

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

Distilling and Grilling, LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Distilling and Grilling, LLC, 21 West Auburn Street, Manchester, NH 03101

Date of Hearing: August 21, 2017

Case No.: 55496

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$850.00 for work performed.

Distilling and Grilling, LLC (The Company) denies the claimant was not paid for all work.

The parties agree the claimant was in business for himself.

FINDINGS OF FACT

The Company paid the claimant \$560.00 prior to the hearing leaving a balance of \$290.00.

This Department must first determine whether the claimant was an employee or an independent contractor. 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 Hearing Officer finds that the testimony presented by the parties indicates that the claimant was an independent contractor who met all of the above criteria. Because the claimant was an independent contractor, not an employee of an employer, this Department does not have jurisdiction over his 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.

David M. Zygmunt
Hearing Officer

Date of Decision: August 23, 2017

Original: Claimant
cc: The Company

DMZ/das