

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



v

**Stultz Electrical Motors & Controls Co**

**DECISION OF THE HEARING OFFICER**

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

**Date of Hearing:** May 13, 2015

**Case No.:** 50024

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of his wage claim, that he was owed \$21,591.98 in unpaid commissions because the employer arbitrarily and retroactively changed the commission structure.

At the hearing, the claimant amended his claim to \$28,108.99 to add a larger percentage of commissions due on two sales.

The employer denies the claimant is due any further commissions. The claimant received the commissions to which he was entitled as well as an overpayment of \$5,000 because the employer based the commission on the wrong target figure.

**FINDINGS OF FACT**

The claimant worked for an affiliated company, Schultz Electric Co. (hereafter Schultz) beginning November 26, 2007 through December 28, 2009. He then transitioned to this employer on December 29, 2009 through April 28, 2014 when the employer was purchased by Timken. He is currently employed with Timken.

The claimant argues he is due \$28,108.99 in unpaid commissions. He alleges the employer arbitrarily changed the commission structure and applied it retroactively. The claimant disputes sales in which the employer reduced the amount of the sales numbers, did not pay because the sales had been considered house account sales (CCI/Cutler sales) or did not pay correctly on hydro sales.

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.

Schultz provided the claimant with a job offer letter dated November 8, 2007. The employer notified the claimant he would receive “the base \$55,000 is predicated on sales of \$1,100,000. As explained there will be a quarterly bonus of 5% above target sales. The bonus will be adjusted in the fourth quarter for sales adjustments (write-offs and credits).”

The claimant did not receive any notification of rate of pay from his current employer, though the employer continued to pay his base salary as stated from Schultz.

The employer failed to properly notify the claimant of his rate of pay, including commissions/bonus. The written notification provided did not provide the claimant with a complete characterization of his total compensation plan.

The claimant understood, through verbal communications, that he was not entitled to commissions/bonus on house accounts and hydro rewind sales and that the cost of freight was not included in the sales amount.

For the years 2008 through 2011, the claimant did not make enough in sales to earn a commission/bonus.

In 2012, the claimant’s supervisor encouraged him to pursue hydro sales. The supervisor claimed he would advocate for the claimant to receive sales credit toward the commission/bonus. The claimant knew hydro sales were not included in the sales target goal at that time because they were considered house accounts.

The employer did pay the claimant a bonus for the 2012 because they were afraid that the claimant would leave and he was the only salesperson they had in that area. The employer did not agree or notify the claimant that commissions/bonus were to be paid on hydro sales going forward.

The claimant understood through a conversation with Jim Amerman, Bob Davis and Charlie Davis in early 2013, that he would receive 2% in commissions/bonus for hydro rewind sales going forward. The employer memorialized this in a February 19, 2013 email to the claimant.

The claimant repeatedly asked for his total compensation plan to be reduced to writing, which he did not receive.

The employer provided credible and persuasive testimony that the CCI/Cutler sales were house accounts, which the claimant knew were sales for which he would not receive credit.

The claimant did not provide persuasive testimony or evidence to show he should have received a commission/bonus on the sales he is claiming.

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he was not paid for all commissions/bonus due. The Hearing Officer finds that the claimant failed to meet that burden. The claimant, therefore, fails to

prove by a preponderance of the evidence that he is owed the claimed commissions/bonus/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.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: June 5, 2015

MJD/kdc