



# State of New Hampshire

## Department of Labor

January 11, 2022

Ken Merrifield  
Commissioner of Labor

Rudolph W. Ogden III  
Deputy Labor Commissioner

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[REDACTED]  
364 Hartshorn Rd.  
Barnstead, NH 03218

Re: [REDACTED] v. G&M Remodeling, Inc.  
Case No. # 62929

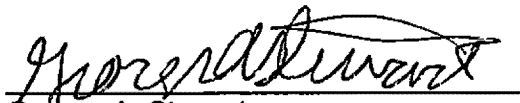
Dear Mr. Kenison:

Enclosed is the Decision from the Hearing held before the Department on December 21, 2021. Your Wage Claim was found to be valid in part.

If the employer does not comply with the order to send payment to the Department within thirty (30) days, and does not appeal the decision, the Department will forward information regarding the manner in which you can enforce this Decision.

Any party aggrieved by this Decision may appeal it in the manner specified by RSA 275:51 V not later than twenty (20) days from the date of this Decision by petition to the Superior Court setting forth that said Decision is erroneous, in whole or in part, and specifying the grounds upon which same is claimed to be in error. The scope of review by the Superior Court is limited to questions of law. In the event that an appeal is filed, the party appealed against will be served with a notice of the appeal from the Superior Court. The party appealed against is required to respond to this notice, in writing, to the Superior Court, and may wish to contact the Clerk of Superior Court for assistance at that time. Failure to respond in writing may result in a reversal of the Decision.

A recording of this hearing will remain available for 60 days after the date of this Decision. A copy of the recording is available on a CD-ROM for \$20 postpaid. A copy of the recording must be requested in writing with payment included at the time of the request.

  
George A. Stewart  
Hearing Officer

GAS/cb

cc: G&M Remodeling, Inc.  
Gage Pinto  
2 Pound Rd.  
Chichester, NH 03258

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

██████████  
v.

G&M Remodeling, Inc  
CASE #62929

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, self-represented  
Gage Pinto, representing the employer

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid wages)

**DATE OF HEARING:** December 21, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a wage complaint on June 20, 2021, alleging that he worked 100 hours at \$30.00 an hour for the employer, that payment was due on June 16, 2021, and that he has not been paid; also, that he moved a wall and re-roofed a dormer for the employer at an agreed price of \$1,000.00 to be split with another person, and that he has not been paid for that, either.

Notice of the claim was sent to the employer on June 22, 2021. No objection was received from the employer. Claimant requested a hearing on July 13, 2021 and the notice of today's hearing was sent on October 26, 2021. The hearing was conducted from the Department, with both parties appearing remotely by telephone.

**FINDINGS OF FACT**

The following findings are based on the testimony of the claimant, employer's representative, an exhibit offered by the claimant, and matters of record in the Department file. During the hearing, the claimant acknowledged under oath that any and all written submissions to the Department were true were true and accurate to the best of his knowledge and belief, and those statements are treated herein as part of the testimony in the case.

Claimant is 25 years old and lives in Barnstead. He attended high school through the eleventh grade. Since turning 18, he has worked in the construction field for several companies. He testified that, with one exception, he was on the payroll of an employer for all his jobs; in the exceptional case, he worked as an independent contractor. He testified that he also does some snow plowing with his father's business.

Claimant has known Gage Pinto, the employer's owner, for many years. On February 16, 2021, he met up with Mr. Pinto at the industrial park in Barnstead where Gage has a place of business. Gage asked him to give him a hand with a job he had going in Barnstead. Claimant was to build an interior wall and hang some sheetrock. He testified that Gage agreed to pay him \$30.00 per hour. He estimated that he began working on that job the same day. Claimant testified that, over the same time period, he also did some outside work for the employer in Alton. The rate of pay was the same at both jobs. When the weather was good, he worked in Alton; when it was bad, he worked in Barnstead. He testified he worked almost a month in all in Alton. On both jobs, he was working with Gage and another person named Dan.

Claimant said he expected to be paid on a weekly or biweekly basis but did not get paid. Mr. Gage told him that his company had to be paid first by the property owner and then claimant would receive his pay after that. Claimant agreed to wait.

Claimant testified that, on April 16, 2021, he met up with Mr. Gage in the Barnstead Industrial Park for the purpose of getting a written agreement from the employer to pay him the money that he was owed for the Barnstead and Alton work, 100 hours in all. They were sitting in Pinto's truck. Claimant drafted an agreement using a standard work proposal form. Claimant submitted a copy of this document as an exhibit.

