

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Profile Motors Inc.

DECISION OF THE HEARING OFFICER

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

Employer: Profile Motors Inc., PO Box 2220, 38 Towle Rd., Conway, NH
03818

Date of Hearing: February 24, 2015

Case No.: 49581

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$800.00 in unpaid commissions for an automobile he sold during his employment.

The employer agrees the claimant is due a commission for the automobile in question, however, it has not arrived at the dealership yet. Delivery is anticipated for February 26, 2015. They will pay the claimant as soon as they are paid for the automobile.

They disagree with the amount of commissions being claimed. The automobile cost \$59,414.81, and it sold for \$59,351.66. This resulted in a loss.

Pursuant to the written commission policy, the sales staff receive 25% of gross [profits] on units less than 60 days old, and a minimum of \$100.00.

The hearing was left open until 4:30pm on March 25, 2015, for the employer to submit the commission due to the claimant for this sale. The Department received a check for \$150.00 gross within the required timeframe. The claimant was given until April 8, 2015, to respond as to whether or not he accepted this check as payment in full. The claimant responded stating the check did not satisfy his claim.

FINDINGS OF FACT

The claimant sold an automobile during his employment.

The parties agree the claimant is due a commission on the sale. They differ on the amount of the commission.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including commissions, at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of the commission schedule and maintained on file a copy of the notification signed by the claimant.

The written commission policy states, in relevant part, the sales staff will receive 25% of gross [profits] on units less than 60 days old, and a minimum of \$100.00.

The automobile cost the dealership \$59,414.81, and it sold for \$59,351.66. This resulted in a loss. As no gross profits existed on the sale, the payable commission is the \$100.00 minimum.

The employer submitted a check in the amount of \$150.00 to compensate the claimant for the commission on this sale. They added an additional \$50.00 over the minimum amount payable, because of the length of time it has taken to complete the sale.

The claimant's argument that the employer's numbers are flawed is not persuasive. The employer previously submitted documentation to show the cost of the vehicle to the dealership and the sale price to the customer. The claimant did not present any credible testimony or evidence to show the employer's accounting is inaccurate or incorrect.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed commissions/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 commissions/wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 14, 2015

MJD/kdc