

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

XCube Research & Development Inc and Mikael Taveniku

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:44 IV liquidated damages
RSA 275:42 V, personally liability of corporate officer/manager

Employer: XCube Research & Development Inc, 126 Marsh Rd, Pelham NH 03076
Mikael Taveniku, 126 Marsh Rd, Pelham NH 03076

Date of Hearing: April 12, 2018

Case No.: 55842 and 56522

BACKGROUND AND STATEMENT OF THE ISSUES

A prior hearing was held for case number 55842 and a Decision had been issued. As the employer's copy of the Hearing Notice was returned to this Department, the October 25, 2017, Decision was voided. The claimant submitted a subsequent claim, 56522, and both of these claims were consolidated into one hearing. This Decision follows.

The claimant now asserts he is owed \$76,000.00 in unpaid salary/wages for the period of December 1, 2016 through August 28, 2017. He seeks liquidated damages on these wages and asserts that Mikael Taveniku should be held personally liable.

The employer/Mikael Taveniku argues that the claimant was physically in the building but was performing work for the benefit of himself and his son not the company so he did not earn any salary. Mikael Taveniku and Satish Jha both accuse the other of having control of the company.

FINDINGS OF FACT

The claimant worked for the employer from December 1, 2016 through August 28, 2017. He received an annual salary of \$125,000, payable on a semimonthly basis.

The claimant received a total of \$17,500 over the course of his employment, and is alleging the balance of \$76,000 is still due.

The claimant provided credible testimony that he worked each pay period between December 1, 2016 and August 28, 2017, and never took a single vacation day.

The employer/Mikael Taveniku did not provide any persuasive testimony or evidence that the claimant was not performing any work.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed salary/wages in the amount of \$76,000.

The claimant seeks liquidated damages on these wages from the time the wages were due within the required timeframe of his separation from employment on August 28, 2017.

The employer/Mikael Taveniku provided credible testimony that there were no funds in the company to pay the claimant.

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" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds the employer did not have the financial ability to pay the wages due. Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due in the time required, because the employer did not have the financial ability to pay.

The claimant seeks to hold Mikael Taveniku personally liable for the payment of the wages found due.

Mikael Taveniku denies personal liability as he did not have control of the company during the claimant's employment. He alleges Satish Jha had control of the company.

RSA 275:42 V For the purposes of this subdivision the officers of a corporation and any agents having the management of such corporation who knowingly permit the corporation to violate the provisions of RSA 275:43, 44 shall be deemed to be the employers of the employees of the corporation.

The Hearing Officer finds that the claimant failed to provide sufficient testimony or evidence that Mikael Taveniku meets the criteria under RSA 275:42 V to be deemed employers of the employees of the corporation.

The claimant has filed a previous claim with this Department and a second claim which were both heard today. The claimant is advised that future claims regarding the same "cause of action", arising out of the same factual transaction, are barred under the doctrine of res judicata under University of N.H. v. April 115 N.H. 576 (1975), which states that a judgment on the merits is conclusive upon the parties "both as to what was

actually litigated and as to everything that might have been litigated", thereby extinguishing the claimant's rights to remedies.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant proved by a preponderance of the evidence that he was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$76,000.

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.

As this Department finds that the claimant failed to prove by a preponderance of the evidence that Mikael Taveniku knowingly permitted the company to violate the provisions of RSA 275:43, 44, it is hereby ruled that this individual was not the employer of the claimant, under RSA 275:42 V.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$76,000, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 26, 2018

Original: Claimant
cc: Employer

MJD/nm