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Air Conditioning Contractors of America

Greater New York Chapter
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Greater New York Contractors' NEWS



www.accany.org PLEASE ROUTE THIS PUBLICATION WITHIN YOUR ORGANIZATION

JULY 2015

President's Message



Marc Soffler

After being associated with ACCA for over thirty years, it is with great pleasure to announce that we have begun the rebranding of our association. We will now be known as MACC, Metropolitan Air Conditioning Contractors of New York.

In addition to our new name and logo, within the next few weeks we will be announcing several exciting new benefits, programs and events that we will be offering our local community of Air Conditioning professionals. Although we have

Turn to President's Message on page 4

**There Is No Membership Meeting in July and the
Greater New York Contractor's NEWS
Does Not Publish In August.
Our Next Meeting will be September 3rd.**

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Photos are inside on pages 8&9 and in color on our website



**Don't Forget to make your Reservation
for our 37th Annual Golf Outing at The
Village Club at Lake Success to be held
Monday, August 10th
www.accany.org**

Who we are — ACCA is a non-profit association serving more than 60,000 professionals and 4,000 businesses in the HVACR community. We work together to promote professional contracting, energy efficiency, and healthy, comfortable indoor living for all Americans.



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PRESIDENT'S MESSAGE *Continued from page 1*

transitioned from ACCA to MACC, our goal remains the same; to deliver informative content to our members, offer rewarding networking opportunities and provide members with the tools and resources necessary to grow their businesses.

The month of July always brings about warm temperatures, and as usual, causes everyone to be busy working long hours. However, summer is also the time of year where we get together and enjoy some leisure time. Our Cocktail Party, that took place last month at City Cellar, was a fantastic night, attended by both new and familiar faces. Another great event that took place is our annual Night at the Mets Game, where we were given the opportunity to spend quality time with our coworkers and their families. I would like to thank all of the sponsors for their support and continued participation in these events.

Please remember to sign up for our 37th Annual Golf Outing, which will take place on August 10th, at The Village Club at Lake Success. Our regular monthly meetings will resume again in September and I look forward to seeing you then.

Please visit our website (www.accany.org) on a regular basis to stay informed about upcoming events.

— Marc Soffler

Check our website regularly for the latest information and updates!
www.accany.org



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 and see how
 innovative we can get.

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Editor's Notes

by Anthony N. Carbone

This June, our local Chapter had a successful cocktail party at City Cellars in Westbury on the patio. The passed hors d'oeuvres and buffet, including sushi, were spectacular. Many long-time representatives and owners of leading air conditioning contractors and suppliers came to participate in an important networking opportunity.

The strengthening of our relationships and exchange of information is one of the most powerful advantages of ACCA. I hope the members of our organization realize the value of our programs and the power it affords each company.

In addition, we had a fantastic turnout for The Night at the Mets on June 12th (see the photos on pages 8 and 9). The Mets played an exciting game and won the game. Great chance to bring employees for a night out and mingle with counterparts of ACCA at a world class baseball stadium.

Please contact me via e-mail regarding ideas you might have for our local chapter that you think are of interest to our organization – Anthony@systematiccontrol.com



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Night With The Mets



People & The Workplace

By Alan B. Pearl,
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The Positives and Negatives of Commission Sales Agreements

What are commission sales agreements?

Many employers, who are not in the "sales" business, require their employees to sell for the benefit of the company. The question then becomes, should you have commission sales agreements for your employees? There are a number of factors to consider when determining whether or not your company could benefit from having commission sales agreements. Ask yourself a few questions, such as, do my employees receive any sort of payment for the sales that go into my business? This may be a difficult question to answer, but here is an example: Employer runs an Air Conditioning and Heating Service Company. Majority of the workforce are installation and repair technicians who service existing air conditioning and heating systems. However, in an effort to increase revenue, the company wants to sell new systems to ex-

isting customers and also form a new customer base. In doing so, Employer tells technicians that they will provide them with 1% of the total revenue obtained for any new system installation contract or new client contract. We now have an oral commission sales agreement, which opens an employer up to liability.

