

MACC *News*

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APRIL 2016



**AMAZING IS NEVER GIVING
UP THE FIGHT.**

**See/Hear “Miracle Man” Danny Jacobs at our April 7th Meeting.
Information is on Page 5**

**METROPOLITAN AIR CONDITIONING
CONTRACTORS OF NEW YORK (MACC)
Formerly Air Conditioning Contractors Association – NY Chapter**
123 South Street, Suite 112
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516-922-5832 / www.maccnny.org

From the President...



MARC SOFFLER
Dynaire Corp.

As contractors prepare for the upcoming cooling season, we are once again challenged with finding competent employees to assist in running our companies. Finding a steady source of quality employees is vital for a company's growth.

Many of us still use all the traditional methods of recruitment, such as newspaper ads, technical schools, and bulletin boards at local distributors. Today, the internet has become an excellent source to find young talented employees. The challenge for employers is decide where to spend their time and resources to find new help. Like any task business owners are faced with, the recruitment process should start with a plan that includes goals, a budget, a means to execute, and the ability to evaluate the results.

The March association meeting focused on topics that assist contractors on issues that are unique to the types of projects found in our area. I would like to thank John Ottaviano and Gregory Singer, who presented on State and City Energy Conservation Construction Code, and Yannis Legakis of Skyline Management regarding Surety Bonds.

In an effort to bring more interesting topics and venues to our members, our next meeting on April 7th will be at Il Bacco Ristorante in Little Neck, NY, featuring special guest speaker Daniel Jacobs, middle weight boxing champion. The story about his journey, including the challenges and victories, will prove to be inspiring to all. I look forward to seeing you there and please remember to visit our web site at www.maccny.org for upcoming events. — *Marc Soffler*

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ON PAGE 14.**

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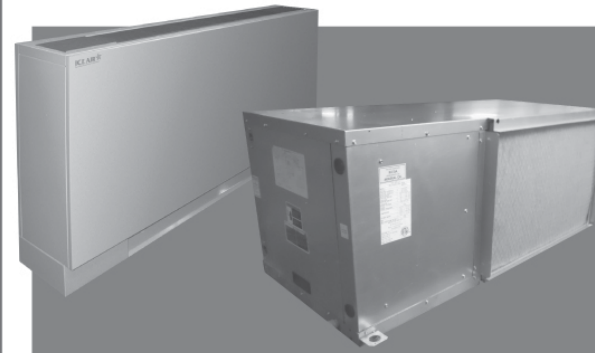
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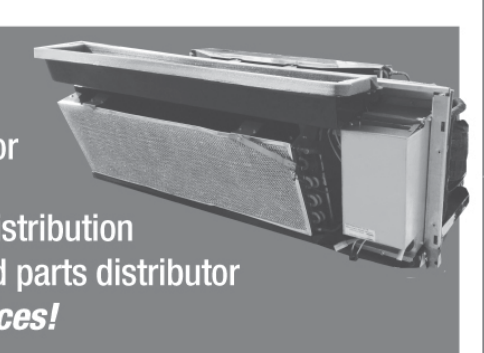
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 Danny Jacobs’ Motivational Presentation: 7 pm - 8 pm

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Editor's Notes

by Anthony N. Carbone

The warm weather came early this year for the Metropolitan New York area, hitting eighty (80°) degrees for one day and consecutive seventy (70°) degree days. It is a jolt in the arm for HVAC contractors, as clients realize summer will be coming.

For commercial accounts and restaurants, they made a decision to turn on their units now or the patrons will begin to complain.

There is a strange lull in many businesses as the economy seems to have hit a stall and spending has slowed. Not sure what signal people are waiting for. It may be the political process that is frightening some consumers from spending. Many are uncertain as to which direction the economy will go as these opponents are very different. We have never seen an outspoken candidate like Donald Trump who has thrown political connections out the window and is speaking like people do at the dining room table or local bar. But, will this have, or has it already put a stifle on the economy? Time will tell.

I hope everyone is gearing up for the 2016 air conditioning season this year. — *Anthony N. Carbone*



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Statement From Stuart S. Zisholtz, Esq.

Being An Additional Insured On A General Contractor's Policy May Be Fool's Gold

Under ordinary circumstances, when an owner and a General Contractor get together to prepare a contract, the focus is on the time and price. Both parties want to know how long the job will take and what it will cost. Tangential issues, such as insurance, are usually glossed over and given very little attention. Very rarely is the contract compared to the actual insurance policy. This could be a major mistake.

Where the owner gets the General Contractor to indemnify the owner for the owner's negligence, the policy will provide that the carrier will pay all sums legally due from the General Contractor.

