

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

XCube Research & Development Inc, Mikael Taveniku and Satish Jha

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: XCube Research & Development Inc, 126 Marsh Rd, Pelham NH 03076
Mikael Taveniku, 126 Marsh Rd, Pelham NH 03076
Satish Jha, 18 Chatham Cir, Wellesley MA 02481

Date of Hearing: April 12, 2018

Case No.: 56521

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts that XCube Research & Development Inc should be held liable for liquidated damages for \$55,000.00 in previously unpaid salary/wages for the period of February 1, 2017 through August 28, 2017. He additionally asserts Mikael Taveniku and Satish Jha should be personally liable.

The employer agreed the original wages were due to the claimant, however, there were no funds to make payment.

Mikael Taveniku and Satish Jha both denied personal liability and accuse the other of having control of the company.

FINDINGS OF FACT

The claimant previously received a valid Decision from this Department for wages in the amount of \$55,000.

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. He seeks to hold Mikael Taveniku and Satish Jha personally liable for the liquidated damages as he claims they had control of the company and chose not to pay him.

The employer provided credible testimony that there were no funds in the company to pay the claimant. Some employees did receive wages with what little funds were in the company, but many employees were not able to be paid, including himself.

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.

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

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.

As no liquidated damages are found to be due, no personal liability can be assessed.

However, even if damages were due, the Hearing Officer would not have found Mikael Taveniku and Satish Jha to be personally liable.

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 claimant did not present credible or persuasive testimony or evidence that either Mikael Taveniku and Satish Jha should be held personally responsible for claim.

Therefore, the Hearing Officer would have found that the claimant failed to prove by a preponderance of the evidence that Mikael Taveniku and Satish Jha should be held personally liable for the claim.

The claimant has filed a previous claim with this Department which was found meritorious after a hearing. The claimant attempted at that last hearing to add the issue of RSA 275:44 IV liquidated damages, which was disallowed under Lab 204.02. The claimant was allowed to file this claim as he was not familiar with the administrative rule nor was he represented by counsel.

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

Based on the testimony and evidence presented, and 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 is invalid.

As this Department finds that the claimant failed to prove by a preponderance of the evidence that damages were due, and therefore Mikael Taveniku and Satish Jha could not have knowingly permitted the company to violate the provisions of RSA 275:43, 44, it is hereby ruled that these individuals were not the employer of the claimant, under RSA 275:42 V.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 26, 2018

Original: Claimant
cc: Employer

MJD/nm