

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



V

**Mohab Sharibia dba Impressions Beachwear**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:42 I/II employer/employee relationship

**Employer:** Mohab Sharibia dba Impressions Beachwear, 225 Ocean Blvd,  
Hampton, NH 03842

**Date of Hearing:** October 14, 2015

**Case No.:** 51160

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$10,735 in unpaid wages for hours worked between May 22, 2015 and July 26, 2015. He argues he had an agreement to work for Mohab Sharibia dba Impressions Beachwear for seventeen weeks during the summer for \$25,000, or \$1,470.59 per week. He worked nine weeks for a total of \$13,235.29. He received two checks for \$1,250 each, which leave a balance of \$10,735.00 due.

Mohab Sharibia dba Impressions Beachwear denies the claimant was an employee. Mr. Sharibia and the claimant were revisiting a failed business deal from the summer of 2014, for the claimant to lease one of Mr. Sharibia's businesses, between May 22, 2015 and July 26, 2015.

**FINDINGS OF FACT**

This Department must first determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the

work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

The parties had an employer/employee relationship during the summer of 2014. During the summer of 2014, the parties had a failed business deal for the claimant to lease one of Mr. Sharibia's stores. The claimant had given Mr. Sharibia a deposit for the business, which he returned to the claimant when the deal did not come to fruition.

The claimant tells a passionate story that he entered into an employee/employer relationship with Mr. Sharibia for the 2015 summer, receiving \$25,000 for seventeen weeks, or \$1,470.59 per week. This is a tremendous increase from his \$300.00 weekly salary from the summer of 2014.

Mr. Sharibia tells an equally persuasive story that he and the claimant were revisiting a failed business deal from the summer of 2014, for the claimant to lease one of Mr. Sharibia's businesses, between May 22, 2015 and July 26, 2015. The demise of the agreement occurred when an altercation between the parties required police involvement on July 26, 2015.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than Mr. Sharibia. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he was an employee and not paid for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden of proof as his story is only as credible as, not more credible than, the employer's.

The Hearing Officer finds the claimant was not an employee of an employer, but a potential business partner.

Even if the claimant had proven he was an employee, he would still retain the burden to prove he was due the claimed wages.

The claimant's assertion that he entered into an agreement to receive \$1,470.59 per week for 2015 would not be persuasive in light of the fact that he received \$300.00 per week in 2014. He also could not produce copies of the checks he claims to have received, bank statements show deposits, or any other documentation to show he received the claimed payments.

Further, the parties disagree on the validity of the copies of the text messages the claimant previously provided.

The claimant had also provided signed statements from area businesses that these individuals had witnessed the claimant at Mr. Sharibia's store. Both parties agree the claimant had been at the store during the time period in question, they disagree as to his role while there.

The Hearing Officer finds the claimant, therefore, fails to prove by a preponderance of the evidence that he was an employee of an employer and due wages as an employee.

### **DISCUSSION**

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet his burden in this claim.

### **DECISION**

Based on the testimony and evidence presented, as RSA 275:51 V affords the Wage Claim process to employees of employers only, it is hereby ruled that the Wage Claim is invalid due to a lack of jurisdiction by this Department.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: November 9, 2015

MJD/kdc