

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


v

TOWER HILL TAVERN LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Tower Hill Tavern, LLC., 264 Lakeside Ave., Laconia, NH 03246

Date of Hearing: September 2, 2014

Case No. 48358

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on June 27, 2014. The notice was sent to the employer and there was no written objection to the Wage Claim. The Notice of Hearing was sent to both sides on August 5, 2014. The employer did show up for the hearing.

The claimant testified that he worked for the employer for four years. He worked at the Tavern and there was an electronic time recorder. He stated that he never clocked in for more than forty hours. He received checks in the past but never cashed the checks. For the last four pay periods he was never paid. The claimant said that his hourly rate was between \$3.26 to \$8.00 per hour.

The claimant stated that the business was a start-up business and he lived at the restaurant. He is seeking \$50,000.00 in unpaid wages over the period of time that he worked for the employer.

The employer testified that the claimant was running the business and was issuing himself checks. The owner was working and living in Florida and when he came back to see what was happening to the business, he let the claimant go and is now trying to keep the business afloat and pay of numerous debts. The bills were run up while the claimant was in charge of the business. The employer believes that all wages have been paid and that the claimant placed the business in dire financial straits.

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

It is the finding of the Hearing Officer, based on the testimony presented for the hearing, that the Wage Claim is invalid. The claimant has the burden of proving that there are wages due and owing and he did not meet this burden. The claimant, for four years was the keeper of records and the person who paid wages. He was unable to produce any time records or documents to show that the checks were issued and never cashed or that there was any agreement that allowed the claimant to live at the restaurant in lieu of wages.

The owner was credible in his testimony that the employer did not owe and wages and that the debts of the business were never paid and that the taxes were never paid. The claimant ran the business and was responsible for all wages to be paid.

The claimant was not credible in this Wage Claim and so the 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: September 25, 2014

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Original: [REDACTED]
cc: Tower Hill Tavern, LLC.

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