



3. On May 2, 2016, David Alderman timely filed a Notice of Appeal and Request for Contested Hearing. There is no evidence showing Alderman Companies paid the amount owed to Loomis by May 3, 2016.

4. Following unsuccessful mediation efforts, on June 9, 2016, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH).

5. On June 13, 2016, OAH issued a Notice of Hearing and Telephone Conference informing the parties a scheduling conference to set dates for the proceedings would be held on June 28, 2016.

6. On June 28, 2016, Loomis and David Alderman participated at the scheduling conference. During the conference, the Hearing Officer advised David Alderman that Alderman Companies was required to have legal counsel represent the corporation in these legal proceedings. David Alderman indicated he would talk to his attorney, David Freedman, and have him enter a notice of appearance. In addition to other deadlines, the parties agreed to a September 26, 2016 final pre-hearing conference and an October 3, 2016 telephone hearing.

## **II. ISSUE**

Whether Alderman Companies, Inc., a Montana corporation and the appellant, owes wages for work performed, as alleged in Leah Loomis' complaint, and owes any penalties.

## **III. FINDINGS OF FACT**

1. On June 13, 2016, the Office of Administrative Hearings issued a Notice of Hearing and Scheduling Conference. The notice in part informed the parties that corporations, partnerships and limited liability companies must be represented by an attorney and a failure to appear could result in default.

2. On June 28, 2016, both Loomis and David Alderman participated at the scheduling conference. Since Alderman Companies did not have an attorney present, the Hearing Officer advised David Alderman that Alderman Companies was required to have legal counsel represent the corporation in these legal proceedings. David Alderman stated he would contact David Freedman, an attorney, and have him provide OAH with a notice of appearance.

3. The June 30, 2016 Scheduling Order in part informed the parties this matter was set for a hearing on October 3, 2016. The Order also stated:

A party's failure to appear for any conference, and/or failure to obey orders issued by the Hearing Officer, may result in sanctions against that party that can include entry of default, dismissal of an appeal, dismissal of the complaint, imposition of liability or other appropriate sanctions.

4. On September 26, 2016, Loomis was not present for the final pre-hearing conference, but David Alderman participated. The Hearing Officer advised David Alderman that the corporation, Alderman Companies, had to have a licensed Montana attorney represent the corporation at the October 3, 2016 hearing, and the attorney needed to provide a notice of appearance to OAH. David Alderman again informed the Hearing Officer he would talk to his attorney that day.

5. As of the date of this decision, the Office of Administrative Hearings has not received a notice of appearance from any attorney indicating the attorney represented Alderman Companies in these proceedings.

6. On October 3, 2016, the Hearing Officer attempted to contact Alderman Companies for the telephone hearing by calling the only phone number that had been provided to OAH. When no one answered the phone, the Hearing Officer waited 10 minutes and called the phone number. Again, no one answered the phone. The Hearing Officer was unable to leave a message because the voice mail box had not been set up. When no one on behalf of Alderman Companies was available the second time, the Hearing Officer closed the record in this matter.

7. Without good cause, the appellant, Alderman Companies, failed to appear at the hearing in this matter.

8. Alderman Companies failed to present a prima facie case showing it is entitled to any relief. There is nothing in the administrative record or the Wage and Hour determination that shows any error of fact or law that would question the propriety of the Wage and Hour Unit's determination.

9. Alderman Companies owes Loomis a total of \$7,724.70, which represents \$4,428.00 in unpaid wages (\$2,862.00 in regular wages and \$1,566.00 in overtime wages).

10. Alderman Companies is assessed penalties in the total amount of \$3,296.70 (a 55% penalty for regular wages pursuant to Mont. Code Ann. § 39-3-206 which amounts to \$1,574.10, and a 110% penalty for overtime wages totaling \$1,722.60). Admin. R. Mont. 24.16.7561(1)(a)(b).

#### IV. DISCUSSION AND ANALYSIS<sup>1</sup>

Alderman Companies, Inc. is in default because it failed to appear in accordance with Montana law.

