

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Andrew Chalmers dba Chalmers Building Services

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:42 I/II employer/employee relationship

Employer: Andrew Chalmers dba Chalmers Building Services, PO Box 2480, N
Conway NH 03860

Date of Hearing: October 10, 2017

Case No.: 55379

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,312.50 in unpaid wages for hours worked for the weeks ending May 13 and May 19, 2017. He argues the employer does not dispute that the work was done, only that the work was unsatisfactory. There are also allegations that prior work was unsatisfactory.

Andrew Chalmers dba Chalmers Building Services (hereafter "Chalmers") argues the claimant was not his employee, but paid and employed by the homeowner. He is a project manager who hires contractors for his clients.

FINDINGS OF FACT

The claimant began a working relationship with Chalmers on August 1, 2016.

The parties disagree as to whether the claimant was an employee of Chalmers.

This Department must first to determine whether not or this company was an employer to the claimant.

RSA 275:42 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.

RSA 275:42 II defines "employee" as, "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:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

The claimant invoiced the homeowner for a good portion of the invoices he sent for his work, which some invoices sent to Chalmers. Chalmers argues that the claimant began to invoice him for a period of time, at which time he told the claimant to invoice the homeowner directly. At all times, the parties agree the homeowner paid the invoices sent by the claimant, regardless of to whom they were addressed. Chalmers himself receives an hourly rate for his own work, and does not receive any bonus, incentive, or anything additional for the work or hours of the other contractors on the site.

The Hearing Officer finds that the claimant was not an employee of Chalmers. Chalmers did not employ the claimant, nor did the claimant receive any consideration of direct or indirect gain or profit, to engage in any employment, from Chalmers.

Claimant's counsel mischaracterized the issue as employee versus independent contractor status of the claimant. However, in this case, Chalmers does not meet the criteria to be considered an employer of this claimant.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages from this entity, as this entity is not found to be his employer.

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 an employee of this cited entity, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 16, 2017

Original: Claimant
cc: Employer

MJD/nm