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Greater New York Chapter
123 South Street,
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Greater New York Contractors' NEWS



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MAY 2015

President's Message



Marc Soffler

The spring season brings about many changes as we transition from the long winter to the upcoming summer months. Beginning July 1st of this year, our chapter will be involved in a change to the membership structure between national and the local chapters of ACCA. Some of the immediate changes to take place as a result of this modification will be a new name for the chapter, a new logo, and the adjustment to how our membership dues are billed. Members will also have the opportunity to join

Turn to President's Message on page 4

JOIN US AT OUR MAY MEETING!

Thursday, May 14, 2015

For a Special Presentation by:

Jocelyn R. Nager, Esq.
President of Frank, Frank,
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Special Notice

The GNY ACCA News Online

This copy of your May issue of the Greater New York ACCA Newsletter has been sent to you via email. We believe this will lend more flexibility, ease of reading and archiving convenience.

The electronic issue can contain interactive hyperlinks to advertisers' websites and to referenced content. It will also give us an opportunity to add color as desired.

The normal print format will resume in June but we would like your input about your preferences. Do you prefer this Online issue or would you rather keep it the old way. Please let us know. Call 515-922-5832.

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Greater New York Contractors' News is printed monthly by the Greater New York Chapter of ACCA. Questions should be directed to the appropriate director or committee member for assistance. While this newsletter is designed to provide accurate and authoritative information on the subjects covered, the Association is not engaged in rendering legal, accounting, or other professional or

technical advice. Accordingly, the Association cannot warrant the accuracy of the information contained in this newsletter and disclaims any and all liability which may result from publication of or reliance on the information provided herein. If legal advice or other expert assistance or advice is required, the services of a competent, professional person should be sought.

Editor's Notes

by Anthony N. Carbone

Some Observations On Hiring Field Technicians And Installers

The Human Resource Department of any HVAC company looking for field technicians and installers is without a doubt a full time job. With so much social media available to not only the employee, but also to the employers, the potential you would think is abundant. The market place for talent though is still lean.

But deciphering this information, provided by potential candidates, is another story. The most annoying and disturbing part of selecting new talent is reading these ridiculous resumes that people concoct. An example of these are: "To better enhance my career and excel to new heights." "My vast of experience will lend itself to my new employers and will contribute to the overall success of your company." These creative lines are so nonsensical and farcical, regardless of their good intentions.

The reality is, Do they have the specific experience that fits with your company? Do the employees have the capacity to match with your company culture? These attributes are the essentials of what is needed. The paper resume or the electronic email sent to potential employers lends very little information than the previous companies that they worked for and the proximity of where they live from the operation they are serving. Let's face it, hiring an employee who lives in Suffolk, yet works in Queens means your truck, gas and travel time is enormous. The work honeymoon is soon over after sitting in traffic for hours to arrive to work or to get home. What is your opinion?

— Anthony N. Carbone

PRESIDENT'S MESSAGE *Continued from page 1*

the local and national organization independently.

Many of us see this as a great opportunity for a new beginning for the HVAC professionals in our area. This new independence, will give our organization the opportunity to focus more on our local community of professionals and continue to work toward making this organization more beneficial for members. We will continue to further develop our business and technical training courses, offer interesting dinner and networking events, and promote our organization to represent HVAC professionals as leaders in our industry.

At our last monthly meeting in April, we conducted a "round table meeting" in which we discussed various topics concerning the direction of our organization. Countless great ideas emerged from this event and the board of directors have been actively exploring many of those suggestions.

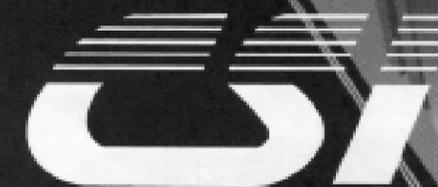
There is no better time to become more involved in the association and assist in the formation of our new organization. I welcome your comments and look forward to seeing everyone at our next meeting at Vivaldi Ristorante on May 15th.

— Marc Soffler

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ACCA to Promote Industry Workforce Initiatives

ACCA will launch a new workforce development program, IE3jobs.com, aimed at military veterans as well as students.

According to David Kyle, 2014/2015 Chairman of the Board, contractors are facing labor shortages of potentially catastrophic proportions. "This isn't a surprise, it hasn't crept on us," he says. "People were talking about labor shortages and workforce development 25, 30, 50 years ago. They're still talking about it today. I think the only way to address our challenge is to begin changing the way other people think about our industry – and maybe the way we think about our industry, too."

