

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 104-2006
OF JACOB ROBERTS,)	
Claimant,)	
)	
vs.)	
GREG REMARK, d/b/a PRO AUDIO,)	AGENCY FINAL DECISION
)	
Respondent.)	
)	

* * * * *

I. INTRODUCTION

Jacob Roberts (Roberts) filed a wage and hour claim on July 6, 2005, alleging that Greg Remark, d/b/a Pro Audio (Remark) owed him \$13,500.00 in unpaid wages for work performed during his employment.

On August 8, 2005, the Wage and Hour Unit issued a determination that Remark owed Roberts \$13,500.00 in unpaid wages and \$14,850.00 in penalty.

On August 25, 2005, Remark responded, maintaining that Roberts was employed until his discharge on December 27, 2004 and that he had not filed a timely claim within 180 days of default or delay in payment.

On September 27, 2005, the Wage and Hour Unit dismissed Roberts' claim on the basis that he had not filed a timely claim.

On December 13, 2005, the Hearing Officer held a pre-hearing scheduling conference in this matter. Rhett Nemelka, Attorney at Law, represented Roberts. Remark was not available at the telephone number he provided. Exhibits 1 through 61, from the file of the Wage and Hour Unit, were admitted into the record without objection.

On January 20, 2006, the Hearing Officer conducted a hearing in this matter. The claimant was present. Rhett Nemelka, Attorney at Law, represented him. Remark was not available at the telephone number he provided. Nemelka made a motion for summary judgement on the issue of the timeliness of Roberts' claim, referring to his brief of October 13, 2005. Since the evidence before the Hearing Officer at this time reveals that Roberts has filed a timely claim, and because Remark has not appeared to show that Roberts has not filed a timely claim, Nemelka made a motion to dismiss Remark's appeal of the initial determination and asked the

Hearing officer to issue a default order in Roberts' favor. He also asked that he be awarded attorney fees.

II. SUMMARY JUDGEMENT

Roberts, under oath, testified that he was employed by Remark through January 21, 2005, and that wages owed at that time have not been paid. 180 days from that date is July 20, 2005. Roberts filed his Wage and Hour claim on July 6, 2005, within 180 days of default or delay in the payment of wages which were due upon Robert's termination of employment. Therefore, Roberts filed a timely claim.

III. DECISION AND AWARD

Roberts filed a timely claim, and testified to the wages he earned and has not been paid. Remark has not appeared to defend against Roberts' claim at hearing. Therefore, the Wage and Hour Unit's dismissal order dated September 27, 2005, is set aside. The initial determination dated August 8, 2005, which awarded Roberts \$13,500.00 in unpaid wages and \$14,850.00 in penalty, supported by the substantial evidence of record, is reinstated.

IV. ATTORNEY FEES:

Roberts seeks attorney's fees and costs of pursuing this wage claim. Roberts is the prevailing party, however, attorney's fees and costs are not recoverable in this proceeding. Mont. Code Ann. § 39-3-214; *Chagnon v. Hardy Construction Co.* (1984), 208 Mont. 420, 680 P.2d 932 *and* *Thornton v. Commissioner* (1980), 190 Mont. 442, 621 P.2d 1062 (attorney's fees are not recoverable at the administrative stage of a wage and hour claim, only at the district court stage).

V. ORDER:

1. Roberts filed a timely claim for wages earned and due and supported the claim with sworn testimony.
2. Remark did not appear and contravene the evidence presented by Roberts, and therefore the initial determination made by the Wage and Hour Unit is supported by the credible evidence of record.
3. Roberts's counsel is not entitled to attorney fees or costs.
4. Greg Remark, d/b/a Pro Audio, IS HEREBY ORDERED to tender a cashier's check or money order in the amount of \$28,350.00, representing \$13,500.00 in unpaid wages and \$14,850.00 in statutory penalty, payable to the claimant, Jacob Roberts, and delivered to the Wage and Hour Unit, Employment Relations Division, P.O. Box 6518, Helena, Montana 59604-6518 no later than 30 days after service of this decision. Remark, d/b/a Pro Audio may deduct applicable withholding from the wage portion but not from the penalty portion of the award.

DATED this 17th day of February, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ DAVID H. FRAZIER
David H. Frazier
Hearing Officer

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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.

Roberts FAD dfp