

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Simon and Kristen Hales dba Ballet North NH

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 275:42 I/II employer/employee relationship

Employer: Simon and Kristen Hales dba Ballet North NH, 94 Evans Rd, Barnstead, NH 03218

Date of Hearing: April 11, 2017

Case No.: 54732

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$36,225 in unpaid wages for hours worked between July 25, 2015 and January 28, 2017.

At the hearing, she amended her claim to \$30,831.25 for 1,233.25 hours worked between May 25, 2016 and January 28, 2017, calculated at \$25.00 per hour. She states that the unpaid work was performed after she moved out of her parent's house on May 25, 2016, and became an employee, through January 28, 2017, when her employment ended.

Simon and Kristen Hales dba Ballet North NH deny the claimant, their daughter, was an employee. This family business started as an idea they discussed for many years to assist the claimant with her dream of being a dance instructor and owning her own studio. They allege she had issues which made it prohibitive to work for other dance studios and determined, with all parties in agreement, that this family business would be the best course of action. The business started around the kitchen table where many business discussions continue to take place. Her involvement in those discussions became less frequent as she simply was not physically there after she moved out on May 26, 2016. Her position with the company did not change as a result of her residing in a different home.

FINDINGS OF FACT

The claimant is the adopted daughter of Simon and Kristen Hales.

The parties mutually agreed to start the family business, which opened in July 2015. Simon and Kristen Hales contributed the bulk of the money to start the business (and continue to support the business financially). The claimant contributed approximately \$9,600, consisting of \$1,000 of her own savings, and \$8,600 from an insurance settlement of a car accident, which actually belonged to her father. The settlement was for a car damaged in an accident, which he

owned, paid for, and paid to insure. None of this money was a settlement to her as the victim of the accident.

The parties began this venture as a family business consisting of Simon and Kristen Hales, the claimant, and her brother Logan. All individuals contributed to the work needed for the business.

Simon and Kristen Hales appear on the lease as the only names as the landlord took issue with a 23 year old [the claimant] signing the lease and the utilities. The claimant did have signatory power on the bank account. The claimant's name did not appear on the trade name registration with the New Hampshire Secretary of State's office because she had a non-compete agreement with a prior employer, which might be violated with her name on the documentation. She was an integral part of the business, teaching many classes, and having input with most, if not all, business decisions.

The claimant lived at home with her parents throughout the planning and implementation phases of the business. She moved out of her parent's home May 25 or 26, 2016, to reside with her boyfriend. She contends that she became an employee on this date, and should be paid \$25 per hour for 1,233.25 hours worked through January 28 2017, when she ceased working.

Simon and Kristen Hales dba Ballet North argue that the claimant's status did not change simply because she moved out of their home. They argue she was part of the family business until she chose not to be, but she was at no time an employee.

This Department must determine if the claimant was an employee of an employer.

RSA 275:42 Definitions. – Whenever used in this subdivision:

I. The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person, except employers of domestic labor in the home of the employer, or farm labor where less than 5 persons are employed.

II. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria

This Department does not define "employing" as used in the definition of employer in RSA 275:42 I.

Black's Law Dictionary, Sixth Edition, does not defines "employing" but does define "employ" as: to engage in one's service; to hire; to use an as agent or substitute in transacting business; to commission and entrust with the performance of certain acts or functions or with the management of one's affairs; and, when used in respect to a servant or hired laborer, the term is equivalent to hiring, which implies a request and contract for a compensation.

Simon and Kristen Hales dba Ballet North did not engage in one's service as her performance was for her own service in the business. They did not hire the claimant, they began the family business together as a family. They did not use her as an agent or substitute in transacting business, as it was her business as well. She was not commissioned or entrusted to perform certain acts or functions or with the management of one's affairs, as they were her

responsibilities as part of the business. She was not hired as a servant or laborer, and there was no request for nor contract for a compensation offered in that role.

The claimant meets the definition of employer using this definition of “employing” as it would be her interests that would be served by having employees.

The family acted as a unit planning the business, implementing the business, and ultimately running the business. None of the family members were “hired” into the business or had employment roles. There was never a “meeting of the minds” as to compensation to be paid to any family member, with the exception of return of principal to the parties and eventual ownership shifting to the claimant.

The family members, individually, and acting as a family unit, were acting in an employer capacity. The claimant at all times was a part of the business unit until January 28, 2017, when she ceased her performance.

The Hearing Officer finds the claimant was not an employee of an employer, therefore, this Department does not have jurisdiction over her claim. The claimant may have a cause of action in another legal venue.

DECISION

Based on the testimony and evidence presented, as RSA 275:51 V affords the Wage Claim process to employees of employers only, it is hereby ruled that the Wage Claim is invalid due to a lack of jurisdiction by this Department.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 1, 2017

Original: Claimant
cc: Employer

MJD/das