

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

EI Colima LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: EI Colima LLC, 116 W Pearl St, Nashua NH 03060

Date of Hearing: January 3, 2018

Case No.: 55896

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$16,400 in unpaid salary calculated at \$500 per week for October 2016 and \$900 per week November 2016 through February 18, 2017, as he was given a promotion to manager but only received his bartending pay.

The employer denies the claimant given a management position and denies he was not paid for all time worked.

FINDINGS OF FACT

The claimant worked for the employer from June 2, 2016 through February 18, 2017. He initially signed a job description and rate of pay for a bartending position in May 2016. He received the noticed rate of pay throughout his employment.

The claimant argues he was hired as a bartender in June 2016 but in October 2016 was promoted to manager. He argues he is due \$500 per week for each of the four weeks in October 2016 during his management training period and \$900 per week between November 1, 2016 and February 18, 2017, when his employment ended.

The employer argues the claimant was never officially promoted to the management position because of issues with his performance. He did sit with management during any free time he had to see some of the functions performed, but was never a member of management. He at all times remained a bartender.

The employer provided a notice of job descriptions and rate of pay for his bartending position in May 2016, which the claimant signed. The parties agree no documentation existed for any other position or change in rate of pay.

The claimant received his regular bartending rate of pay all throughout his employment, documentation previously submitted. The claimant seeks not the difference between the payment he received and the salary he alleges he was promised, but the salary in addition to the wages he already received.

The claimant did not provide persuasive testimony that he was promoted to a management position or that he was promised any wages or salary other than his acknowledged bartending pay.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he was promoted to a management position and not paid all wages due. The Hearing Officer finds that the claimant failed to meet that burden of proof as his story is only as credible as, not more credible than, the employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed the claimed wages.

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 wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 9, 2018

Original: Claimant
cc: Employer
Employer's Attorney

MJD/nm