

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



**V**

**Lighthouse Technical Sales LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid employee expenses  
RSA 275:43-b unpaid salary  
RSA 275:44 IV liquidated damages

**Employer:** Lighthouse Technical Sales LLC, 55 Lake St Unit 3-8, Nashua, NH 03060

**Date of Hearing:** April 10, 2017

**Case No.:** 54578

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of her wage claim, that she was owed unpaid commissions, unpaid salary, and unpaid employee expenses.

At the hearing she clarified she was only seeking liquidated damages on her wages of \$6,872, as her wages were due within seventy-two hours of her termination on December 16, 2016, and did not receive any wages until January 4 and 5, 2017, after she contacted this Department on January 4, 2017.

The employer agreed to hear the issue of liquidate damages, though it had not been listed on the Notice of Hearing.

The employer denies he willfully withheld payment from the claimant. He agrees he initially told her he would not pay her wages on December 30, 2016, the next regular payday, because she would not return his intellectual property, and she had notified him not to contact her again. He did change his mind and decide to pay her all wages he conceded were due on January 3, 2017.

**FINDINGS OF FACT**

The employer terminated the claimant's employment on December 16, 2016, after many discussions with the claimant.

The claimant argues she did not receive all wages, salary, commissions and employee expenses within seventy-two hours, as required by RSA 275:44 I.

The employer argues they were unable to determine the commissions due to the claimant, as she withheld records. The employer called two meetings to review documentation, however, both times the claimant contacted the employer only minutes prior to the meeting stating she could not make it.

He agrees he initially told her he would not pay her wages on December 30, 2016, the next regular payday, because she would not return his intellectual property.

On January 3, 2017, the first business day following the regular payday, he had a change of heart and decided to pay any wages and commissions that he could determine were due. He processed a direct deposit for payment on January 4, 2017. He received calls from Labor Inspectors Berube and Corbett of this Department January 4, 2017, stating that the claimant was looking for the payment of her final wages. He processed a second payroll on January 4, 2017, for payment on January 5, 2017, as a result of the additional information that he obtained in that phone call.

RSA 275:44 Employees Separated From Payroll Before Pay Days. –

I. Whenever an employer discharges an employee, the employer shall pay the employee's wages in full within 72 hours.

IV. If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

There was no evidence the employer was aware of the requirements of RSA 275:44 I to pay all wages due to a terminated employee within seventy-two hours.

However, the employer did fail to pay all wages due on the next regular payday, December 30, 2016, by his own choice, for at least the salaried portion of the wages due and the remainder of the commissions and expenses he conceded were due. He agrees he had the financial ability to pay the wages.

The employer paid all wages he conceded were due on January 4, 2017, of \$2,499.93. He processed an additional payroll of \$3,444.31 after speaking with the Department on January 4, 2017, and gaining additional information.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence that the employer should be held liable for liquidated damages for December 31, 2016 and January 3, 2017, as the employer knew the wages of \$2,499.93

were due on December 30, 2016, chose not to pay the wages, despite having the financial ability.

### **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant proved by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the Wage Claim for liquidated damages is valid in the amount of \$499.99 ( $\$2,499.93 \times 10\% \times 2 \text{ days}$ ).

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$499.99, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: April 14, 2017

Original: Claimant  
cc: Employer

MJD/das