

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████

V

NH Core Properties LLC
Case No.: 58391

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:42 I/II employer/employee relationship

Date of Hearing: March 13, 2019

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she was an employee of NH Core Properties LLC and is owed \$34,000 in unpaid wages for worked performed between August 29, 2018, and November 28, 2018.

NH Core Properties LLC (*hereafter NHCP*), denies the claimant was an employee and that she is due any further monies from them.

FINDINGS OF FACT

The claimant is the President and Board of Director Chair of Leading North Star, Inc. (*hereafter LNS*). There were some unanswered questions about the claimant's mother's participation in the ownership of the business. For all relevant periods of this claim, the claimant has run this business by herself. This company is in the business of managing condominium associations. LNS managed two condominium association accounts, Holden Farm Condominium Association and Salem Crossing, prior to her meeting ██████████ of NHCP.

For the purposes of this claim, only the Holden Farm Condominium Association agreement is discussed. The Salem Crossing account has always been, and continues to be, serviced by LNS.

For the Holden Farm Condominium Association agreement the claimant serviced as LNS, she received a monthly fee. She charged this client separately for additional work performed as agreed by the parties and received payment separately from the monthly fee.

██████████ has owned NHCP since 2011. This company offers property management services to condominium associations, such as maintenance, construction, landscaping, plowing, etc.

Around March 2018, the claimant struck up a conversation with [REDACTED] while at a school their children both attend, after seeing information about his business on social media. They have similar businesses and she thought they may be able to help each other.

The parties began texting as early as May 1, 2018, text documentation submitted. The claimant agrees she is "Auburn Mom Property Company" as represented on the text messages from NHCP. The next series of text messages submitted begin July 18, 2018. The parties agree they had verbal conversations during this lapse in time. The text messages clearly indicate the parties were attempting some sort of business relationship, with the mention by the claimant of "specifically bc im a partner" on August 1, 2018, at 8:26pm, NHCP Exhibit Page 44. The claimant moved her real estate license under [REDACTED]. She did not have any real estate transactions during the period of this claim.

NHCP was unwilling to execute any type of business arrangement agreement with the claimant because of a pending business transaction. No notes or other written documentation, except the previously referenced text messages, were provided to show any agreement the parties may have entertained, but not executed. On at least one occasion NHCP "challenged" the claimant to put her wishes in writing. Text messages also indicate the claimant wishing to "buy in" to NHCP for "15%-20%" ownership.

On August 28, 2018, the claimant, as LNS, executed an addendum to a Management Agreement between LNS and Holden Farm Condominium Association for the period of March 1, 2017, through February 28, 2019, replacing the name of LNS with NHCP. This addendum was signed by the claimant and a representative of Holden Farm Condominium Association. [REDACTED] signature does not appear on this form.

On approximately August 29, 2018, the claimant began working out of NHCP's business office.

The claimant received the full regular monthly fee for the management of the Holden Farm Condominium Association management contract, through checks from NHCP made payable to LNS, for the months of September, October and November 2018. NHCP acted as a pass through for these funds to LNS, and did not make any deductions from the full fee.

The claimant completed an application for health insurance with NHCP. This application was never processed by, nor did she ever receive health insurance from, NHCP.

The claimant did spend a few hours riding with [REDACTED] to see the properties that NHCP manages. [REDACTED] agrees she made lists of issues and action items for the properties they visited and discussed the issues with the claimant.

The claimant left the offices of NHCP after a meeting with [REDACTED] and [REDACTED] in which there was a disagreement on November 28, 2018, and never returned.

NHCP attempted to return the contract for Holden Farm Condominium Association to the claimant at a scheduled meeting among NHCP, Holden Farm and

herself, around December 1, 2018. The claimant failed to appear at that meeting. Holden Farm then entered into an agreement with NHCP to continue servicing the agreement through the end of the contract in February 2019, which has been extended for an additional six months.

DISCUSSION AND CONCLUSIONS

The claimant argues she and [REDACTED] of NHCP entered into a verbal agreement in which she would become an employee of NHCP and receive \$10,000 per month as a salary, in return for turning over her two condominium contracts for Holden Farm Condominium Association and Salem Crossing.

She further argues that [REDACTED] told her they could not put any agreement in writing until a separate business deal consummated, but that he would make up any salary to her after that deal concluded.

NHCP argues they were in discussions with the claimant to see how their businesses could assist each other, not to offer the claimant employment. They offered to help the claimant out with business space because she “was a one man show” and they could offer administrative support in their offices. At no time did they offer her employment. Further, even if they had, they would not have paid her \$10,000 per month, as [REDACTED] does not pay himself that.

The claimant argues that NHCP offered her health insurance for herself and her family. She completed the paperwork and returned it to NHCP. NHCP argues they provided the claimant a copy of what they offer their employees so she could see the benefits but did not offer the insurance to the claimant.

The claimant bears the burden to prove she was an employee of NHCP, and subsequently owed the claimed wages.

NHCP disavows any contemporaneous knowledge of the August 28, 2018, addendum to the Holden Crossing agreement, which changed the management company from LNS to NHCP. It was also only signed by the claimant and Holden Farms, not NHCP. When the monthly management fees were received by NHCP following the execution of the agreement, they passed the full fee without reduction to LNS, not the claimant as an individual. NHCP attempted to return the contract to the claimant after her abrupt departure from their offices, however she did not appear for the meeting. Because Holden Farm required a management company, they made an offer to NHCP, which they accepted.

The parties each tell passionate stories that support their respective positions. Very little documentation exists to explain their discussions or the relationship of the parties. The little documentation that does exist is clearly intermingled with verbal conversations that are unknown to the Hearing Officer.

There is no indication, other than the claimant’s testimony, that she performed any work on behalf of or for the benefit of NHCP.

It is clear that there was never a “meeting of the minds” as to the relationship between the parties. The claimant continually operated LNS during her time using the

office space at NHCP, managed both the Holden Farm Condominium Association and Salem Crossing, and received full payment for these activities. The transfer of the Holden Farm contract was a step towards LNS and NHCP attempting a relationship, albeit without any written agreement. This appears to be a failed relationship between two business partners, not that of an employee and employer.

Because the claimant did not provide persuasive evidence that she was an employee of NHCP, the Hearing Officer finds the claimant is not an employee of an employer. As such, this Department lacks jurisdiction.

Even if the claimant had proven she was an employee of an employer, she did not provide persuasive evidence that she would be due the claimed wages. Other than her testimony that there was a verbal agreement for \$10,000 per month, the claimant showed no documentation or other proof that she was entitled to any specific rate of pay or that she performed the work necessary to be entitled to any payments.

DECISION

Based on the testimony and evidence presented, as the wage claim process through this Department is only available to employees of an employer, and it is found the claimant is not an employee of an employer, this Department lacks jurisdiction in this matter.

██████████
Hearing Officer

Date of Decision: April 1, 2019

Original: Claimant
cc: Company's Attorney
Company