

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**AMERICAN INCOME LIFE**

**DECISION OF THE HEARING OFFICER**

**Appearances:** Jennifer A. Eber Esq. Attorney for the Independent Agent

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 274: 42 I/II employer/employee relationship

**Employer:** American Income Life, 50 Nashua Rd. #210, Londonderry, NH 03052

**Date of Hearing:** January 29, 2014

**Case No.** 46914

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a Wage Claim for \$100,000.00 for commissions on product sold. Even though he received wages, he feels that he is not being paid an appropriate commission for policies sold. The claimant also maintains that he is an employee and not an Independent Contractor.

The employer maintains that the claimant is an Independent Contractor and that the company does not have any employees in New Hampshire. The claimant has signed hiring agreement to the fact that he is an Independent Contractor and that any claims should be adjudicated by an internal arbitration system.

**FINDINGS OF FACT**

RSA 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 that an employer pay an employee all wages due at the time the wages are due and owing.

This is where the law points out the criteria for a person to be an employee and be in an employer/employee relationship.

It is the finding of the Hearing Officer, based on the filings and the testimony presented for a Pre-Hearing Conference, that the criteria for the claimant to be an employee has not been met. All the testimony and the documentation points to the claimant being an Independent Contractor.

There is no need to deal with the wage issue because the claimant is not in the proper forum. The claimant has to exhaust his remedies under the signed contracts.

The Wage Claim appeal is invalid.

### **DECISION AND ORDER**

This Department must first to determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

- (a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.
- (b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.
- (c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.
- (d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.
- (e) The person holds himself or herself out to be in business for himself or herself.
- (f) The person has continuing or recurring business liabilities or obligations.
- (g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.
- (h) The person receives compensation for work or services performed and remuneration is

not determined unilaterally by the hiring party.

(i) The person is responsible in the first instance for the main expenses related to the service or work performed. However, this shall not prohibit the employer or person offering work from providing the supplies or materials necessary to perform the work.

(j) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(k) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(l) The person is not required to work exclusively for the employer”.

This Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: March 4, 2014

Original: Claimant  
cc: Employer

Jennifer Eber, Esq.  
Orr & Reno  
45 S Main Street, PO Box 3550  
Concord, NH 03302-3550

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