

FILED

JUL 06 2004

RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

MICHAEL B. ROGER, Bar No. 041042
BARRY E. HINKLE, Bar No. 071223
KRISTINA L. HILLMAN, Bar No. 208599
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Attorneys for Plaintiffs

**Submitting Counsel are directed to serve this
order upon all other parties in this action.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

29⁸

CARPENTERS 46 NORTHERN
CALIFORNIA COUNTIES CONFERENCE
BOARD, and ROBERT ALVARADO, in his
capacity as Trustee of the CARPENTERS
HEALTH AND WELFARE TRUST FUND
FOR CALIFORNIA; CARPENTERS
VACATION-HOLIDAY TRUST FUND FOR
CALIFORNIA; CARPENTERS PENSION
TRUST FU

No. CV 03-04288 SBA

**AMENDED JUDGMENT AND FINAL
JUDGMENT**

Plaintiff,

v.

JOHN RICHARD SANTOS, Individually;
JOHN RICHARD SANTOS, individually and
doing business as SANTOS CONSTRUCTION;
JOHN RICHARD SANTOS, individually and
doing business as ARTEF INTERNATIONAL;
ARTEF INTERNATIONAL; SANTOS
CONSTRUCTION

Defendants.

The Court having issued its JUDGMENT confirming arbitration award executed and filed
March 19, 2004;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Decision and Award issued by Arbitrator Gerald R. McKay on June 10, 2003
(referred to as "Award"), attached hereto and incorporated herein as Exhibit A, is confirmed in its

1 entirety and made an order of this Court;

2 2. That pursuant to said Award and this Court Judgment of March 19, 2004

3 Defendant shall pay to Plaintiff the following sums:

4 a. \$47,333.55, as unpaid fringe benefits and liquidated damages per the Award;

5 b. \$300.00 as and for the costs of the proceedings and attorneys fees per the
6 Award;

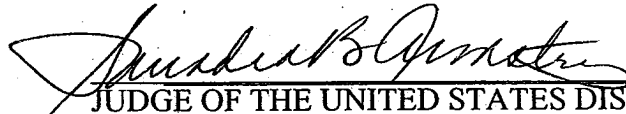
7 c. \$3,300.00, as and for attorneys' fees incurred in United States District Court
8 and;

9 d. \$710.50, as and for costs incurred in United States District Court;

10 **TOTAL AMOUNT OF JUDGMENT = \$51,644.05**

11 Dated:

12 *1 July 04*

13 
14 JUDGE OF THE UNITED STATES DISTRICT
15 COURT, NORTHERN DIVISION

16 103595/347128

**IN GRIEVANCE PROCEEDINGS
PURSUANT TO SECTION 51 OF THE
CARPENTERS MASTER AGREEMENT**

**NORTHERN CALIFORNIA
CARPENTERS REGIONAL COUNCIL,**

Grievant,

vs.

**JOHN RICHARD SANTOS, Individually;
JOHN RICHARD SANTOS, individually
and doing business as SANTOS
CONSTRUCTION; JOHN RICHARD
SANTOS, individually and doing
business as ARTEF INTERNATIONAL;
JOHN RICHARD SANTOS, individually
and doing business as CHET'S
CABINETS; ARTEF INTERNATIONAL;
SANTOS CONSTRUCTION,**

Employer.

Grievance #03-093

**DECISION AND AWARD OF
THE ARBITRATOR**

These grievance proceedings were convened on this 10th day of June 2003, in the offices of the Carpenters 46 Northern California Counties Conference Board located at 446 Hegenberger Road, Oakland, California.

The Northern California Carpenters Regional Council (hereinafter referred to as "Regional Council") appeared through its representative, Cal Watterson. Michael Plommer of the Carpenter Funds Administrative Office also appeared.

The Employer, John Richard Santos, Individually; John Richard Santos, individually and doing business as Santos Construction; John Richard Santos, individually and doing business as Artef International; John Richard Santos, individually and doing business as Chet's Cabinets; Artef International; and Santos Construction, (hereinafter collectively referred to as "Employer") did not appear, although notice was duly given.

A quorum of the Board of Adjustment, including the Arbitrator, Gerald R. McKay, was present.

Pursuant to agreement, the matter was submitted to the Arbitrator for decision, which decision is final and binding upon the parties.

