

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Sprout for Business, LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid commissions
RSA 275:48 I withholding of wages

Employer: Sprout for Business, LLC, 6 Chenell Drive, #220, Concord, NH 03301

Date of Hearing: July 24, 2017

Case No.: 55275

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserted through the filing of a wage claim to be owed \$830.51 in unpaid commissions.

The employer contends she mailed the claimant her final commissions and denies that the claimant is owed the claimed wages because her commission plan changed in October, 2016.

FINDINGS OF FACT

The claimant worked for the employer from August, 2016 through May 26, 2017. She left the employer on her own accord. She was paid commission only.

Previously the employer paid the claimant \$89.25. At the hearing the employer delivered a check to the claimant in the amount of \$275.00, leaving an adjusted claim amount of \$466.26.

The adjusted claim is comprised of \$237.75 for undelivered commissions for the final pay period and \$228.51 in unpaid commissions due after separation. The parties agreed that the \$89.25 previously paid to the claimant was included in the calculation for the total amount in the undelivered final commissions. Thus, the claim is further adjusted (\$237.75 - \$89.25) to \$148.50.

The employer agrees the claimant is due \$148.50 in commissions for the final pay period.

The employer took her own initiative to mail the claimant her final commissions. She did not consult the claimant.

Therefore the Hearing Officer finds that the claimant proved by a preponderance of the evidence she is owed \$148.50 (\$237.75 - \$89.25) and this part of the Wage Claim to be valid.

The claimant argues she is due commissions after separation in the amount of \$228.51.

The employer disagrees because the commission plan had changed.

Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes.

The claimant held she was never notified of the change.

The employer concedes that the change was not put in writing but was announced at a sales meeting at the end of August, 2016, to be effective in October, 2016.

The Hearing Officer finds that the employer was not in compliance with the requirements of Lab 803.03 (a) when she did not inform the claimant, in writing, of the changes to the commission plan.

The Hearing Officer also finds that this does not automatically guarantee the claimant her commissions earned under the previous plan.

The employer credibly testified the commission plan changed effective sometime in October, 2016. The claimant held she was unaware of the change until six months later in April 2017.

The Hearing Officer finds the claimant's argument unconvincing because it is more than likely that she understood the commission plan had changed in October, 2016 and continued in commission payments thereafter.

The Hearing Officer therefore finds the claimant failed to prove by a preponderance of the evidence that she should now be paid her commissions according to the plan in effect prior to October, 2016.

ORDER and DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the employer failed to pay the claimant it is hereby ruled that this portion of the wage claim is valid in the amount of \$148.50.

Based on the testimony and evidence presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as the claimant failed to prove by a preponderance of the evidence that she is owed the balance of claimed commissions it is hereby ruled that this portion of the Wage Claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the amount of \$148.50 for final commissions, less any applicable taxes, within 20 days of the date of this order.

David M. Zygmunt
Hearing Officer

Date of Decision: August 23, 2017

Original: Claimant
cc: Employer

DMZ/das