

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Datron Dynamics Inc, William King President and Robert Murphy Vice President

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages and commissions
RSA 275:43-b unpaid salary
RSA 275:44 IV liquidated damages
RSA 275:42 V, personally liability of corporate officer/manager

Employer: Datron Dynamics Inc., William King, President and Robert Murphy, Vice President, 115 Emerson Rd, Milford NH 03055

Date of Hearing: October 3, 2016

Case No.: 53487

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$32,000.00 in unpaid commissions. He then sent a clarification of the commissions to \$32,400 and added \$21,600 in unpaid salary to compensate him for the six months he believed it would take him to find a new job. He further asserted that William King, President and Robert Murphy, Vice President should be held personally liable.

At the hearing, he amended his claim for wages to commissions only, in the amount of \$32,400. He argues he had cases "in the pipeline" for which he should receive commissions. He believes the employer feels his is not entitled to the commissions.

He argues Mr. King and Mr. Murphy should be held personally responsible for these wages to "do the correct thing."

The employer denies the claimant is due any commissions. As the claimant admitted, none of the customers he was working with submitted orders prior to his termination date with the employer.

FINDINGS OF FACT

The claimant worked for the employer from June 8, 2015 through July 20, 2016, when the employer terminated his employment.

The claimant argues he should be paid his regular commission, 2% of sales less shipping and ancillary items, for all sales in his pipeline at the time of his termination.

The employer argues that none of the customers with whom the claimant was working had submitted purchase orders on or prior to the date of his termination.

The employer did not have a written commission policy other than the terms in his May 5, 2015, offer letter. The policy outlined in this letter stated, in relevant part, "Outside Sales Commissions: Compensation based on 2% of machining system invoice less shipping, training/installation and 3rd party accessories not purchased from DATRON AG. Commissions are paid within 30 days of final payment made by the customer."

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".

Both parties agree that none of the customers for which the claimant is seeking commissions had submitted purchase orders on or prior to the date on which the claimant's employment terminated.

Because the employer had not accepted any of the orders prior to his termination date, the Hearing Officer finds that the claimant is not entitled to a commission.

Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed commissions.

Because no commissions are found to be owed, Mr. King and Mr. Murphy cannot be held personally responsible.

However, even if commissions had been found to be owed, the claimant did not provide persuasive testimony and evidence to show that Mr. King and Mr. Murphy knowingly allowed the corporation to violate any provisions of RSA 275:43 or 275:44, pursuant to RSA 275:42 V.

The Hearing Officer would have found the claimant failed to prove by a preponderance of the evidence that Mr. King and Mr. Murphy bear personal responsibility under RSA 275:42 V.

DISCUSSION

The burden of proof lies with the claimant in these matters. The claimant has the burden to prove by a preponderance of the evidence that the claimed commissions are due. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant failed to meet this burden.

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, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 17, 2016

Original: Claimant
cc: Employer

MJD/das