Commissions are defined as compensation based on a percentage of or some other amount based upon an employee's orders or sales. In New York, a commission is considered wages under the labor law. It is considered earned either at the moment stated in the contract, or, if no written or implied agreement exists, at the time of the employee's production of a ready, willing and able purchaser of the services. Deductions may be taken from earned commissions only as permitted by the labor law for such items as insurance, health benefits, charitable contributions, union dues, etc. Always as a caution, wage and hour considerations need to be made. Business expenses must be reimbursed.

How to ensure your compliance?

In July of 2007, New York Labor Law was amended with regard to compensation paid to commissioned sales staff. Many new requirements were put in place to ensure the protection of the employee, such as the requirement that all commission sales agreements are to be in writing and must include a detailed description of how the monies earned and payable will be calculated; how often the payments will be made; the frequency of reconciliation (if the agreement includes a draw); as well as all pertinent details regarding the commissions upon termination to name a few. This results in serious consequences for employers in New York who neglect to draft commission sales agreements. Essentially, in the absence of a written agreement, the Department of Labor will take the position that the agreed upon terms are the terms presented by the employee and NOT the employer. Even if written agreements have terms which are absent or uncertain, the Department will resolve any disputes as to the meaning and import of the terms in favor of the employee. Finally, the Courts will enforce and oral agreement to pay commissions and often side with the employee.

What are the benefits?

Having articulate and concise commission sales agreements affords employers with several protections. First and foremost, it will reduce the company's liability against mistakenly false or intentionally fraudulent compensation claims; will enable employers and employees to resolve disputes regarding commissions and wage related issues quicker and with less expense; these agreements allow for regular earnings statements which enables employers and employees to determine how much is owed to the company

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in the cases of recoverable draws; and most importantly, it ensures that you are in compliance with the regulation. Employers may want to include language that underscores that the agreement is not an employment contract and is limited to compensation issues.

Having knowledgeable employees who are already interacting with your clients and potential clients and earn commission on portions of their sales is beneficial to employers, especially smaller employers who do not have the capacity to hire sales staff. Any agreement regarding the amount of "sales", i.e. new clients, up-selling more deluxe systems or parts, or replacements, etc. should trigger the need for a commission sales agreement. Employers should considering consulting with legal and/or professional Human Resources people to assist in evaluating

any current programs or development of new programs.

If you need any assistance with regard to this or any other labor or employment matter, please contact me at abp@pmpHR.com or (516) 921-3400. •



Kevin Cirincione
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Statement From Stuart S. Zisholtz, Esq.

Caution on Public Contracts

I cannot emphasize enough the egregious and outrageous provisions set forth in public contracts. Each public agency has their own terms and conditions and each of the terms and conditions must be complied with in order for you to recover any balance due and owing.

Recently, a decision was rendered by the Appellate Division, Third Department pertaining to a public contract involving a reconstruction of a bridge and stretch of highway.

In that action, the contractor failed to comply with the contract provisions involving change orders which required a notice to the State of New York within ten work days and certain records be kept and submitted as well. The contract provided that the notification and recordkeeping provisions be strictly complied with for disputes and shall be considered a condition precedent to any recovery. Since the contractor failed to provide the proper notice and failed to timely submit certain required records to the State of New York, its entire claim was dismissed.

I have written articles in the past about the brutal and harsh terms associated with public contracts. While financially the contracts may appear to be worthwhile, the results could be

detrimental if you fail to comply with the specific terms and conditions set forth in the contracts.

Unfortunately for this contractor, he was unable to recover anything for the additional work due to his failure to provide the necessary notice and documentation within the time frame set forth in the contract.

Never let your lien time run out!

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me or the Association.

Stuart S. Zisholtz is a partner in the law firm of Zisholtz & Zisholtz, Mineola, New York, a general practice firm specializing in Construction Law and Mechanic's Liens. He is also a member of the Greater New York Chapter, ACCA. He can be reached at 516-741-2200. •



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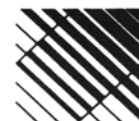
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Contractor Comfort Index 83 in May—Down 3 from 2014

The May Contractor Comfort Index (CCI) shows that contractors' positive outlook on short-term growth is continuing as the weather heats up. ACCA began measuring contractor attitudes toward short-term economic growth with the CCI in February 2010.

For May 2015, the CCI is 83. The CCI also shows that contractors are feeling slightly more cautious than they were 12 months earlier when the CCI was 86. •

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