

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


V

Black Rock Restaurant LLC dba Sharky's Beach Bite

DECISION OF THE HEARING OFFICER

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

Employer: Sharky's Beach Bite, 480 Newbury Street, Danvers, MA 01923

Date of Hearing: April 30, 2014

Case No.: 47614

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$10,790.00 in unpaid wages for hours worked between May 24, 2013 and July 30, 2013. He worked a total of 830 hours at \$13.00 per hour.

He testified that he and the Mark Pelletier have been friends since high school. He argues that Mr. Pelletier asked him to be a partner, but he declined because he was unable to financially do so. He further argues that Mr. Pelletier asked him to work in the kitchen at a rate of \$13.00 per hour, which he accepted. He testified he was at all times an employee.

He also testified that Black Rock Restaurant LLC dba Sharky's Beach Bite (hereafter "Sharky's") was unable to pay him until August 2013. Sharky's paid all wages due, a \$1,000 weekly salary, from August 1, 2013, until the establishment closed in September 2013. He seeks wages from the date the establishment opened, May 24, 2013, through July 30, 2013.

Mark Pelletier denies the claimant was an employee. He argues the claimant was a partner in the business, though he was not a member of the LLC. The partnership was also not reduced to writing. The claimant brought the skills to the venture and Mr. Pelletier brought the financing. They were to split the profits equally at the end of the season. At some point in July 2013, Mr. Pelletier realized there would be no profits, and began giving the claimant \$1,000 per week.

At the hearing, Mr. Pelletier submitted statements from two employees stating that the claimant presented himself as an owner to them and other employees and patrons of Sharky's. The claimant did not object to the submission of these documents.

Mr. Pelletier also submitted an excerpt from the Hampton Beachcomber dated Thursday, June 27, 2013, which includes the caption of "Matt Olga and Mark Pelletier are the owners of Sharky's Beach Bite of F Street." The story goes on to refer to Mr. Olga and Mr. Pelletier as co-owners. The claimant did not object to the submission of the article.

FINDINGS OF FACT

The claimant argues he was hired as, and was at all times, an employee of Sharky's. He argues he was hired on May 24, 2013, as an employee at a rate of \$13.00 per hour, but Sharky's was not able to pay any wages until August 2013, at which point Mr. Pelletier changed his rate of pay from \$13.00 per hour to \$1,000 salary per week. He was paid \$1,000 per week through the closing of the business for the season.

The claimant argues that though he participated in a phone interview with the Hampton Beachcomber for the article submitted by Sharky's, he never said he was an owner.

Mr. Pelletier argues he and the claimant began the venture of Sharky's together as business partner to fulfill a lifelong dream. They were full partners in the venture, though the claimant was not a member of the LLC. Mr. Pelletier felt badly as he realized there would be no profits from the business and in August 2013 began giving the claimant \$1,000 per week.

The article from the Hampton Beachcomber submitted by Sharky's makes several references to both parties as owners, co-owners, "they decided to open up their own restaurant" and that this venture is "Olga and Pelletier's first time owning and operating a restaurant."

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than Sharky's. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he was an employee of Sharky's and subsequently was not paid for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden of proof. The claimant, therefore, fails to prove by a preponderance of the evidence that he was an employee of Sharky's and is owed the claimed wages.

DECISION

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 Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

/s/

Melissa J. Delorey
Hearing Officer

Date of Decision: May 16, 2014

Original: Claimant
cc: Employer

MJD/clc