Suppose the owner accidentally cuts the electric on the project, and 50 men are stranded on various part of the job. One falls down and gets hurt or killed. The owner turns to the General Contractor's policy which provides that the carrier will pay only

such sums as the General Contractor is liable to pay. General Obligations Law of the State of New York prohibits anyone from making a contract that will absolve him of his own negligence. Thus, the carrier disclaims and the owner has no coverage.

In another instance, the General Contractor's contract might be for \$10,000,000 with a \$500,000 deductible. Does the owner know that?

I can list many situations where being named as an additional insured on a General Contractor's policy is fool's gold.

The important lesson to be learned is take the insurance clause of the contract and the insurance policy to your insurance broker and make sure the two are in sync. Do not rely upon a sample endorsement where the owner is an additional insured on the General Contractor's policy.

Never let your lien time run out.

For a free copy of a pamphlet pertaining to Mechanic's Liens and Payment Bond Claims, please contact me or the Association. •

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Homeowners should consider an energy efficiency audit for their home before installing any renewable energy technology. Find out how to schedule your Comprehensive Home Energy Assessment with a certified Home Performance Contractor.

According to Newsday, Mike Voltz, director of renewable and energy efficiency programs at PSEG, said the loan program initially will apply to residential rooftop solar systems, but over time it could be expanded to other green energy initiatives. •

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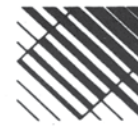
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Part Two: Non-Compete Agreements And Terminated Employees

Our March article provided an overview of non-compete, non-solicitation and confidentiality agreements. This article will focus more on terminating employees with and without cause and the enforceability of a non-compete agreement.

Enforcement of non-compete agreements varies from State to State. In New York, Courts generally will not enforce a non-compete agreement where an employee has been terminated without cause. A recent Court thought the issue was as follows, "Enforcing a noncompetition provision when the employee has been discharged without cause would be 'unconscionable' because it would destroy the mutuality of obligation on which a covenant not to compete is based." Essentially, most courts will not enforce an agreement in which an employee is terminated from employ without cause and not able to obtain gainful employment due to a restrictive agreement. Paraphrasing a case I read recently, an employer should not be able to use offensively an anticompetition clause coupled with a forfeiture provision to economically cripple a former employee and simultaneously deny other potential employers his services.

However, New York Courts hold employees to the same standard. "An employee should not be permitted to violate the terms of his employment contract, thereby giving the employer just cause for terminating him, and yet still be allowed both to compete with, and still collect benefits from, the former employer after his termination." It has long been held in New York that non-compete agreements will be enforceable when an employee has been terminated for cause.

Employers should ensure that they are documenting employment issues in the employee's personnel file according to the company policy. Further, employers should ensure that they are thinking about the enforceability of these agreements at the drafting stage. A well written, clear and concise employment agreement will have a better chance of Court enforcement, than one that does not coincide with current laws and regulations.

Other aspects surrounding enforceability are the choice of law clauses, venue clauses and arbitration clauses. The choice of law clause selects the State law that is to be ap-

plied to the agreement. For example, a New York employer hires an employee who resides in New Jersey. The employer wants to ensure that the law of the State of New York is utilized in any disputes that may arise out of the agreement. Therefore, the employer inserts a choice of law clause in the employment agreement to both document and notify the employee that disputes will utilize New York law.

Also, the employer should select a favorable venue. If an employer's business is in Queens, the employer should select Queens County as the venue. Employers should be aware that they should select a venue that they have ties to.

Lastly, employers may want to select to arbitrate employment disputes. Arbitration clauses generally state that all disputes that arise out of the agreement will be arbitrated. There are many different arbitration organizations an employer can choose from, and some are more expensive than others. Employers should place a well phrased arbitration clause into an employment agreement. Arbitration always saves employers money when disputes arise out of an employment agreement.

It is very important to ensure that these decisions are made prior and during the drafting phase of the employment agreement. As previously explained in our March article, many times employers only learn about the protections afforded to them, after it's too late.

For assistance with drafting employment agreements including, but not limited to, non-compete agreements, non-solicitation agreement and confidentiality agreements, please feel free to contact me at ABPearl@pmphr.com or call 516-921-3400. •

