

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM)	Case No. 747-2014
OF MARGARET A. YARRISH,)	
)	
Claimant,)	
)	FINAL AGENCY DECISION
vs.)	
)	
WOLF'S WHITEHALL FORD LLC,)	
a Montana limited liability company,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Wolf's Whitehall Ford, LLC (appellant) appealed a Wage and Hour Unit determination that found it owed Margaret A. Yarrish additional wages and penalty.

The hearing in this matter was set for June 4, 2014 at 9:00 a.m. Both parties were properly notified of the time and date of the hearing by a scheduling order issued on February 13, 2014. The scheduling order also specifically apprised the parties that the appellant's failure to appear at the hearing would result in the hearing officer affirming the determination of the Wage and Hour Unit.

At the time and date set for the hearing, the claimant appeared in person, but the appellant did not. The appellant had indicated in several communications with the OAH that it would not be obtaining legal counsel and indicated that it would not appear at the hearing. The hearing officer opened the record to indicate that the appellant had not appeared, that the hearing officer waited five minutes to see if the appellant would appear and then closed the record in this matter and entered the appellant's default.

II. FINDINGS OF FACT

1. The appellant was properly notified of the time and date of the hearing in this matter.

2. Without good cause, the appellant failed to appear at the hearing in this matter.

3. Because the appellant did not appear, it failed to present a prima facie case showing that it was entitled to any relief. Moreover, there is nothing in the record or the Wage and Hour Determination that shows any error of fact or law that would call into question the propriety of the determination of the Wage and Hour Unit.

4. In conformity with the determination of the Wage and Hour Unit, Yarrish is found to be due \$15,397.43, representing \$2,420.40 in unpaid regular wages; \$2,092.44 in overtime wages; \$4,813.50 in unpaid bonus; \$3,978.65 in penalties on the unpaid regular wages and bonus; and \$2,092.44 in liquidated damages on the overtime wages.

III. CONCLUSIONS OF LAW

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

2. A review of the Wage and Hour Unit's determination shows no legal cause why the determination should not be affirmed.

3. By failing to appear at the hearing, the appellant has shown no basis for setting aside the determination of the Wage and Hour Unit. Yarrish is due \$15,397.43 in unpaid wages, penalty and damages as described in Finding of Fact No. 4.

IV. ORDER

Based upon the foregoing, the determination of the Wage and Hour Unit is affirmed. Wolf's Whitehall Ford, LLC is hereby ORDERED to tender a cashier's check or money order in the amount of \$15,397.43 made payable to Margaret A. Yarrish and mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59624-6518, no later than 30 days after service of this decision. Wolf's Whitehall Ford, LLC may deduct applicable withholding from the wage portion but not the penalty portion.

DATED this 5th day of June, 2014.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM
DAVID A. SCRIMM
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 service of the 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.