

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



**V**

**The Last Chair LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/bonus

**Employer:** The Last Chair LLC, 52 Huckins Hill Rd, Holderness, NH 03245

**Date of Hearing:** February 1, 2017

**Case No.:** 54327

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of his wage claim, that he was owed \$9,090.59 in unpaid bonus for the third quarter of 2016. At the hearing, he amended the claim to \$10,051.28 based on additional figures of food and liquor cost ratios.

The employer denies the claimant was not paid for all bonus due. They assert that the claimant received all wages/bonus due.

**FINDINGS OF FACT**

The claimant worked for the employer from June 2016 through November 7, 2016, as a chef. He resigned his position and left employment on that date. The employer opened for business on July 6, 2016.

The claimant argues the employer agreed to pay him \$934.00 weekly and 20% of net profits on a quarterly basis.

The employer argues that they paid \$934.00 weekly and 20% of the balance in the checking account as a bonus. They assert they agreed to pay 20% of the balance "after everything was paid."

The employer provided a written agreement to the claimant on August 31, 2016, which outlined many employment criteria, including weekly pay and a 20% net profit bonus.

Neither party signed the agreement. The claimant argued there were several mistakes and he did not agree with all parts of the contract. The parties tell differing stories as to the further discussions regarding signing a written agreement. No final

determinations occurred as to the written agreement and no document was ever finalized with signatures.

The claimant argues the employer took longer than they should have to finalize the third quarter numbers. He further argues that the employer improperly deducted items from the revenues, including building costs and payments to the owners, which resulted in a lower payment of his bonus.

Black's Law Dictionary defines net profits as "Profits after deductions of all expenses; may be classified as net before or after taxes. Deducting the cost of goods sold from sales gives the *gross profit*. Deducting the operating expenses (overhead) from gross profits gives the *operating profits*. Deducting income taxes from operating profits gives *net profits*.

The claimant's arguments that the employer took too long to provide the third quarter numbers and improperly deducted items from the profits are not persuasive. The employer presented credible testimony and evidence that the business was a start-up and there were considerable start-up costs. They did not have the numbers completed immediately after the end of the third quarter because there were many expenses that were not run through the business account and it took time to gather all of the data.

The employer paid the claimant 20% of the remainder of the checking account balance, after they had paid all expenses, including payments to themselves.

The Hearing Officer finds the employer notified the claimant that he would receive 20% of the net profits. The employer provided credible testimony and evidence they operated at a loss for 2016, after putting more than \$100,000 in to start up the business, rendering no profits.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he did not receive 20% of the net profit as a bonus payment.

### **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 bonus/wages, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: February 16, 2017

Original: Claimant  
cc: Employer  
MJD/das