

Five Star Carting payment to NYS Dept. of Labor for \$74,000 in underpayment to multiple workers:

**Audit and Monetary System**

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**Case Details**

**Basic Information**

Case # LS20 2009001385 (148863)

FIVE STAR CARTING, INC.

(FEIN [REDACTED])  
58-35 47TH ST  
MASPETH, NY 11378  
(718) 349 - 7555

Initial Claim # LCM09001548  
Status Pending Payment  
Case Date 01/26/2009

[Contact Log](#) [Electronic Document](#)  
Assigned Investigator Hye Ok Hong

**Investigation / Audit Information**

Investigation Not Active

Summary For Version "Default"

[View Claims](#)

Audit Total \$51,849.07

**Violation Information**

Violation	Type
§ 661 Keep and have available for inspection a true and accurate record for each employee, showing daily and weekly hours worked, gross wages, deductions, any allowances claimed and net wages, and all other records required under the Minimum Wage Order for this industry found in NYS Codes, Rules and Regulations Title 12, Parts 137, 138, 141 or 142.	Article 19 - Minimum Wage Act and Minimum Wage Orders
Part 142-2.7 Furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, any allowances claimed, deductions and net wages (Miscellaneous Industries and Occupations).	Article 19 - Minimum Wage Act and Minimum Wage Orders

**Monetary Information**

**Details**

Details		<a href="#">New Check Receipt</a>	<a href="#">Restitution Data</a>
Underpayment Amount	\$51,849.07		
Interest	\$8,295.85	Payments In	\$74,107.19
Penalties	\$1,000.00	Legal Deductions	\$0.00
Penalty Interest	\$0.00	Direct Payments	\$0.00
Liquidated Damages	\$12,962.27		
<b>Total Due</b>	<b>\$74,107.19</b>	<b>Total Credits</b>	<b>\$74,107.19</b>
		Payments In	\$74,107.19
Total Due	\$74,107.19	Amount Disbursed	\$74,107.19
Total Credits	\$74,107.19	Amount Held	\$0.00
		Amount Abandoned	\$0.00
Balance Due	\$0.00	<b>Total Funds Available</b>	<b>\$0.00</b>
		Cleared	\$0.00

2011 Overtime theft case, worker Carlos C:



**New York State Department of Labor**  
Andrew M. Cuomo, Governor  
Peter M. Rivera, Commissioner

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Five Star Carting, Inc.  
58-35 47<sup>th</sup> Street  
Maspeth, NY 11378  
Attn: Roma Vykhoanets

05/22/2014

RE: Five Star Carting, Inc. vs. LS00 2011014030

Dear Mr. Vykhoanets,

On 10/06/2011, your former employee, Mr. Carlos Cajamarca filed an Unpaid Wage and a Minimum Wage and Overtime claims for the period of 10/01/2010 to 08/30/2011. He alleged that he was paid a straight salary for all hours worked and was not paid proper overtime. On 11/22/2013, you stated that Mr. Cajamarca's claim was settled by the union but no evidence was provided. Therefore, we computed the underpayment based on the information provided by Mr. Cajamarca.

Following is an example of how we computed the underpayment:

Mr. Cajamarca stated that he worked 47.5 hours a week and was paid a straight salary of \$650.00 per week (10/01/2010 – 04/30/2011) and \$690.00 per week (05/01/2011 – 08/30/2011).

For week ending 10/09/2010:

Derived hourly rate:  $\$13.68$  ( $\$650.00 \div 47.5$  hours), no underpayment for first 40 hours.

Overtime hours: 7.50 hours x  $\$20.52$  ( $\$13.68 \times 1.5$ ) =  $\$153.90$  (correct wage due). He was paid  $\$102.60$  ( $\$13.68 \times 7.5$  hours), the weekly underpayment is  $\$51.30$  ( $\$153.90 - \$102.60$ ). The rest of weeks were computed using the methodology. A uniform purchase of  $\$6.00$  was included in the computation.

Mr. Cajamarca also stated that he was not paid 11 hours worked on 08/29/2011 and 6 hours worked on 08/30/2011.

Week ending 09/03/2011:  $\$14.53$  ( $\$690.00 \div 47.5$  hours) x 17 hours =  $\$247.01$  (unpaid wage).

