

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

  
**V**

**STICKS AND STONES**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 279:21 VIII unpaid overtime  
RSA 275:44 IV liquidated damages  
RSA 275:42 I/II employer/employee relationship

**Employer:** Sticks and Stones, PO Box 186, Barnstead, New Hampshire 03225

**Date of Hearing:** May 27, 2014

**Case No.** 47568

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on February 18, 2014. 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 April 18, 2014. The Wage Claim was filed for \$400.00 and overtime.

The issue that has to be dealt with first is the issue of the employer/employee relationship. If there is a finding that there is no relationship then the claimant is not in the proper forum to resolve this Wage Claim.

The claimant testified that he was in business for himself and he worked for the employer for about six months. He filled out his time on a calendar and received a bi-weekly pay check. There was no hiring agreement and the claimant did submit invoices for his work. The claimant did not receive any type of accounting for federal taxes.

The employer testified that the claimant had to provide his own tools. The claimant refused to fill out a W-9 form and there were no taxes deducted from payments to the claimant. The claimant did receive a loan from the employer.

### **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.

RSA 275:43 III If a subcontractor who is responsible for making health and welfare funds or pension funds contributions fails to make such contributions within the 30-day requirement of paragraph I, the person designated to receive such contributions shall, within 15 days of the date the contributions become due, notify in writing the labor commissioner that the contributions are overdue. The labor commissioner shall notify the prime or general contractor within 15 days from the date of receipt of such notice that such contributions are overdue. The department of labor may pursue the general or prime contractor for such contributions only after all reasonable efforts have been made to secure the contributions from the subcontractor.

This is the section of the law that deals with the employer/employee relationship. This issue must be resolved if the Wage Claim is to continue.

It is the finding of the Hearing Officer, based on the testimony presented at the hearing, that there is no employer/employee relationship and therefore no Wage Claim. It is apparent that the claimant does not meet the definition of an employee. Based on the criteria established in this section of the law, the claimant is in business for himself and controls his business functions and product.

### **DECISION AND ORDER**

There is no employer/employee relationship in this case. The Wage Claim is invalid.

/s/

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: June 18, 2014

Original:      Claimant  
cc:              Employer

TFH/clc