According to the form, the job name was "Payment" and the specifications of the job were as follows: "Payment of \$3,000 for past due hours of 100 hours at \$30/hr." The payment agreement was stated as follows: "We propose hereby to furnish material and labor, complete in accordance with the above specifications for the sum of \$3,000." Claimant signed the document as the submitter. There was another signature on the line labeled, "Accepted." Claimant testified that the latter signature was Pinto's.

Claimant testified that he was never paid for either job, except that Gage did give him \$100.00 in cash after he complained that he could not keep working without being paid.

Claimant testified that he later agreed to return to the Alton job at a flat rate of \$1,000.00. His understanding was that the homeowner had been dissatisfied with work done earlier and that this was a re-do. He had helped build

it in the first place, so he agreed to the re-do at a flat rate. He testified that he worked on this job with a partner, Jon Hayes, and neither of them got paid.

Claimant testified that recently, he had started his own construction business. He was working with independent contractors rather than employees. He said he was bidding his own jobs "the same way he [Pinto] does."

Gage Pinto is 25 and lives in Chichester. He has known the claimant since they were both little kids. He is the owner of G&M Remodeling, Inc. He said he has no employees; "All my guys now are 1099's, they pay their own insurance." He testified that he uses written contracts unless he knows the person; in such cases, a verbal agreement and a handshake is sufficient.

Mr. Pinto testified that he was finishing up a on a job in Barnstead. The claimant approached him and offered to help with putting up some drywall. Pinto said there wasn't much work left to do, just a few hours' worth. He never offered to pay the claimant a specific hourly rate for helping him out. He said that claimant helped out, lending a hand as a friend, for about two to three hours that evening and that was the end of it.

With regard to the claimant's exhibit, Mr. Pinto said only that he did not recall seeing the document or signing it. He did not specifically deny signing it, even when pressed by the hearing officer on the point.

He testified that the claimant later came to him telling him he was starting a business with two other guys, Jon Hayes and Nate Ouellet, and was looking for work as a subcontractor. He agreed to give claimant work as an independent contractor at a flat rate of \$1,000.00, which was payment for building a wall and a dormer. He was going to pay the claimant when the job was completed and satisfactory. The \$1,000 was to have been paid directly to the claimant who would have been responsible for paying his partners. He did not end up paying the claimant because the work was not done right. He had to pay others to have it re-done. That was why he did not pay claimant for the work.

## **DISCUSSION AND CONCLUSIONS**

The claimant had the burden of proving by a preponderance of the evidence that he was owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

In this case, claimant's testimony that he worked as Mr. Pinto's employee for 100 hours at \$30.00 per hour is credited. The document that claimant relied

upon tends to corroborate that the work was done. Mr. Pinto's testimony that the claimant worked for him as a mere volunteer on the Barnstead job is not found to be credible. Also, Mr. Pinto's testimony that he "did not recall" signing the acknowledgment of a \$3,000.00 debt and promise to pay is not found to be credible under the circumstances. If he did not sign such a document, it seems likely he would have been able truthfully to deny signing it. His insistence that he did not recall signing was insufficient to rebut the claimant's testimony that he did sign it.

With regard to the second part of the claim—the \$1,000.00 for moving a wall and re-roofing a dormer—claimant's testimony that he performed this work as an employee rather than independent contractor is not credited. He testified that he worked with a partner and the \$1,000.00 was to be split between them. This is consistent with Mr. Pinto's testimony that claimant took the job as a subcontractor. Claimant also testified that he agreed to the flat rate of \$1,000.00 because it was a redo of the Alton job; this is the kind of accommodation typically made by an independent contractor who is contractually liable for the quality of his workmanship.

### DECISION

Based on the evidence submitted, it is found that the claimant met his burden of proving that he was owed \$3,000.00 in wages for the work referenced in the signed agreement, less the \$100.00 that claimant admitted he was paid in cash. Claimant did not meet his burden of proving that he was owed wages as a statutory employee for the \$1,000.00 job he performed with another person. His claim is therefore ruled **valid** to the extent of \$2,900.00.

The employer is hereby ordered to send a check to the Labor Department, payable to ██████████, in the amount of \$2,900.00, less applicable deductions, within 30 days of the date of this Order.

January 11, 2022  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/cb