

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Cross Country Mortgage Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/commissions
RSA 275:44 IV liquidated damages

Employer: Cross Country Mortgage Inc, 6850 Miller Rd, Brecksville OH 44141

Date of Hearing: April 13, 2016

Case No.: 52401

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$20,560.65 in unpaid commissions/wages four loans he originated while still employed and for overrides on his loan officers. He seeks liquidated damages on these wages.

The employer denies the claimant is due any commissions as his written agreement states that he would only be paid on loans that closed and funded while he was employed. Similarly, he is not due any overrides, as they are commissions, and these loans closed and funded after his separation from employment.

FINDINGS OF FACT

The claimant worked for the employer as a Branch Manager from August 17, 2015 through January 6, 2016.

The claimant argues he is due commissions on four loans he originated and overrides on his loan officers loans.

The employer argues the claimant is not due any commissions/overrides pursuant to the written contract.

The parties agree the loans in question had not both closed and funded as of January 6, 2016, the claimant's last day of employment.

The written contract dated August 11, 2015, states, in relevant part, "4.3 Compensation at End of Employment. Upon cessation of Employee's employment, for any reason, Employee shall be paid any compensation earned up to and including the date employment ends. Except as otherwise expressly provided herein, or required by applicable law, Employee shall not be entitled to any further compensation, including (but not limited to) draws, benefits, fringe benefits, commissions, or bonuses, as

applicable. Notwithstanding the foregoing, if on the date Employee ceases to be employed, a loan is in the pipeline and the loan meets the criteria of an Eligible Loan (as defined in Exhibit A and excluding element “(d)” of the definition), then the Employee shall be paid the commission for such loan in the same manner as if the Employee had remained in the employment of Company during such period.” And “To the extent loan processors and underwriters working as part of Employee’s team remain employed by the Company following termination of Employee’s employment with Company, said processors and underwriters shall continue to process loans in the Employee’s pipeline for purposes of this Section 4.3. The commission, if any, will be paid within sixty (60) days after the end of Employee’s employment. Employee hereby covenants not to attempt to move any “pipeline” loan to any other person or entity following the end of employment. For purposes of this Section 4.3, the term “pipeline loan” shall mean any loan in underwriting as of the date of termination of Employee’s employment. Company will do nothing to impede/delay the closing from taking place.”

Exhibit A reads, in relevant part, “III Definitions: An “Eligible Loan” is defined as a residential mortgage loan (a) that is originated with Applicable Requirements; (b) is closed and funded in accordance with Applicable Requirements, in the period in which the commission is calculated; (c) that is not unfunded, cancelled or rescinded for any reason within three (3) business days after settlement.”

Exhibit A also defines the “overrides” as commissions, which are subject the aforementioned policies.

The New Hampshire Supreme Court, in Bryan K. Galloway v. Chicago-Soft, Ltd. 142 NH 752, established a “general rule” regarding commission sales that states, “a person employed on a commission basis to solicit sales orders is entitled to his commission when the order is accepted by his employer. The entitlement to commissions is not affected by the fact that payment for those orders may be delayed until after they have been shipped. This general rule may be altered by a written agreement by the parties or by the conduct of the parties which clearly (*emphasis in original*) demonstrates a different compensation scheme”.

The claimant’s argument that the latter portion of Section 4.3 of the August 11, 2015, agreement applies as the loans in question were in the pipeline is not persuasive because Section 4.3 clearly states that in order to be eligible for commission after separation from employment, any loans in the pipeline on the last day of employment must meet the criteria in Exhibit A III Definitions for an Eligible Loan. The claimant admits that the loans in question were not closed and funded, as required in Exhibit A III, as of January 6, 2016.

The Hearing Officer finds that the employer provided the claimant with the August 11, 2015, agreement that informed him that he would not receive commission (which includes overrides for other loan officer’s loans) on loans that closed and funded after his termination. Because the claimant was given the written agreement, the general was altered to demonstrate a different compensation scheme. Because of this alteration of the general rule, the claimant fails to prove by a preponderance of the evidence that he is owed the commissions on the loans that did not close and fund prior to the date of his termination.

Because no wages are found to be owed, no liquidated damages can be awarded.

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 275:43 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 26, 2016

Original: Claimant
cc: Employer
Attorney

MJD/aph