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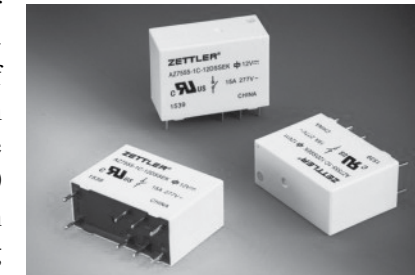
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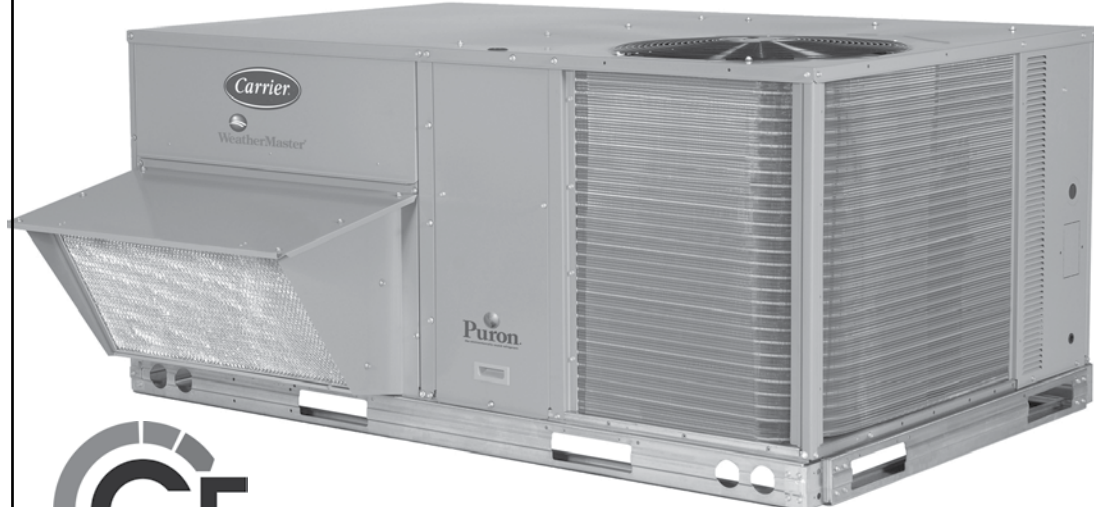
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**Metropolitan Air Conditioning Contractors of New York
CONTRACTOR MEMBERSHIP APPLICATION**
Valid through December 31, 2016

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Company:		
Mailing Address		
Street/PO Box:		
City:	State:	ZIP Code:
Phone:	Fax:	
Primary Contact:	Title:	
Email Address:	Website:	
As a member, I agree to abide by the MACC Code of Ethics. Sign: _____		
What your company does:		
Check all that apply: <input type="checkbox"/> Air Conditioning (AC) <input type="checkbox"/> Boilers (B) <input type="checkbox"/> Controls (CN) <input type="checkbox"/> Duct & System Cleaning (DSC) <input type="checkbox"/> Electrical (EL) <input type="checkbox"/> Energy Management (EM) <input type="checkbox"/> Evaporation Cooling (EC) <input type="checkbox"/> Geothermal Cooling (GC) <input type="checkbox"/> Heating (HT)	<input type="checkbox"/> Home Performance (HP) <input type="checkbox"/> Indoor Air Quality (IAQ) <input type="checkbox"/> Insulation (IL) <input type="checkbox"/> Plumbing/Piping (PP) <input type="checkbox"/> Radiant Heating & Cooling (RHC) <input type="checkbox"/> Refrigeration (R) <input type="checkbox"/> Sheet Metal (SM) <input type="checkbox"/> Test & Balance (TB) <input type="checkbox"/> Ventilation (VT) <input type="checkbox"/> Other _____	Markets Served: <input type="checkbox"/> Commercial/Industrial <input type="checkbox"/> Design/Build <input type="checkbox"/> Government <input type="checkbox"/> Industrial <input type="checkbox"/> Institutional <input type="checkbox"/> Light Commercial <input type="checkbox"/> Residential
Were you referred by a current MACC member? If yes, please provide the following:		
Name:	Company:	
MEMBERSHIP DUES		
Contractor Annual Member Dues: \$650 Valid Through: December 31, 2016		
* A contractor is any firm, or corporation that designs, installs, services, and/or repairs environmental systems such as heating, air conditioning, refrigeration, humidification, air purification, and ventilation.		
PAYMENT INFORMATION		
Pay by Credit Card: Return this completed form by fax to 516-922-1414 or by mailing to the address below.		
Pay by Check: Return this completed form with check made payable to MACC to:		
MACC, 123 South Street, Suite 112, Oyster Bay, NY 11771		
Please charge my: <input type="checkbox"/> MasterCard <input type="checkbox"/> Visa <input type="checkbox"/> AMEX <input type="checkbox"/> Discover		
Name on Card:	Security Code:	
Card Number:	Expiration Date:	
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By signing below, I authorize MACC to charge the above card for the amount of dues as indicated above.		
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<small>MACC dues are not deductible as a charitable contribution for federal tax purposes, but may be deductible as a business expense up to 80%. We estimate 20% of your dues are nondeductible for the tax year because of MACC's lobbying efforts on behalf of its members.</small>		

MACC Members Learn About New State And City Energy Conservation Construction Codes Plus Surety Bonds at March 3rd meeting





Photos From The March 3rd Meeting
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