

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Ivesia Solutions Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/commissions

Date of Hearing: November 14, 2018

Case No.: 57913

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$4,912.50 in unpaid commissions for client placements invoiced prior to her separation from employment.

The employer denies the claimant is due any further commissions pursuant to her written commission plan, which she signed.

FINDINGS OF FACT

The claimant worked for the employer from April 2018 through September 5, 2018, as a Technical Recruiter.

The claimant argues she is due \$4,912.50 in unpaid commissions for two client placements she made prior to her separation from employment.

She agrees she signed the written commission plan. She argues that the agreement states she will be paid on revenue received, which is not defined in the document, and she feels should be defined as when the claimant is invoiced.

The employer argues they paid the claimant pursuant to the written commission plan. She received payment for commissions on clients for whom revenue had been received prior to her separation on September 5, 2018. One of the clients had been invoiced prior to September 5, 2018, and the second was not invoiced until September 17, 2018, documentation of this invoice was previously submitted.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including any bonus, at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly noticed the claimant regarding her commission plan, which she agrees she signed on April 30, 2018.

The written plan, previously submitted, reads, in relevant part, "Upon Associate's employment termination, direct hire/perm commissions will only be earned and paid on invoices paid by client (s) as of the termination date. Commission for any invoices sent to client but not received payment as of the Associate's termination date shall not be paid to the Associate."

The New Hampshire Supreme Court, in Bryan K. Galloway v. Chicago-Soft, Ltd. 142 NH 752, established a "general rule" regarding commission sales that states, "a person employed on a commission basis to solicit sales orders is entitled to his commission when the order it is accepted by his employer. The entitlement to commissions is not affected by the fact that payment for those orders may be delayed until after they have been shipped. This general rule may be altered by a written agreement by the parties or by the conduct of the parties which clearly (*emphasis in original*) demonstrates a different compensation scheme".


The employer's written commission plan clearly alters the general rule and demonstrates a different compensation scheme.

CONCLUSIONS

The Hearing Officer finds that the claimant was informed in writing that she would not receive commission on placements that paid invoices after her separation. Because the claimant was informed of this policy, the general rule was altered to demonstrate a different compensation scheme. Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed commissions under the written plan.

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


Hearing Officer

Date of Decision: November 16, 2018

Original: Claimant
cc: Employer