

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

██████████

v.  
T. ANTAYA, LLC.

CASE NO. 102337

DECISION OF THE HEARING OFFICER

**Appearances:** ██████████ the claimant appeared Pro Se.  
No one appeared for the employer.

**Nature of Dispute:** RSA 275:43 I - Weekly, Unpaid Wages

**Employer:** T. Antaya, LLC.

**Date of Hearing:** June 27, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on May 11, 2022, asserting that she is due unpaid wages in the amount of \$16,421.61 net (\$20,873.42 gross) for unpaid wages.

The employer was notified by the Department of Labor (DOL) via mailing dated May 12, 2022. There was no response from the employer within the ten-day period provided by statute. This hearing was then scheduled accordingly for review of the claimant's claim for unpaid wages under RSA 275:43 I for June 27, 2022 at 9:45 am. The employer did not respond to the request for hearing. The claimant appeared in person at the appropriate date and time. The employer did not send a representative. After waiting 15 minutes as required by the DOL's administrative rules the hearing proceeded in the employer's absence.

FINDINGS OF FACT

██████████ graduated from the University of New Hampshire in 2020 with a BS in Mechanical Engineering. She began working for the employer on May 17, 2021. The company designs prototypes for cyclotron particle accelerators. She was employed as a mechanical design engineer and paid \$72,000 per year. Her pay was issued twice a month.

Ms. ██████ testified that the company is typically financed via grants or private investment. As such the company did not always have enough funds available to cover all costs. Ms. ██████ further testified that she understood this when she accepted the

position. Ms. ████████ further testified that the employer did not provide paystubs but did provide a W2 for the tax year of 2021. She was able to file her 2021 income tax return with no issues.

Ms. ████████ testified that she last received a regular paycheck on December 8, 2021. There were then six consecutive pay days where the Ms. ████████ did not receive her paycheck December 15, 2021; January 1, and 15, 2022; February 1, and 15, 2022; as well as March 1, 2022. At this time, the claimant was owed a total of \$14,161.02 net pay (\$18,000.00 gross). She was then paid \$6,000.00 net (\$7,626.57 gross) on March 8, 2022 but was still owed \$8,161.02 net (\$10,373.43 gross). However, following this the claimant did not receive her paycheck on March 15, 2022 or April 1, 15, and 30, 2022. As of the April 30, 2022 paycheck, the claimant was owed \$16,421.61 net (\$20,873.42 gross).

On February 16, 2022, Dr. Thomas Antaya, the company owner, sent a text message to Ms. ████████ indicating that he had hired an attorney to deal with a dispute in Dubai. This dispute could have potentially resulted in the company receiving \$6.3 million. *See page 2.* On March 9, 2022, Dr. Antaya sent a text notifying Ms. ████████ of the payment sent on the previous day. *See page 2.*

On April 6, 2022, Dr. Antaya sent a text message which stated: "Interest in what we are doing is increasing, but hospitals do not yet have capital for large opurchases [sic] so leasing seems to be the way forward and I am trying to get up to speed on leasing expensive medical equipment too." A second text message stated: "hope to send some more funds you [sic] way early next week." *See page 2.*

On April 13, 2022 at 1:11 pm, Ms. ████████ sent a text message which stated: "Hi Doc, hope all is well. Any update on the plane or w2s?" *See page 2.* The claimant explained that Dr. Antaya was in the process of selling one of his airplanes to raise funds to pay the employees. At 8:42 pm Dr. Antaya which stated in part: "I will have some more funds for you this week as well." *See page 1.* Following this statement, no further payments were received.

On April 23, 2022, Ms. ████████ sent a text message noting that she had been offered another opportunity which she was accepting. Ms. ████████ also sent a follow-up text message on April 27, 2022 looking to discuss a payment plan of some kind or any update on when she could expect to be paid. *See page 1.*

The claimant has not been paid any portion of her salary since March 8, 2022. To her knowledge, the company is still functioning.

### **DISCUSSION AND CONCLUSIONS**

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she is owed unpaid 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 argued that she performed several months of work for the employer without being paid her salary. The claimant finally argued that she had made a reasonable attempt to reach out to the employer to resolve this issue with no response.

The claimant's argument that she performed several months of work for the employer without being paid her salary is persuasive. The claimant was not paid on a regular basis for nine and a half pay periods beginning with the December 15, 2021 paycheck and going through the April 30, 2022 paycheck. This is a total of \$22,421.62 net pay (\$28,500.00 gross) which is nearly 40% of her annual salary. The claimant's testimony and text message evidence confirm that she was performing ongoing work for the employer but was not receiving her regular paychecks. Furthermore, the text message evidence confirms that the employer was aware that she had not been paid and was attempting to resolve the situation. *See page 1 and 2.* Thus far the claimant has been paid a portion of the money owed to her in the amount of \$6000.00 net (\$7,626.57 gross).

Overall, there has been a lack of response from the employer here to refute the claimant's position. The employer did not respond to the notice of wage claim sent by the DOL. Furthermore, the employer did not appear at hearing to dispute the claimant's contentions with evidence or testimony.

Based upon a preponderance of the evidence, it is determined the claimant has met her burden and she should be paid her missing wages.

### DECISION

Based on the evidence and testimony presented, the claimant has showed by a preponderance of the evidence that wages were due for nine and a half pay periods beginning with the December 15, 2021 paycheck and going through the April 30, 2022 paycheck. The claimant's request for payment of unpaid wages is approved. It is found that the wage claim for unpaid wages is valid.

The total gross pay owed for this period is \$28,500.00, and the employer has paid the claimant \$7,626.57 of that amount owed. Therefore, the employer is ordered to send a check in the amount of \$20,873.42 to this Department payable to ██████████ less any applicable taxes, for the unpaid wages to this Department within 30 days of the date of this order.

  
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Timothy G. Fischer  
Hearing Officer

Date of Decision: July 26, 2022

TGF/nd