

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


V

SCIENTIFIC MANAGEMENT TECHNIQUES INC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid commissions

Employer: Scientific Management Techniques Inc.

Date of Hearing: July 22, 2014

Case No. 47981

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 23, 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 June 26, 2014.

The claimant testified that he is due \$7,350.00 in commissions. He worked for the employer from September 17, 2013 until April 2, 2014. He was a salaried plus commission employee and he had a hiring agreement. He said that he was to be paid 5% on all opportunities that closed during his employment. The claimant stated that an estimate of the sales during his tenure was \$147,000.00. The 5% payment on these sales equals the amount of the Wage Claim, \$7,350.00.

The employer testified that the claimant did not generate any sales during his time with the company. All of the sales he identifies with were the result of sales already in the "pipe line" or a follow up with calls for service. The hiring agreement had additional parts not brought forward by the claimant. The sales that were not generated by the claimant were subject to a commission range of 0% to 3%. It was clear that the establishment of a commission for these jobs was strictly up to the President.

The President testified that the claimant did not generate any sales on his own and that any he participates with during his tenure did not warrant a sales commission.

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 is the part of the law where an employer is mandated to pay all wages once the wages are due and owing.

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This section of the law places an issue such as commissions into the category of wages when the commissions are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony provided for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant lumped all sales into the 5% commission category. He did not mention that there were other sections of the hiring agreement that dealt with commissions for already established accounts. The employer was credible and within the scope of the hiring agreement to give no commissions on certain sales. The President exercised his authority and did not give the claimant any commissions for the cited sales.

The Wage Claim is invalid.

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 Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 13, 2014

Original: [REDACTED]
cc: Scientific Management Techniques Inc.

TFH/kl