

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

CLARK'S RESTAURANT LLC

Case No. 62640

DECISION OF THE HEARING OFFICER

Appearances: Attorney William Warren, on behalf of the claimant, [REDACTED]
Mr. Douglas Clark, on behalf of Clark's Restaurant LLC, Pro Se

Nature of Dispute: RSA 275:43 I - Weekly, Unpaid Wages
RSA 275:43-b - Payment of Salaried Employees, Unpaid Salary
RSA 275:43 V - Weekly, Unpaid Vacation Pay
RSA 275:44 IV - Employees Separated from Payroll Before Pay Days, Liquidated Damages

Witnesses: [REDACTED], claimant, on her own behalf
Mr. Douglas Clark, on behalf of the employer

Date of Hearing: July 16, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

On the basis of the claimant's assertions that she is owed \$110,153.54 in unpaid wages in the form of unpaid salary, unpaid vacation pay and liquidated damages, she filed a Wage Claim with the New Hampshire Department of Labor on April 27, 2021; a Notice of Wage Claim was forwarded to the employer on May 7, 2021. The employer objected to the Wage Claim in writing on May 15, 2021. The claimant requested a hearing on May 25, 2021. Notices of Hearing were forwarded to all parties on June 3, 2021, and a hearing was scheduled accordingly.

A formal hearing was held at the New Hampshire Department of Labor (DOL) Headquarters in Concord, New Hampshire on July 16, 2021 at 8:30am. All parties appeared via the video conferencing platform Webex. Video testimony was provided by [REDACTED], the claimant on her own behalf, and Mr. Douglas Clark, on behalf of the employer.

Finally, the record was left open until 4:30pm on July 23, 2021 for written closing statements; all parties submitted written closing statements in a timely manner. It

should be noted that Mr. Clark submitted a second written statement subsequent to his written closing statement. This document was dated Friday, July 30, 2021, which is after the record had been closed in this matter. Therefore, this submission was not considered.

FINDINGS OF FACT

██████████ was a consultant for Clark's Restaurant LLC beginning in 2018.

In 2020, ██████████ intended to become an employee of the LLC, and at her instigation, an Employment Agreement was drafted and signed by both ██████████ and Mr. Clark. This agreement stated that ██████████' employment began on January 1, 2019. (CL 2) Both parties agree that this Employment Agreement is the governing document in this matter.

Under the section titled "Compensation," there is very little information. It established Base Salary and notes that a "Base Salary is set forth herein as a matter of convenience and shall not be deemed or interpreted as an agreement..."

There is an additional clause for an Annual Bonus that referenced "Exhibit A." A clause for "Vacation" noted, "MP shall be eligible to accrue and use paid vacation in accordance with Company policy as may be in effect from time to time. All vacation shall be scheduled to minimize disruption to Company's operations."

Every page of the Employment Agreement was either initialed or signed by both parties with the exception of "Exhibit A" which has no notations on it whatsoever. Exhibit A seemingly sets forth a total annual compensation of \$275,950.00 for ██████████ ██████████ to be a "Managing Partner" of both Ciao Italia Ristorante and Clark's American Bistro & Weeks Chop Shop. Mr. Clark contested the accuracy of Exhibit A.

It should be noted that Clark's American Bistro & Weeks Chop Shop was never managed by ██████████.

After some time, the employment arrangement did not work out and ██████████ was given a ten (10) day notice of termination on January 10, 2021. (CL 4-5)

██████████ testified that her total salary was \$175,000.00 per year but acknowledged that, ultimately, Mr. Clark determined her compensation. ██████████ explained that she had never received a salary for her work with the LLC. ██████████ also explained that she is seeking unpaid vacation pay and liquidated damages.

Mr. Clark testified that ██████████ insisted on the Employment Agreement and that it was drafted at her request. Mr. Clark acknowledged that he was frustrated with

██████████ job performance and provided her with a ten (10) day notice of termination on January 10, 2021. Mr. Clark asserted that he paid ██████████ all wages that were

owed and due to her and all compensation articulated in the Employment Agreement that would be due to her upon termination.

██████████ requested a determination that she is owed \$110,153.54 in unpaid wages in the form of unpaid salary, unpaid vacation pay and liquidated damages.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that they are owed \$110,153.54 in unpaid wages in the form of unpaid salary, unpaid vacation pay and liquidated damages. Proof by a preponderance of the evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

Mr. Clark asserts that ██████████ has been paid all wages that she was owed and due and that she is owed and due no further wages.

██████████ asserts that she is owed and due \$110,153.54 total, comprised of \$34,615.26 in unpaid salary for Clark's Bistro, \$20,461.51 for 6.08 weeks' unused vacation pay and \$55,076.77 in liquidated damages.

It must be noted, however, that ██████████' testimony at hearing was inconsistent and self-contradictory. For example, when asked if she had an employment agreement and if it was accurately reflected in the evidentiary packet, ██████████ answered, "No," "Yes," and "I don't know." Additionally, during the hearing, ██████████ was asked if she ever used vacation time and she firmly answered "no." Later, she stated, "Did I take weeks' vacation? Absolutely not. It was a day, half a day – that type of thing." This type of equivocation occurred throughout hearing. Ultimately, it is determined that ██████████' testimony could not be relied upon.

What remains is the signed Employment Agreement and the credible testimony of Mr. Clark. The employment agreement was drafted at the initiation of ██████████ and only references Exhibit A once, regarding an Annual Bonus. Overall, it is confusing why every single page of this agreement was either signed or initialed by both parties with the exception of Exhibit A. Additionally, Exhibit A is found to be generally confusing. Taken as a whole, and acknowledging that Mr. Clark contests the accuracy of this document, Exhibit A is not found to be persuasive and the Employment Agreement is silent with regard to compensation. Regarding unpaid wages in the form of unpaid salary, it is clear that ██████████ did perform work for the employer; however, it remains unclear if she is owed and due any unpaid wages and if so, in what amount.


Regarding unpaid vacation, ██████████ provided testimony that could not be relied upon.

Ultimately, it is the claimant's burden to prove by a preponderance of the evidence that they are owed unpaid wages in the form of unpaid salary, unpaid vacation pay and liquidated damages; given the reasoning explained above, it is determined that the claimant has failed to meet their burden of proof in this matter. It is determined that this Wage Claim is invalid.

DECISION

Based on a thorough review of the evidence and testimony presented, and as RSA 275:43 I requires that an employer pay all wages due to an employee, it is determined that the claimant did not prove, by a preponderance of the evidence, that they are owed and due unpaid wages in the form of unpaid salary, unpaid vacation pay and liquidated damages; it is hereby ruled that **this Wage Claim is invalid.**

August 18, 2021
Date of Decision


Jeremy Micah Denlea, Hearing Officer

Original: Claimant
cc: Employer

JD/cb