The following exhibits were introduced:

1. Copy of a 1999-2004 Carpenters Master Agreement;
2. Copy of a Carpenters 46 Northern California Counties Memorandum Agreement signed and dated by Santos Construction on September 3, 2002;
3. Copy of a Carpenters 46 Northern California Counties Memorandum Agreement signed and dated by Artef International on September 3, 2002;
4. Copy of a Carpenters 46 Northern California Counties Memorandum Agreement signed and dated by Artef International on April 1, 1998;
5. Copy of a Carpenters 46 Northern California Counties Memorandum Agreement signed and dated by Artef International on April 10, 1998;
6. Copy of Notice of Grievance, with attachments, dated May 15, 2003;
7. Copies of letters dated May 28, 2003 notifying the employer, and each of them, of the date and time of the hearing, which letters were sent to the last known addresses of John Richard Santos, Individually; John Richard Santos, individually and doing business as Santos Construction; John Richard Santos, individually and doing business as Artef International; John Richard Santos, individually and doing business as Chet's Cabinets; Artef International; and Santos Construction;
8. Certificate of Service dated May 28, 2003;
9. Copy of a Northern California Carpenters Trust Fund Remittance Report filed by Artef International for the month of October 2002;
10. Copy of a Northern California Carpenters Trust Fund Remittance Report filed by Artef International for the month of September 2002.

Testimony was given by Michael Plommer with respect to the grievance.

Remedy sought:

That the Employer forthwith cease and desist any further violations of the Carpenters Master Agreement for the remainder of its term;

That the Employer forthwith comply with said Agreement for the remainder of its term;

That the Employer be assessed for violations as found.

The evidence having been taken, the matter stood submitted for decision by the Arbitrator.

DECISION

1. Based upon the evidence submitted, it is found that the Employer, John Richard Santos, Individually; John Richard Santos, individually and doing business as Santos Construction; John Richard Santos, individually and doing business as Artef International; John Richard Santos, individually and doing business as Chet's Cabinets; Artef International; and Santos Construction (hereinafter collectively referred to in this Decision and Award as "Employer"), are each party to and bound to the current Carpenters Master Agreement. The Carpenters Master Agreement specifically requires the Employer to participate in the grievance procedure and authorizes the Board of Adjustment or Arbitrator to hear and decide the matter on a default basis in the event of Employer non-participation.
2. The Arbitrator has considered the evidence pertaining to the merits of the grievance and finds that the grievance filed by the Northern California Carpenters Regional Council is meritorious and that the Regional Council is entitled to a remedy to resolve this matter.
3. Having found in favor of the Regional Council, the Arbitrator issues the following Award:

AWARD

1. The Employer shall forthwith cease and desist any further violations of the current 46 Northern California Counties Carpenters Master Agreement for Northern California for the remainder of its term. The Employer shall forthwith comply with said Agreement for the remainder of its term.
2. The Employer shall pay the amount of \$47,333.55 in unpaid fringe benefits and liquidated damages.
3. The Employer shall immediately cease and desist from improperly reporting and untimely paying Trust Fund contributions that are required to be paid to the various Trust Funds referred to in the 46 Northern California Counties Carpenters Master Agreement for Northern California.
4. The Employer shall correctly report and timely pay all required contributions to each and all of the various Trust Funds referred to in the 46 Northern California Counties Carpenters Master Agreement for Northern California. Correct reporting means to report each individual employee for all hours worked and paid for. Timely payment means that all payments must be paid on or before the 15th and no later than the 25th of each month following the work month for which each such report is made.
5. The Employer shall forthwith submit to an audit of all of its books and records by representatives of the Northern California Carpenters Trust Funds for the period January 1, 2000 through date of audit entry, in order to determine the amount of

wages and fringe benefits due, if any, and to whom they may be due. For purposes of this Award, the amount of wages due shall be based upon the number of hours worked for which Trust Fund contributions are deemed to be due the Carpenter Trust Funds by the auditors.

The books and records which must be submitted to the auditors are all those referred to in Section 21 of the Carpenters Master Agreement and the records referred to in Article IV, Section 8, of the Carpenters Health and Welfare Trust Agreement; Article IV, Section 6, of the Carpenters Pension Trust Agreement; Article VII, Section 4, of the Carpenters Vacation Holiday Trust Agreement; and Article IV, Section 6, of the Carpenters Apprentice Trust Agreement, including, but not necessarily limited to all of the following records as has been determined by the Joint Delinquency Committee of the Carpenters Trust Funds to be relevant:

