

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

NEW ENGLAND REGIONAL MORTGAGE COMPANY

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 279:21 minimum wage

Employer: New England Regional Mortgage Company, 90 Stiles Road, Ste 201, Salem,
NH 03079

Date of Hearing: March 4, 2014

Case No. 46833

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 9, 2013. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on February 5, 2014.

The claimant testified that he worked for the employer for about two and a half months. He said that his salary package was a 100% commission based plan. In his two and a half months he never sold any mortgages and therefore never received any wages. The employer had given the claimant a sales pitch that laid out various ways in which the employer was going to generate business. None of the proposed methods were ever fulfilled.

The claimant said that he tried to develop leads through the internet but was not successful. He testified that at one point the employer called his and said that he should have been receiving minimum wage for the hours he worked. This was the time he first heard that he was to receive a "draw" from commissions. This was never discussed with the claimant. The claimant also said that he was never on a time clock and was never trained on the time clock used by the employer. The claimant said that he told the owner he felt he was owed at least minimum wage for the eleven weeks and one day that he worked. The owner offered \$2,500.00 to settle the deal and the claimant refused to accept it.

The claimant feels that he is due eleven weeks and one day of wages. The time worked times the rate of the minimum wage, shows the claimant is seeking \$3,248.00 in wages.

The employer testified that there was an employment contract in place that stated the claimant had to work in the main office and he had to record his time on a time clock. The employer stated that the claimant did not follow the contract and they attempted to recreate his work history and came up with 89 hours over the term of employment.

The employer offered a settlement in this claim and it was not accepted by the claimant. The employer also sent one check to the claimant which has not been cashed pending the outcome of this Wage Claim.

FINDINGS OF FACT

RSA 275:43 IRSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This section of the law mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 279: 21 Minimum Hourly Rate. – Unless otherwise provided by statute, no person, firm, or corporation shall employ any employee at an hourly rate lower than that set forth in the federal minimum wage law, as amended. Tipped employees of a restaurant, hotel, motel, inn or cabin, who customarily and regularly receive more than \$30 a month in tips directly from the customers will receive a base rate from the employer of not less than 45 percent of the applicable minimum wage. If an employee shows to the satisfaction of the commissioner that the actual amount of wages received at the end of each pay period did not equal the minimum wage for all hours worked, the employer shall pay the employee the difference to guarantee the applicable minimum wage.

This part of the law deals with the minimum amount that an employee can be paid based on hours of work.

It is the finding of the Hearing Officer, based on the written submission and the testimony provided for the hearing, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant worked for eleven weeks with the company and did not receive any wages. His wage plan was based on a commission for mortgages sold and implemented. The claimant did not sell any mortgages. The claimant said that the employer did not follow through on promises made for selected advertising. This is not the bases for the Wage Claim but it does not release the employer from paying the claimant minimum wage for the hours worked.

There was testimony about an employment contract but one was never produced for the hearing. The claimant testified credibly that he was allowed to work from home and did so. There was no order to work in the employer's office.

The employer has the burden to keep employment records and if it included hours worked, there is no record of the hours worked. The employer said that they attempted to recreate the time worked. This does not take the place of actual record keeping.

The Wage Claim is valid in the amount of \$3,248.00. The check issued is not a part of this decision and should be returned to the employer.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$3,248.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$3,248.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 26, 2014

Original: Claimant
cc: Employer

TFH/all