

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



**V**

**Corporate Data & Voice Solutions Inc**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Corporate Data & Voice Solutions Inc., 59 Stiles Rd, Salem, NH 03079

**Date of Hearing:** November 3, 2016

**Case No.:** 53609

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$6,000 in unpaid commissions for a sale to St. Anselm's College. He argues that he performed all the work on the sale which resulted in a final quote to the customer prior to his separation from employment in May 2016. He argues the quote he produced did not change when the order was accepted by the employer in August 2016; therefore, he is due the claimed commission.

The employer denies the claimant is due any commission. The claimant produced a final quote to the customer; however, the order was not accepted until August 5, 2016. As the claimant separated from employment on May 13, 2016, he is not due any commission pursuant to the written commission agreement. The employer admitted he did make a verbal exception to the written commission agreement that if the order were accepted by the end of May 2016, the claimant would receive a commission and if the order were to be accepted by the end of June 2016, he would receive consideration of some commission. The order was not accepted until August 5, 2016.

**FINDINGS OF FACT**

The claimant worked for the employer from March 10, 2014 through May 13, 2016.

The claimant argues he is due \$6,000 in commissions for a sale to St. Anselm's College. He argues that the sales process was complete by the time he left service on May 13, 2016, and that the quote he provided did not change by the time the order was accepted by the employer on August 5, 2016. He further argues that the written commission policy did not apply to his situation as the employer verbally told him he would receive a commission on this sale.

The employer argues the claimant is not due any commissions under the written commission agreement executed by both parties on March 10, 2014, which states, in relevant part, "All sales personnel are eligible to receive a commission on all products and labor sold....." and "Full commissions will be paid up to the last date of Employment. Sales to customers after the last date of Employment are not subject to the Commission Plan."

The employer admitted he did make a verbal exception to the written commission agreement that if the order were accepted by the end of May 2016, the claimant would receive a commission and if the order were to be accepted by the end of June 2016, he would receive consideration of some commission. The order was not accepted until August 5, 2016, when the customer submitted the order with the required PO number, and 50% deposit.

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 did not accept the order for St. Anselm's College until after the claimant had terminated from employment. Therefore, the claimant is not entitled to a commission under the established general rule, the employer's written agreement or the verbal agreement for commission consideration if the sale were to be accepted by the end of June 2016.

The claimant's argument that nothing changed in the quote given to the customer between his separation and the date the employer accepted the order is not persuasive.

The Hearing Officer finds the claimant failed to prove he is due the claimed commission under the written agreement with the employer or the established general rule.

### **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 wages 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, including commissions, 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: November 16, 2016

Original: Claimant  
cc: Employer

MJD/das