During his inaugural remarks in 2014, Kyle said that he believed the HVACR industry is better described as "the indoor environment and energy efficiency, or IE3, industry." IE3 was originally coined by ACCA as a phrase to describe its media and event offerings, but Kyle found that when he used it to describe his company – as being "IE3 experts" – he was met with great acceptance and interest from school guidance counselors, students, and

military veterans.

"I truly believe that this is the right thing to do," Kyle says. "As the IE3 industry, we are high-tech, green – an exciting place to work. Whether we like it or not, HVAC sounds like box installers. IE3 sounds like service providers. I think the future belongs to service providers."

Kyle's company, Trademasters, provided an initial grant to ACCA to produce a series of online videos, one aimed at military veterans and one aimed at students, which will be launched on YouTube later this month.

These videos will tie back into IE3jobs.com, a public service website dedicated to drawing new candidates into the contracting sector, which will launch next month. The site will feature videos and offer a simple way for candidates to contact ACCA member companies who are offering on-the-job training or apprenticeship programs.

ACCA will be taking a particular interest in encouraging veterans to enter the IE3 industry. "I've hired many veterans and realized they are the perfect candidate pool for our company and every other contractor out there," Kyle says. "Plus, we offer the perfect job opportunity for them – a chance to make a difference in the world by reducing energy usage, a chance to use their leadership expertise and hands-on skills, a chance that almost no other industry can offer them for great income potential and overall life satisfaction."

Over the next year, ACCA will be helping its members understand and use federal and state programs that support veterans transitioning to private jobs, and will be promoting IE3 and contracting as the right career path for veterans.



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Employment Law Litigation

At a recent ACCA meeting, one of the members inquired concerning the costs of employment law litigation. I'm finding that the question is timely and sensitive. I thought that I would devote this article to that question.

Litigations are costly and time consuming. Therefore, any ounce of prevention is worth a pound of cure.

1. Employee Handbook: The first defense is your employee handbook containing a compliant procedure and a signature from your employee (annually) that they have received the handbook, have read it, and they will follow it.

2. Personnel Files: Complete and accurate personnel files are absolutely essential.

3. Hiring Documents: The hiring documents as well as the resume and preliminary documents pertaining to employment must be maintained for a period of six (6)

years after the employee leaves your employ.

4. Disability Related Cases: For disability related cases, the personnel file should contain non-medical documentation with regard to the start of the leave, the information pertinent to the injury or illness, and if necessary a separate file set up for the medical data that may be sent in by the attending physician. Without such information, the company is unable to or is in a poor position to a judge how much and for how long they must accommodate employee's disability.

5. Poor Supervisory Conduct: In cases involving poor supervisory conduct, it is suggested that all documentation concerning supervisory training on discrimination and harassment be maintained in perpetuity. Managers who attend discrimination and harassment training should sign an acknowledgment for any materials that were distributed. That signature should be placed in the employee's personnel file. You need to show that the manager was acting within the scope of his employment. You need to show that the manager did not violate a statute or regulation. Least of all, do you want a manager testifying that he/she was unaware of the rules and regulations governing discrimination in the workplace?

6. Breach of Confidentiality: The cases that involve breach of confidentiality or non-compete agreements, we want to make sure that the applicant's non-competition agreements at a prior place of employment is not binding. We should be aware of any prior restrictions. If we are going to ask for a document that the document be executed within 72 hours of employment if not before.

7. Wage and hour cases: We obviously want to see wage payment and time keeping records that meet the current standards of The New York Wage Theft Prevention Act. I have spoken about many of these documents in the past and should you not be using the LS54 or LS56 for hourly and salaried individuals, please let me know immediately.

8. Workforce Reduction: For cases involving a reduction in force, we want to see documentation objective in nature supporting the reasons for each employee who is selected for lay off. Fortunately cases like these are rare.

9. Terminations: We obviously want to see documentation showing that the employee was given a true reason for their termination. While it is not necessary in New York State to provide the employee with this documentation, we urge you to tell your departing employee the truthful reason for the separation. Signed statements by supervision and management supporting the poor performance or inappropriate conduct are essential.

10. Employee Job Performance: For litigation where the employee's job performance is the sole issue, we want to see performance reviews indicating that production was

unsatisfactory, that prior admonitions and warnings were furnished and that the handbook provisions concerning progressive discipline, if applicable, have been followed.

These steps will assist the company should a claim be filed with a Federal, State, or city agency alleging a deprivation of right pertaining to employment. We are pleased to announce a continuing series of seminars with various companies exploring workplace procedures and protocols. Please be on alert for our announcements as these 2 hour sessions are invaluable.