- (a) Contribution Return and Report of Wages - California (Form DE-3)
- (b) Contribution Returns and Report of Wages – Federal
- (c) Time cards for all employees
- (d) Payroll Journal
- (e) Workers Compensation Reports
- (f) Individual Earnings Record
- (g) Forms W-2, W-4, 1096 and 1099
- (h) Trust Fund Reports for other trades
- (i) General check registers
- (j) Check stubs or vouchers
- (k) Bank statements and cancelled checks
- (l) Job Costs Records, copies of all contracts
- (m) General Ledger, Cash Receipts Journal
- (n) Individual, Corporate and/or Partnership Tax Returns
- (o) Vendor's invoices
- (p) Records of related entities

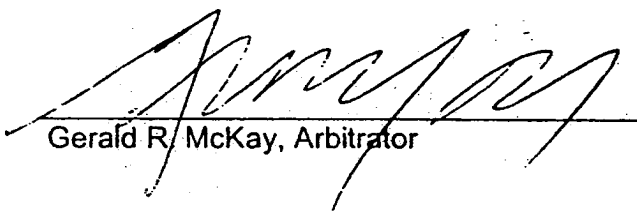
- (q) Other books and records as may be necessary to conduct appropriate testing to assume the accuracy of records that have been reviewed.
6. In the event that there is any dispute between the parties to this Award concerning the amount of money due, or to whom said amounts are to be paid, or the amount that is to be paid following the audit, the Arbitrator hereby retains jurisdiction over these proceedings to resolve or adjust said differences upon further submission to it by any of the parties to this Award.
7. In the event that the Employer does not comply with the terms of this Award and if the Regional Council or Trust Funds files suit to confirm this Award, the Regional Council or Trust Funds shall be entitled to reasonable attorneys' fees and court costs incurred in enforcing this Award. Said attorneys' fees and court costs are deemed a part of the remedy awarded by the Arbitrator in order to resolve the issues raised in the grievance procedure as set forth in Section 51 of the Carpenters Master Agreement.
8. It is further ordered that pursuant to Section 51, the Employer shall pay the sum of \$300.00 as and for its share of the cost of these proceedings.

Amount due under this Award:

- | | | |
|-----|---|-------------|
| (a) | Unpaid fringe benefits and liquidated damages | \$47,333.55 |
| (b) | Cost of proceedings | 300.00 |

Amount due: \$47,633.55*

6-12-53
Date


Gerald R. McKay, Arbitrator

*The above sum does not include the amount due and owing for wages and fringe benefits (if any) determined by the audit.

CASE NUMBER(S): #03-093

**CERTIFICATE OF SERVICE
(1013a, 2015.5 C.C.P.)**

I am a citizen of the United States and a resident of the County of Alameda, State of California.

I am over the age of eighteen years and not a party to the within action; my business address is

446 Hegenberger Road, Oakland, California 94621. On June 12, 2003, I served the within

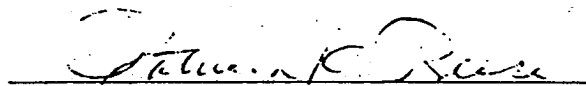
DECISION AND AWARD OF THE ARBITRATOR on the interested parties in said action by placing a true and exact copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Oakland, California, addressed as follows:

**John Richard Santos, Individually; John
Richard Santos, Individually & dba Santos
Construction; John Richard Santos, Individually
& dba Artef International; John Richard Santos,
Individually & dba Chet's Cabinets;
Artef International; Santos Construction
2700 Campbell Drive
Auburn, CA 95602**

SENT CERTIFIED AND REGULAR MAIL. CERTIFIED RECEIPT #7002 2410 0001 6969 5660.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California on June 12, 2003.



Patricia K. Reese

CASE NUMBER(S): #03-093

**CERTIFICATE OF SERVICE
(1013a, 2015.5 C.C.P.)**

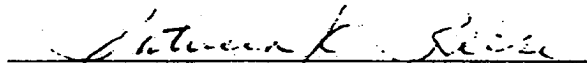
I am a citizen of the United States and a resident of the County of Alameda, State of California.
I am over the age of eighteen years and not a party to the within action; my business address is
446 Hegenberger Road, Oakland, California 94621. On June 12, 2003, I served the within
DECISION AND AWARD OF THE ARBITRATOR on the interested parties in said action by
placing a true and exact copy thereof enclosed in a sealed envelope with postage thereon fully
prepaid, in the United States Post Office mail box at Oakland, California, addressed as follows:

**John Richard Santos, Individually
2700 Campbell Drive
Auburn, CA 95602**

SENT CERTIFIED AND REGULAR MAIL. CERTIFIED RECEIPT #7002 2410 0001 6969 5677.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California on June 12, 2003.