This is a contested case proceeding subject to the Montana Administrative Procedures Act (MAPA) pursuant to Mont. Code Ann. § 2-4-601 et. seq and § 39-3-302. MAPA specifically provides that informal disposition may be made of any contested case by, among other things, a default unless such disposition is precluded by law. Mont. Code Ann. § 2-4-603(1)(a). Nothing in Title 39 or Title 2 prohibits imposition of a default where a party fails to comport with any facet of a scheduling order, fails to respond to a tribunal's direct order, or fails to appear for a scheduled hearing.

The Department has adopted the Attorney General's model rules, which provide in pertinent part, "[I]n a contested case, if a party does not appear to contest an intended agency action, the agency may enter a default order. If a default is entered, pursuant to Mont. Code. Ann. § 2-4-623, the order must be in writing and include findings of fact and conclusions of law" (emphasis added). Admin. R. Mont. 1-3-213(1) and 24-2-101(1).

A corporation can only appear in a legal proceeding through a licensed attorney. *Audit Services, Inc. v. Frontier West, Inc.*, (1992), 252 Mont. 142, 148, 827 P.2d 1241, 1246. A corporation is a separate legal entity and cannot appear on its own behalf through an agent other than an attorney. *Weaver v. Graybill*, (1990), 246 Mont. 175, 178, 803 P.2d 1089, 1091, quoting Annotation, Propriety and Effect of Corporation's Appearance Pro Se, Through Agent Who is Not Attorney, 19 A.L.R. 3d 1073 (1968).

Since mid-June 2016, Alderman Companies has been on notice that an attorney licensed to practice law in Montana must represent Alderman Companies in this legal proceeding. David Alderman informed the Hearing Officer on June 28 and

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<sup>1</sup>Statements of fact in this discussion and analysis are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

September 26, 2016 that David Alderman would contact the corporation's attorney, David Freedman. No attorney contacted the Office of Administrative Hearings to indicate Alderman Companies was represented by legal counsel. At the September 26, 2016 final pre-hearing telephone conference, David Alderman was again told that Alderman Companies must have an attorney.

No one on behalf of Alderman Companies appeared at the October 3, 2016 hearing. As of the date of this decision, no one on behalf of Alderman Companies has contacted the Hearing Officer or OAH about this matter. Alderman Companies failed to follow the orders issued by the Hearing Officer. Therefore, Alderman Companies is found in default.

## V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint. Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. A corporation can only appear in a legal proceeding through a licensed attorney. *Audit Services, Inc. v. Frontier West, Inc.*, (1992), 252 Mont. 142, 148, 827 P.2d 1241, 1246. A corporation is a separate legal entity and cannot appear on its own behalf through an agent other than an attorney. *Weaver v. Graybill*, (1990), 246 Mont. 175, 178, 803 P.2d 1089, 1091, quoting Annotation, Propriety and Effect of Corporation's Appearance Pro Se, Through Agent Who is Not Attorney, 19 A.L.R. 3d 1073 (1968). Only licensed attorneys may practice law or represent others in legal proceedings. *Traders State Bank v. Mann*, (1993), 258 Mont. 226, 852 P.2d 604 (overruled on other grounds).

3. Alderman Companies failed to follow the June 30 Scheduling Order, the Hearing Officer's June 28 and September 26, 2016 directives; failed to participate at the October 3, 2016 scheduled hearing; and failed to have a licensed attorney represent the corporation in this legal proceeding.

4. By failing to appear at the hearing, the appellant Alderman Companies has shown no basis to set aside the Wage and Hour Unit's determination. Loomis is due a total of \$7,724.70 in unpaid wages and penalties as described in Findings of Fact 9 and 10.

**VI. ORDER**

It is ORDERED that the respondent's appeal is DISMISSED. The Department's determination is final. Alderman Companies owes Loomis \$4,428.00 in unpaid wages and a penalty of \$3,296.70. Alderman Companies, Inc. is ORDERED to tender a cashier's check or money order in the amount of \$7,724.70 made payable to Leah Loomis and mailed to the Employment Relations Division, P.O. Box 201503, Helena, MT 59620-1503, no later than 30 days after service of this decision. Alderman Companies, Inc. may deduct applicable withholding from the wage portion, but not the penalty portion.

DATED this 20th day of October, 2016.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DEBRA L. WISE  
DEBRA L. WISE  
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702.

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.