

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ADT HOME SECURITY AND FIRE

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: ADT Home Security & Fire, 1501 Yamato Rd, Boca Raton, FL 33431

Date of Hearing: October 23, 2014

Case No. 48731

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 25, 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 September 26, 2014. The Wage Claim is for \$540.00 in unpaid commissions.

The claimant testified that he worked for the employer for over a year. His wage plan was for commissions only and there was no provision for a "draw". He sold this particular job and went on two installations with the install crew. The installers did not bring the proper equipment to put in the system.

There was a hiring agreement and an employee handbook in place. The sale was paid after the install and a follow-up by the sales person. To the best of the claimant's knowledge, the sale was made and paid for by the client. When the claimant resigned from his position the job had not been installed.

The employer testified that the policy is that once an employee leaves the company there are no more commissions paid out. The particular job that is being questioned by the claimant was closed after the claimant left employment. This is part of the compensation plan and company policy. The policy was known to the claimant.

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.

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 written submissions and the testimony of the parties, 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 employer provided credible testimony that there was a hiring agreement in place and that there was a written company policy that stated there were no payments of commissions once an employee separated from employment. In this case the job was sold but had not been installed before the claimant left.

The fact that the installation was delayed because of an equipment mistake does not extend the policy to bypass a separation date. The Wage Claim is invalid.

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 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: November 12, 2014

TFH/slh