

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

PIF Technologies Inc and Natalia Streltsov, DMD

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages and commissions
RSA 275:44 IV liquidated damages

Employer: PIF Technologies Inc, 1370 Hooksett Rd, Hooksett, NH 03106

Date of Hearing: June 1, 2017

Case No.: 55028

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$12,865.00 in unpaid commissions and liquidated damages.

At the hearing he clarified he is seeking \$3,933.60 in unpaid commissions and liquidated damages.

The employer denies the claimant is due any commissions at this time or that they failed to pay any commissions due.

FINDINGS OF FACT

The claimant worked for the employer from March 21, 2016 through March 15, 2017, when he was terminated by the employer. The claimant received commissions under a verbal agreement with the employer.

The claimant argues he made sales for which commissions are still due from the employer in the amount of \$3,933.60. He acknowledges he has received two prior checks from the employer, in the amounts of \$533.78, gross, on April 5, 2017 and \$1,965.60, gross, on May 3, 2017, which he has not cashed. However, he did subtract these amounts from the total commissions he now seeks as due.

He argues that he should have been paid on sales as he made them, not having to wait until the customer pays for the sale. He does acknowledge the employer verbally notified him that he would have to wait for the funding of a sale in order to receive his commissions in July 2016.

The employer argues that a sale is not complete until the funding is received from the customer.

They have paid the claimant commissions after his termination, as the sales have funded. They anticipate approximately \$2,125.48 to be paid to the claimant when customers fund their sales. They argue not all of the sales quotes signed by the claimant's customers became actual orders because they were cancelled by the customers.

They argue the claimant was fully aware of the commission policy and had conversations regarding the remaining commissions to be paid out after his separation from employment.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including commissions, at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay, including commissions, at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer acknowledges they did not provide the claimant with a written commission plan.

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".

This Decision entitles the claimant to commissions on sales when the employer accepts the order. It does not require the payment of the commission at the time the order is accepted, instead noting that payments for these orders may be delayed until after they have shipped.

The employer does not disagree that the claimant is due commissions on the sales that will come to fruition. The payment for the commissions has been and will continue to be made when the customer funds the sales. If the sales are not funded, the orders will be canceled and the claimant will have no entitlement to any commission. They note they have paid partial commissions on sales when the customer has made a partial payment on the sale.

The claimant's argument that he has never had a sale cancel before is not persuasive evidence that none of the remaining sales could not have canceled.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed commissions at this time.

The employer acknowledges they will continue to pay commissions to the claimant if and when they become due.

Because no wages are found to be owed, no liquidated damages can be awarded.

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 this portion of the Wage Claim is invalid.

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 failed to prove 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 portion of the Wage Claim for liquidated damages is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 8, 2017

Original: Claimant
cc: Employer

MJD/das