used two subcontractors: Starnight Restoration Services Inc. ("Starnight") owned by Fazal Choudry and Shahzad Brothers Inc. ("Shahzad Brothers") owned by Farrukh Shahzad, the son of Choudry. As part of a scheme devised by Capous, MGC and each subcontractor split the fraudulently obtained payments from the DOE "50-50."

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<sup>1</sup> The workers will receive \$291,000 in wages and supplemental benefits and \$40,000 in interest. The defendants are also required to pay \$81,000 to the City of New York as restitution. In addition, the defendants will pay \$80,000 in civil penalties.

<sup>2</sup> Under the terms of the contract, payroll documentation had to accompany requests for payment.

<sup>3</sup> Under the contract Capous entered into with the DOE, he had to receive permission from the DOE prior to using any subcontractors. He failed to do so. Moreover, on all paperwork Capous submitted to the DOE, he affirmatively indicated that he was not using a subcontractor to complete the contracted work.

Investigators examined the paperwork Capous submitted to the DOE for payment. Capous consistently affirmed that he had not engaged subcontractors to complete the contracted work. Moreover, a significant number of payroll records, which wrongly indicated that those listed were employees of MGC, were merely photocopies of previously submitted documents on which the work dates and assignment locations were changed. A review of the fraudulent paperwork also revealed that the workers were not paid the prevailing wages and supplemental benefits they were owed for the work performed. The paperwork also listed a number of "ghost" employees who had not worked on DOE jobs but who were listed on the payroll, nevertheless.

Investigators interviewed a number of individuals listed on the payroll documentation submitted to the DOE. The workers confirmed that they were not employed by MGC, although, if questioned on a DOE site, they were instructed to respond that they were employed by MGC. The workers also confirmed that they were not paid prevailing wages and supplemental benefits in accordance with New York State Labor Law. Other individuals, whose names were listed on the payroll reports, stated that they were not employed by MGC or the subcontractors on the dates listed on the submitted documents.

Investigators determined that the individuals who performed the DOE jobs under the MGC contract were underpaid in wages and supplemental benefits in excess of \$290,000. Moreover, MGC affirmed that over \$238,000 had been paid to workers who never worked on the DOE jobs listed by Capous on MGC's payroll reports.

By its plea agreement, MGC is barred from public contracts for at least five years. In light of the fact that Starnight and Shahzad Brothers participated in this scheme with Capous, it is the recommendation of this office that the DOE refrain from engaging in business with these companies and their owners. Moreover, after the five year debarment period ends, the Department of Education should consider this matter prior to engaging in any business dealings with Michael G. Capous or MGC Restoration Services, Inc.

We note that MGC's misconduct went undetected by the DOE, despite obvious indications that the company was in violation of State Law. For example, the payroll documentation, attached to the request for payments which Capous submitted to the DOE on behalf of MGC, was erroneous on its face. The amounts MGC claimed it had paid to "its employees" were not in accordance with prevailing wage law. Moreover, the paperwork clearly failed to reflect the payment of supplemental benefits which also are required by law. Therefore, it is the recommendation of this office that the DOE personnel responsible for the processing of payments to vendors be required to examine the submitted payroll paperwork for obvious and apparent problems or discrepancies.

We are forwarding a copy of this letter concerning this investigation to the Office of Legal Services. Should you have any inquiries regarding the above, please contact Eileen Daly, the attorney assigned to this case. She may be reached at (212) 510-1407. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON  
Special Commissioner  
of Investigation for the  
New York City School District

By: \_\_\_\_\_

Regina A. Loughran  
First Deputy Commissioner

RJC:RAL:ECD:gm

c: Michael Best, Esq.  
Theresa Europe, Esq.

February 1, 2005

Hon. Rose Gill Hearn  
Commissioner  
New York City Department of Investigation  
80 Maiden Lane, 18<sup>th</sup> Floor  
New York, NY 10038

Re: MGC Restoration Services, Inc.  
SCI Case #2002-3156

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Should you have any inquiries regarding the above, please contact me or First Deputy Commissioner Regina Loughran. She may be reached at (212) 510-1426.

Sincerely,

RICHARD J. CONDON  
Special Commissioner  
of Investigation for the  
New York City School District

By:

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Regina A. Loughran  
First Deputy Commissioner

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