

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE**

[REDACTED]

v.

Rosewood Realty Trust

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Rosewood Realty Trust, [REDACTED]

Date of Hearing: April 4, 2018

Case No.: 56703

BACKGROUND AND STATEMENT OF THE ISSUES

The employer operates in the hotel / motel industry.

The claimant worked for the business for approximately five (5) years beginning as a chamber maid then ultimately performing front desk operations at the time of her separation

The current issue concerns unpaid wages relative to an apparent promised bonus.

The claimant asserts the employer promised to her that she would receive an end-of-year bonus for year 2016 equal to one-percent (1%) of gross income that she calculates to be approximately \$5,000.00.

On the basis of the claimant's assertions she is owed an unpaid bonus she filed a Wage Claim on January 25, 2018. A Notice of Wage Claim was forwarded to the employer on January 26, 2018. The employer's objection was received on February 5, 2018 and forwarded to the claimant this same day. The Department received the claimant's request for a Hearing on February 12, 2018. A Notice of Hearing was sent to the parties on February 22, 2018. On February 27, 2018 the employer requested a reschedule of the Hearing date; the Hearing was rescheduled with notices of Hearing sent to the parties on March 15, 2018 Accordingly a Hearing was held at the New Hampshire Department of Labor on April 4, 2018.

FINDINGS OF FACT

The claimant worked for the employer from September 2012 until she separated on November 7, 2017. She testified she was earning twenty-five (25) dollars per hour at this time.

The claimant describes the employer as having been very generous to her over her years of employment. She cited examples of her paying for a trip to Florida for she and her children, buying her a computer, an expensive coat, living rent free for a period of time and at one time giving her money to buy snow tires for her car. The claimant described these items as "bonuses."

The claimant references the year 2016 in her claim as the referenced year in her claim; during her testimony she stated she was unsure of the dates. She testified that in 2016 the employer had knowledge that she and her husband desired to purchase a home and promised her one percent (1%) of gross income at the end of 2016. The claimant calculated this amount to be "about \$5,000.00.

The employer states she had been considering a bonus for the client at the end of 2015 but decided against it. She states the business showed a profit in 2015 of \$1,162.00 and then a loss in 2016 in the amount of \$2,024. The employer testified she never promised the claimant a bonus.

The claimant stated she did not receive the bonus because of a soured business relationship the employer had with her husband. She suggested that the employer is motivated to withhold her bonus as a means to settle a dispute with her husband.

The employer holds that her relationship with the claimant's husband is unrelated to her employer / employee relationship she had with the claimant.

The claimant testified that sometime in 2016 the employer offered the claimant an alternative bonus plan of \$4,000 for the 2016 fiscal year and another \$2,000 if she stayed through 2017. The claimant holds the employer reneged on this deal when she (claimant) requested the offer in writing.

There was no written agreement or policy concerning bonuses submitted for the Hearing.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant describes herself as having been a dedicated and valuable employee. The employer agrees.

When the claimant used the items (trips, computer, etc.) as examples of bonuses she received from the employer in the past, she did not mention, if prior to their receipt, the employer had stated any contingencies in regard to earning them; if certain performance criteria need to be met.

The employer argues the items she had given the claimant in the past were gifts.

The claimant testified the employer “never put anything in writing” and that the descriptions of the bonuses were verbal promises.

The employer counters with the position that the claimed bonuses were never offered and that’s why there is nothing in writing.

In order for the claimant to have been successful she would have needed to demonstrate to this Hearing Officer the existence of an agreed upon bonus plan where she met all the goals necessary in order for the employer then to be obligated to pay her the bonus. Ultimately the claimant was unable to do so.

The claimant presents her case without any credible physical or corroborating testimony in her support. Therefore, this Hearing Officer finds that the claimant did not meet her burden of proof to show by a preponderance of the evidence that he is owed wages in the form of a bonus.

DECISION

Based on the evidence presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as this Department finds the claimant did not prove by a preponderance of the evidence she is owed wages in the form of an unpaid bonus in the amount of \$5,000.00 it is hereby ruled that this Wage Claim is invalid.

Hearing Officer

Date of Decision: May 4, 2018

Original: Claimant
Cc: Rosewood Realty Trust