

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



**V**

**Garrison City Radio Group Inc.**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Garrison City Radio Group Inc., c/o Midway Buick, PO Box 149,  
Somersworth, NH 03878

**Date of Hearing:** November 14, 2016

**Case No.:** 54015

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$1,200.00 in unpaid commissions for sales orders accepted by the employer prior to his separation from employment on May 20, 2016. He further argues the written commission plan does not specify how commissions are handled at separation of employment.

The employer denies the claimant is due any commissions. He testified the company entered into a Local Management Agreement (LMA) with Binnie Media in April 2016, which allowed Binnie Media to operate the business until final FCC approval for the purchase of the business, which was completed in October 2016.

He argues the written commission plan states commissions are paid on collections, not on sales. Therefore, the claimant actually received more commissions than he was due, as Binnie Media paid commissions, via Garrison City Radio Group Inc checks, for June, July and August 2016 collections.

**FINDINGS OF FACT**

The claimant worked for the employer as the General Manager until May 13, 2015, when he became a sale manager. His employment terminated May 20, 2016.

The claimant argues he had made sales prior to his separation on May 20, 2016, for which he had not received commissions, approximately \$1,200.00.

The employer argues the written commission plan, previously submitted, states in relevant part, "15% commission on the first \$12,000 of collections each month and 20% on any amount over \$12,000."

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 written commission plan specifies that commissions are based on collections, not on sales orders accepted by the employer. As the claimant's employment terminated on May 20, 2016, he was not due any commissions on collections after that date, though the employer continued to pay commissions on collections through August 2016. Further, as sales order acceptance is not the basis of commissions, Bryan K. Galloway v. Chicago-Soft, Ltd. 142 NH 752 is not relevant.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed commissions under the written commission plan of the employer.

### **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: November 17, 2016

Original: Claimant  
cc: Employer

MJD/das