

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

COVENT BRIDGE GROUP
DECISION OF THE HEARING OFFICER

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

Employer: Covent Bridge Group, 9485 Regency SQ BLVD #400, Jacksonville
FL 32225

Date of Hearing: August 18, 2016

Case No.: 53029

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on June 14, 2016. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on July 27, 2016.

The claimant testified that he worked for the employer for two years. His wages were based on a salary plus commission plan. The claimant further testified that there was a hiring agreement in place.

The claimant testified that he worked for the entire month of March and feels that he is due the commissions earned for that month. The claimant estimates the commission for March to be \$2,500.00. Although the claimant left employment in April, he feels that the commissions had been earned and should not be held from him.

The claimant testified that he did sign a severance agreement and that he read the severance agreement. He said that he had the right to consult legal counsel before signing the agreement and did have a grace period to back out of the severance package. The claimant did testify that he waived his rights to future commissions but does not feel he waived his right to the March commissions that had been earned and the month completed.

The employer testified that the severance agreement waived any rights to past and future agreements. The severance was drawn up to end the employment relationship. The length of the separation payout (four weeks) was unusual for the company but they did it for this employee only.

The claimant agreed to the severance package and in so doing he waived all rights to past and future commissions. The employer testified that they had discussions, with the claimant, over the commissions and the severance agreement.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing. This part of the law also points out that commissions are considered wages when the commissions are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The employer provided a written document that waived the employee's rights to past and future commissions along with other areas of concern. The claimant was told to read the document, have it reviewed by an attorney if it was not understandable, and the document gave a time frame to back out even after agreement. The claimant signed the document. With the signature the claimant waived his right to his March commissions.

The claimant said that he was aware of all the checkpoints but did not feel that he could waive his rights to commissions already earned. Unfortunately the claimant signed away his rights by agreeing to the lump sum settlement which was equal to four weeks of salary.

The Wage Claim is invalid.

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 the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due; it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: September 2, 2016

Original: Claimant
cc: Employer

TFH/aph