The enclosed Recapitulation Sheet covers Minimum Wage and Overtime, Unpaid Wage and Unlawful Deduction covered for the period 10/09/2010 to 09/03/2011 in the amount of  $\$2455.64$  with 25% liquidated damages of  $\$613.91$  applied. Total amount due is  **$\$3069.55$** .

We are also enclosing a Notice of Labor Law Violation for section 661 (failure to provide the requested records) and section 193.2 (unlawful deduction. Be advised that these violations carry a monetary penalty of up to  $\$1000.00$  each per week in which the violation occurred. We are imposing  $\$500.00$  penalty for each violation. Total amounts for the penalties are  $\$1000.00$ .

Please remit payment of  **$\$4069.55$**  ( $\$2202.63$  underpayment,  $\$247.01$  unpaid wage,  $\$6.00$  unlawful deduction,  $\$613.91$  liquidated damage,  $\$1000.00$  penalty) by check or money order payable to the Commissioner of Labor by **06/12/2014**. The Department can facilitate payments by offering a payment plan. If you are interested in a payment plan, you can contact Sr. Investigator Joyce Chan at (212) 775-3663 by **06/02/2014**.

If you do not agree with the amount due and/or payable to the claimant(s), and would like to request a compliance conference to discuss and to try to resolve these issues please respond by **06/02/2014**. Also, your case number and/or employer identification number (FEIN) must be shown on all payments and correspondence submitted to the office.

Failure to remit payment or contact us by **06/12/2014** will result in the case being referred for the issuance of an Order to Comply with 16% interest, civil penalties of up to 200%, and 100% liquated damages assessed on the amount due, without further notice.

We trust that we can count on your cooperation in this mater.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeong Lee', with a long horizontal flourish extending to the right.

Jeong Lee  
Labor Standards Investigator  
75 Varick St. 7<sup>th</sup> FL  
New York, NY 10013

2006 - 2009 Prosecution by NYS Department of Labor for overtime theft from Five Star Carting driver:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
COMMISSIONER OF LABOR OF THE STATE  
OF NEW YORK,

*Plaintiff,*

JUDGMENT

- *against* -

ANTHONY TRISTANI AND  
FIVE STAR CARTING, INC.,

*Defendant.*  
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It appearing that the Commissioner of Labor of the State of New York ("the Commissioner"), plaintiff herein, issued the annexed Order(s) finding ANTHONY TRISTANI AND FIVE STAR CARTING, INC. ("the Employer"), defendant herein, in violation of Section(s) 191, 198C & 661 of the Labor Law of the State of New York and directing the Employer to pay One thousand four hundred sixty five and 00/100 Dollars (\$1,465.00) in wages found by the Commissioner to be due and owing and interest at the rate of 16% computed to December 16, 2008 in the amount of Four hundred eighty three and 08/100 Dollars (\$483.08), and a civil penalty of One thousand two hundred thirty three and 00/100 Dollars (\$1,233.00), pursuant to Section(s) 218.1, 219.1 of the Labor


And, it further appearing that after due notice of said Order(s) and demands for payment having been given to the Employer, that the Employer has defaulted and has failed to make full payment as required therein, that the sum of Three thousand one hundred eighty one and 08/100 Dollars (\$3,181.08) remains outstanding and that the time for such payments as provided by law has expired.

NOW, on motion of M. PATRICIA SMITH, Commissioner of Labor of the State of New York, of W. Averell Harriman State Office Campus, Bldg. 12, Albany, NY 12240, the plaintiff here, it is

ADJUDGED that the Commissioner of Labor of the State of New York, of W. Averell Harriman State Office Campus, Bldg. 12, Albany, NY 12240, the plaintiff, do recover of ANTHONY TRISTANI AND FIVE STAR CARTING, INC. of 58-35 47<sup>TH</sup> ST., MASPETH, NY 11378 the aforesaid outstanding wages, interest and civil penalty in the amount of Three thousand one hundred eighty one and 08/100 Dollars (\$3,181.08), and that the Commissioner of Labor of the State of New York have execution thereof.

NYS COMMISSIONER OF LABOR

Anthony Tristani and  
Five Star Carting, Inc.  
58-35 47<sup>th</sup> St.  
Maspeth, NY 11378

By:   
Kristen L. Broden, Esq.  
NYS Department of Labor  
Averell Harriman State Office Campus  
Building 12, Room 509  
Albany, NY 12240  
(518) 457-4380