

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

D'Amante Courser Pellerin PA

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: D'Amante Courser Pellerin PA

Date of Hearing: August 9, 2018

Case No.: 57302

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed approximately \$10,000 in unpaid wages for work performed prior to his retirement in July 2016.

At the hearing, he amended the amount of the claim to \$5,000, because the original \$10,000 was the amount billed to the client, for which he believes he is due 50%.

He attempted to add liquidated damages to the claim at the hearing. Pursuant to Lab 204.02 Specification of Issue, hearings before a hearing officer shall be scheduled for the determination of specified issues duly listed for hearing on the hearing notice. The department shall expand the scope of a scheduled hearing if notice of the added issues, with necessary documentation is given to all parties at least 14 calendar days prior to the assigned hearing date. Issues may be added at any time without such notice with the consent of all parties.

As the parties were not noticed 14 days prior to the hearing, the issue was not heard.

The employer denies the claimant is due any wages for the case in question as the client did not pay any fees for the claimant's work on this case. Further, there was no agreement to pay any wages after the claimant's retirement.

FINDINGS OF FACT

The claimant retired from employment in July 2016. At the time of his retirement he worked under an arrangement by which he received 50% of the fees received from clients.

The claimant argues he recalls he was due somewhere in the neighborhood of \$10,000 for work performed on the case in question, which he later amended to \$5,000. He also argues even if the client did not pay any fees for his work, he should still be entitled to be paid for the work he performed.

The claimant was not able to articulate on which dates or how many hours of work were performed.

The employer argues the client did not pay any fees for the claimant's work on this case and that there was no agreement to pay any wages after the claimant's retirement.

The claimant has the burden to prove he performed work and subsequently was not paid for all wages due.

The Hearing Officer finds the claimant did not provide credible or persuasive testimony, and no evidence, that he performed the work for which he claims wages.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he performed work or is due the claimed wages.

Even if he had proven by a preponderance of the evidence that he had performed the work, he would have failed in his claim for wages due.

The employer provided credible testimony and evidence, submitted previously, billing information showing the discounted fees charged and payments made by the client, that the client did not pay fees for the claimant's services.

DISCUSSION

The claimant raised the issue of RSA 275:44 IV, liquidated damages, for the first time at the hearing.

This issue was not noticed for the hearing nor can issues be added without the consent of all parties. However, in the interest of expediency to all parties, the following information is provided.

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 claimant would have the burden to prove by a preponderance of the evidence that the employer voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed, fails to pay them.

As no wages were found to be due, no liquidated damages could be assessed.

However, even if wages were found to be due, the claim for liquidated damages would have failed as the employer held a genuine belief that no wages were owed to the claimant.

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: August 21, 2018

Original: Claimant
cc: Employer
Employer's Attorney

MJD/nm