If you have any questions concerning any of the aforementioned points of interest, please do not hesitate to contact me. Since most of the readers of this column are in the HVAC industry, we wish to make sure that your sales commission agreements are in compliance with the New York State Regulations governing commissioned sales persons. If you have any doubt that the document is less than compliant, please forward it to me and I will as a courtesy to the members of ACCA, review its content.

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. This is how you avoid litigation. •

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April Meeting...

ACCANY's April meeting topic was postponed until a later date in order for members to hold an intense discussion on our organization itself. There was good attendance and workable ideas were generated by the directors and the membership. There will be more coming on this in the near future.

Plan now to attend the May 14th meeting "Discover the best practices to get paid" presented by Jocelyn R. Nager Esq.



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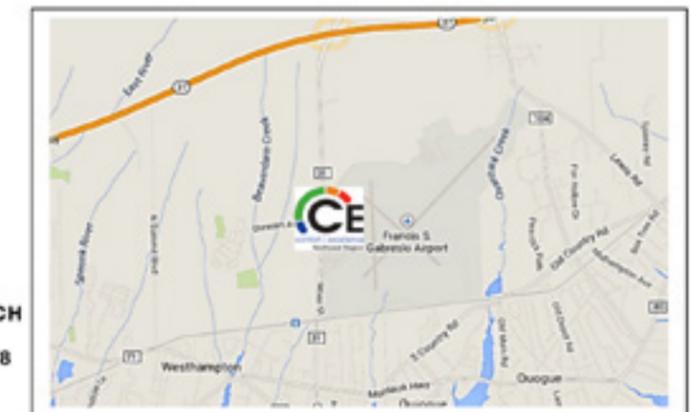
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Statement From Stuart S. Zisholtz, Esq.

Improvements Done By a Tenant

The law is clear that a contractor, subcontractor and/or a supplier has the right to file a Mechanic's Lien on real property where it performed work or furnished materials. Thereafter, it can foreclose its Mechanic's Lien to try and collect the outstanding sum due.

The question, however, is can you hold a landlord responsible for improvements done by a tenant where the landlord had nothing at all to do with the improvements and the tenant has disappeared?

In order to hold a landlord responsible where there is an intervening tenant, you must prove that the landlord consented or requested the work to be done. Consent is vital to filing a Mechanic's Lien. In order to show consent, you must prove that the landlord was actively involved in the project. Mere acquiescence and benefit is not enough to establish liability on the landlord.

The landlord may review plans, approve the work, facilitate construction of the premises, etc. The more involved the landlord is in the project, the stronger your case is against the landlord. It becomes a factual issue as to the knowledge,

consent and authorization provided by the landlord for the project. In the long run, however, it is an uphill battle to compel a landlord to pay for improvements performed by a tenant where the landlord never obligated itself, by contract or otherwise, to pay for the work performed.

The argument by the lienor is always that the landlord is gaining certain improvements to the premises and is being unjustly enriched. The landlord, however, will argue that all of the responsibility lies with the tenant and even though the tenant may be out of business, no liability exists on behalf of the landlord.

The key is that if you are performing work for a tenant mere acquiescence by the landlord will not result in liability against the landlord. He must be actively involved in the project in order to be held accountable.

Never let your lien time run out.

For a free copy of a pamphlet pertaining to Mechanic's Liens and payment bond claims, feel free to 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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ACCA Initiates New Standard On HVAC System Design For Energy Efficient Homes

The ACCA Educational Institute (ACCA-EI) Standards Task Team (STT) announces the initiation of development of BSR/ACCA 16 Manual E-201x, "HVAC System Design for Energy Efficient Homes" as a new industry standard.

HVAC designers are increasingly encountering energy-efficient homes, characterized by markedly reduced heating and cooling loads, as a result of numerous national initiatives like the energy conservation code, EPA ENERGY STAR, DOE New-Zero Ready programs, and DOE Builder's Challenge. ACCA recognized that there is little guidance currently available for HVAC design and selection for these energy-efficient homes; especially, since there is limited

manufacturer offerings for lower capacity equipment.

This standard will provide procedures to design/select HVAC systems and equipment for low-load homes that will achieve satisfactory indoor conditions with lower equipment capacity; i.e., resolving ventilation and moisture requirements/issues with low air volume systems while addressing occupant comfort, health, and safety. These procedures will apply as lower capacity equipment appears in the marketplace.

Anyone wishing to submit comments or interested in being considered for the advisory committee can submit same to standards-sec@acca.org.

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