

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



V

**VINCENT SHELZI**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:42 V personal liability of a corporate officer

**Employer:** Vincent Shelzi 1685 Congress Street, Portland, Maine 04102

**Date of Hearing:** November 6, 2014

**Case No.** 48887

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on September 15, 2014. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on October 15, 2014. The employer did show up for the hearing.

In a decision (#47867) from the Department of Labor dated August 14, 2014 the claimant received a favorable decision in the amount of \$21,153.86. The employer did not appeal this decision and did not pay the amount of the decision.

The company in question for this Wage Claim is VTEC. The owner is Vincent Shelzi and he bought the company from the claimant. The claimant continued to work as an employee of the company. The claimant also feels that Mr. Shelzi is the owner and in complete control of the finances of the company. The testimony shows that there has been no filing of any bankruptcy proceedings for this company. Any wage agreements were signed by Mr. Shelzi.

The physical location of the business, in New Hampshire, closed and the claimant testified that he continued to work from home and the employer had knowledge of this.

The claimant continued to work into December of 2013 when he and the other employee were terminated. The Wage Claim of August 14, 2014 gave the claimant the unpaid portion of his contract for the year 2013.

The employer testified that he purchased the assets of the company in August of 2011. The company took an immediate downturn and the company never made a profit after that. The employer had to infuse capital into the business to try and keep it going and hopefully turn a profit. In the fall of 2013 the employer had difficulty in renewing the lease on the New Hampshire

property and there were two employees who were allowed to work from home. One of these employees was the claimant. Both employees were terminated in December of 2013.

The employer stated that he tried to do everything possible to live up to his commitment to the claimant. When the claimant filed for Unemployment Compensation, the employer stopped all payment to the claimant.

The owner admitted that he ran several businesses and used capital from these entities to keep VTEC going. There has been no repayment on these loans. The owner testified that he had substantial interest in the companies that infused capital into VTEC. As of this hearing, there has been no filing for bankruptcy by the owner or by VTEC. The owner controls the assets and any intellectual assets of VTEC and does not have a plan in place to dissolve the company.

### **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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

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.

RSA 275:42 V For the purposes of this subdivision the officers of a corporation and any agents having the management of such corporation who knowingly permit the corporation to violate the provisions of RSA 275:43, 44 shall be deemed to be the employers of the employees of the corporation.

This part of the law places the burden to pay wages on the officers of the corporation or agents having the management of the corporation. When a corporation fails to pay wages then these officers or agents are the employers of the employees.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant has a previous decision from the Department of Labor (#47867 dated August 14, 2014) that has not been paid by the company, VTEC. This proceeding has shown that VTEC is still a viable company and there has been no filing of bankruptcy. The owner still controls any and all assets and was directly responsible for the infusion of funds to keep the company running.

The law requires that if the company fails to pay wages, the officers and/or the agents of the company are responsible for the payment of wages. In this case the claimant has a valid Wage Claim Decision that was not paid. It is the finding of the Hearing Officer that the owner as the officer/agent of the company is responsible for the wages due and owing.

This Wage Claim is valid in the amount of \$21,153.86.

### **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 Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$21,153.86.

The employer (owner, officer, agent) is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$21,153.86, less any applicable taxes, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: December 4, 2014

TFH/slh