Patricia K. Reese

CASE NUMBER(S): #03-093

CERTIFICATE OF SERVICE
(1013a, 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the County of Alameda, State of California.

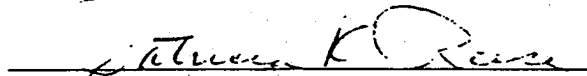
I am over the age of eighteen years and not a party to the within action; my business address is 446 Hegenberger Road, Oakland, California 94621. On June 12, 2003, I served the within **DECISION AND AWARD OF THE ARBITRATOR** on the interested parties in said action by placing a true and exact copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Oakland, California, addressed as follows:

**John Richard Santos, Individually &
dba Santos Construction
2700 Campbell Drive
Auburn, CA 95602**

SENT CERTIFIED AND REGULAR MAIL. CERTIFIED RECEIPT #7002 2410 0001 6969 5684.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California on June 12, 2003.

A handwritten signature in cursive script, appearing to read "Patricia K. Reese", is written over a horizontal line.

Patricia K. Reese

CASE NUMBER(S): #03-093

**CERTIFICATE OF SERVICE
(1013a, 2015.5 C.C.P.)**

I am a citizen of the United States and a resident of the County of Alameda, State of California.

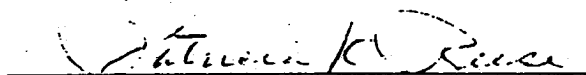
I am over the age of eighteen years and not a party to the within action; my business address is 446 Hegenberger Road, Oakland, California 94621. On June 12, 2003, I served the within **DECISION AND AWARD OF THE ARBITRATOR** on the interested parties in said action by placing a true and exact copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Oakland, California, addressed as follows:

**John Richard Santos, Individually
& dba Artef International
2700 Campbell Drive
Auburn, CA 95602**

SENT CERTIFIED AND REGULAR MAIL. CERTIFIED RECEIPT #7002 2410 0001 6969 5691.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California on June 12, 2003.



Patricia K. Reese

CASE NUMBER(S): #03-093

**CERTIFICATE OF SERVICE
(1013a, 2015.5 C.C.P.)**

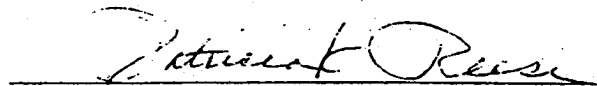
I am a citizen of the United States and a resident of the County of Alameda, State of California.
I am over the age of eighteen years and not a party to the within action; my business address is
446 Hegenberger Road, Oakland, California 94621. On June 12, 2003, I served the within
DECISION AND AWARD OF THE ARBITRATOR on the interested parties in said action by
placing a true and exact copy thereof enclosed in a sealed envelope with postage thereon fully
prepaid, in the United States Post Office mail box at Oakland, California, addressed as follows:

**Santos Construction
2700 Campbell Drive
Auburn, CA 95602**

SENT CERTIFIED AND REGULAR MAIL. CERTIFIED RECEIPT #7002 2410 0001 6969 5721.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California on June 12, 2003.

A handwritten signature in cursive script, appearing to read "Patricia K. Reese", is written over a horizontal line.

Patricia K. Reese

PROOF OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 180 Grand Avenue, Suite 1400, Oakland, California 94612-3752. On June 24, 2004, I served upon the following parties in this action:

John Richard Santos
2700 Campbell Dr.
Auburn, CA 95602

John Richard Santos dba Santos
Construction
2700 Campbell Dr.
Auburn, CA 95602

John Richard Santos dba Artef
International
2700 Campbell Dr.
Auburn, CA 95602

Artef International
2700 Campbell Dr.
Auburn, CA 95602

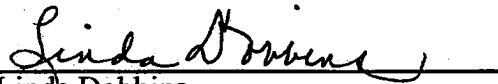
Santos Construction
2700 Campbell Dr.
Auburn, CA 95602

copies of the document(s) described as:

Amended Judgment and Final Judgment

[X] BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Oakland, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

I certify under penalty of perjury that the above is true and correct. Executed at Oakland, California, on June 24, 2004.


Linda Dobbins

103595/344426

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Carpenters 46 Northern California Counties
Confere et al,

Plaintiff,

v.

Santos et al,

Defendant.

Case Number: CV03-04288 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 6, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kristina Hillman
Weinberg, Roger & Rosenfeld
180 Grand Avenue
Suite 1400
Oakland, CA 94612

Dated: July 6, 2004

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk