

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



**V**

**CrossCountry Mortgage Inc**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** CrossCountry Mortgage Inc, 6850 Miller Rd, Brecksville OH 44141

**Date of Hearing:** June 7, 2016

**Case No.:** 52505

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$5,188.01 in unpaid commissions/wages loans he originated prior to his termination with the employer. He amended his wage claim to seek liquidated damages on the unpaid commissions/wages.

The employer denies the claimant is due any commissions as his written agreement notified him that he would only receive commissions on loans that closed and funded while he was employed.

**FINDINGS OF FACT**

The claimant worked for the employer from August 3, 2015 through February 1, 2016, when he resigned.

The claimant agrees that under the contract he signed on August 11, 2015, he is not due any commissions. However, he had a discussion with the employer prior to signing the agreement that he was not agreeable to section 4.3. He and the employer exchanged emails with new verbiage for that section, which would allow for the payment of commissions after separation from employment, previously submitted.

The employer argues the parties did not execute another contract or agreement. Even if they had executed the new language with the claimant had wanted, the definition of Eligible Loan remained the same and therefore, no commissions would be due under those terms.

RSA 275:49 I requires that an employer inform employees of the rate of pay 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 terms and conditions of the compensation package via the August 11, 2015, agreement. Although the parties did discuss possible new terms for the claimant's compensation package, the employer did not provide notification of new terms. Therefore, the controlling notice remains the August 11, 2015, agreement.

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 Hearing Officer finds that the employer provided the claimant with the August 11, 2015, written agreement that informed him that he would not receive commission 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.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: June 15, 2016

Original: Claimant  
cc: Employer

MJD/aph