

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Granite State Solar LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages and commissions
RSA 275:43 V unpaid employee expenses
RSA 275:44 IV liquidated damages
Interest

Employer: Granite State Solar LLC, 197 N Main St Unit 1, Boscawen NH 03303

Date of Hearing: August 17, 2016

Case No.: 52971

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$3,021.55 in unpaid employee expenses and an undetermined amount in unpaid commissions. He further sought liquidated damages and requested interest payable at a rate of 24%.

At the hearing, the claimant clarified he is seeking \$5,175.10 in unpaid commissions, \$2,886.79 in unpaid employee expenses, liquidated damages on the commissions and expenses, and removed the claim for interest.

The employer denies the claimant is owed any commissions. The commission structure pays 1% upfront and the remaining 1% after the installation has been completed and final funding is received, as there is still a large customer service piece pending after the installation. The claimant received the initial 1%, but is not due the remaining 1% as he was not there to complete the customer service piece, which another employee had to do.

They argue the claimant is not due any employee expenses as they cannot verify the appointments he claims to have scheduled. Many of the clients reported the claimant had not visited as he claimed to have. Further, the claimant admitted he did not properly calculate the beginning and ending mileage based on his regular commuting distance.

They further argue that no wages were willfully withheld from the claimant.

FINDINGS OF FACT

The claimant worked for the employer from June 2015 through February 15, 2016, when the employer terminated his employment. He received a base salary and a commission structure on units sold, payable at 1% when the sale is made and a second 1% when the unit is fully funded and installed.

The claimant argues that he sold several solar panel systems for which he did not receive his full commission. On three accounts, Foley, Barry and Scott, he did not receive the initial upfront 1%, totaling \$797.38. For nineteen accounts, including Foley, Barry and Scott, he did not receive the final 1% commission, totaling \$4,377.72, for grand total of \$5,175.10.

The employer did not make any argument regarding the commissions for Foley, Barry and Scott, for which the claimant argues he did not receive his upfront commission of \$797.38.

For the remaining nineteen accounts they argue he is not due any commission as the final 1% commission is earned upon completing the after installation customer service. The claimant was not present to perform these functions; therefore the employer either paid another employee to do so or completed it themselves.

The employer admitted they did not have a written commission structure as required by RSA 275:49.

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 the employer did not alter the general rule set forth by the Supreme Court, therefore it is found that the claimant proved by a preponderance of the evidence he is due the claimed commissions.

The claimant argues he is due \$2,886.79 in outstanding employee expenses.

The employer agrees they initially paid some of the several months of expenses that the claimant filed after his termination. However, upon scrutiny, they credibly and persuasively argue that they discovered he had not attended the appointments he claimed. Further, he had not properly reported mileage as he acknowledged he did not deduct his regular commute from any mileage reports.

The claimant initially stated he had a mileage log he kept in his car, however, he refused to turn it over. Finally, he admitted the mileage log consisted of notes in "scrapbook".

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed expenses.

The claimant seeks liquidated damages on both unpaid commissions and employee expenses.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due in the time required because the employer had a genuine belief that the wages were not owed.

No employee expenses were found to be due therefore no liquidated damages can be assessed.

However, even if employee expenses had been found to be due, the employer held a genuine belief that no expenses were due, and liquidated damages would not have been assessed.

DECISION AND ORDER

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 proved by a preponderance of the evidence that he is owed the claimed commissions/wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$5,175.10.

As RSA 275:43 V considers the payment of employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he was not paid all employee expenses due, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$5,175.10, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 23, 2016

Original: Claimant
cc: Employer

MJD/aph