

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

IN THE MATTER OF THE WAGE CLAIM) Case No. 186-2016
OF SCOTT A. MUNRO,)
)
) Claimant,)
)
) vs.)
)
) **FINAL AGENCY DECISION**
UTAH TRANSPORTATION GROUP, L.C.,)
a Utah limited liability company not)
registered with the Montana Secretary of State,)
d/b/a WEST YELLOWSTONE SELF)
CATERING LODGING,)
)
) Respondent.)

* * * * *

I. INTRODUCTION

1. On July 29, 2015, Scott Munro filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging the respondent, Utah Transportation Group, L.C., a Utah limited liability company not registered with the Montana Secretary of State, d/b/a West Yellowstone Self Catering Lodging (Utah Transportation Group, L.C.), owed him a total of \$1,251.25 in unpaid wages for work performed from May 29 through June 5, 2015 (Documents 61 - 65). On August 24, 2015, Sessel Sagorin, a managing member, submitted a response to Munro’s claim.

2. On January 12, 2016, the Montana Department of Labor and Industry’s Employment Relations Division, Independent Contractor Central Unit issued a decision that Munro was an employee of Utah Transportation Group, L.C. (Documents 14 - 22).

3. On January 21, 2016, the Wage and Hour Unit issued a determination that Utah Transportation Group, L.C. owed Munro \$1,496.50 in unpaid overtime wages. The determination also imposed a 55% penalty for the unpaid overtime wages pursuant to Mont. Code Ann. § 39-3-206 which amounted to \$823.08, and a 110%

penalty if the unpaid overtime wages were not paid by February 5, 2016, which amounted to \$1,646.15 (Documents 7 - 12).

4. On February 3, 2016, Utah Transportation Group, L.C. timely filed a Notice of Appeal and Request for Contested Hearing (Document 6). There is no evidence Utah Transportation Group, L.C. paid the amount owed to Munro by February 5, 2016.

5. Following unsuccessful mediation efforts, on March 24, 2016, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH).

6. On March 29, 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 April 8, 2016.

7. On April 8, 2016, Munro did not participate in the pre-hearing scheduling conference. Sessel Sagorin participated at the scheduling conference on behalf of Utah Transportation Group, L.C., and requested an in-person hearing. During the conference, the Hearing Officer advised Sessel Sagorin that Utah Transportation Group, L.C. was required to have legal counsel represent the limited liability company in these legal proceedings as stated in the March 29, 2016 Notice of Hearing and Telephone Conference. An April 11, 2016 Scheduling Order listed dates for discovery purposes and notified the parties an in-person hearing in Helena, Montana, would be held on July 13, 2016.

8. On April 25, 2016, Utah Transportation Group, L.C. appealed the January 12, 2016 determination that Munro was an employee.

9. On May 2, 2016, the Hearing Officer received notice that Utah Transportation Group, L.C. had appealed the January 12, 2016 determination. On May 11, 2016, the Hearing Officer issued a Notice of Intent to Stay Proceedings and gave the parties until May 23, 2016 to submit written objections to staying the proceedings. Neither party submitted any objections. On May 24, 2016, an Order to Stay the wage and hour proceedings until the Workers' Compensation Court decided if Munro was an independent contractor or an employee was issued.

10. On July 25, 2016, the Workers' Compensation Court dismissed with prejudice Utah Transportation Group, L.C.'s petition and affirmed the January 12, 2016 determination that Munro was an employee.

11. On July 27, 2016, an Order was sent to the parties informing them a scheduling conference would be held on August 15, 2016, at 9:00 a.m., MDT.

12. The Hearing Office contacted both Munro and Sessel Sagorin for the August 15 scheduling conference. While both Munro and Sessel Sagorin answered their phones, neither party was available and did not participate in the scheduling conference. An August 16, 2016 Scheduling Order informed the parties about various deadlines, which included a November 7, 2016 final pre-hearing conference and that a telephone hearing would be conducted on November 15, 2016, at 9:00 a.m. The Scheduling Order also informed Utah Transportation Group, L.C. that as a limited liability corporation it must be represented by a licensed Montana attorney. Neither party raised any objections to the August 16, 2016 Scheduling Order.

13. OAH sent the parties Documents 1 through 65 from the administrative record. Neither party provided any additional documents.

14. On November 7, 2016, the Hearing Officer contacted both Munro and Sessel Sagorin for the final pre-hearing conference. The Hearing Officer called Munro twice and left him messages reminding him the Wage and Hour hearing was scheduled on November 15, 2016, at 9:00 a.m., MST. The only contact listed for Utah Transportation Group, L.C. was Sessel Sagorin and he was contacted. After the Hearing Officer asked Sessel Sagorin if Utah Transportation Group, L.C. had an attorney and reminded him that a hearing was scheduled on November 15, he informed the Hearing Officer he was unable to participate on November 7 because he was leaving for China. Neither party requested a postponement of the November 15 scheduled hearing.

15. On November 15, 2016, both parties were called for the hearing. Sessel Sagorin's phone number was called because he was the only contact listed for Utah Transportation Group, L.C. On November 15, 2016, neither party answered their phones. The Hearing Officer could only leave voice mail messages for both Munro and Sessel Sagorin. The Hearing Officer's message to both parties informed them they were being called for the scheduled hearing and they were asked to call the OAH number immediately if they wanted to participate. As of the date of this decision, neither party has called OAH.

II. ISSUE

Whether Utah Transportation Group, L.C., a Utah limited liability company not registered with the Montana Secretary of State, d/b/a West Yellowstone Self Catering Lodging, the appellant, owes wages for work performed, as alleged in Scott Munro's complaint, and owes any penalties.

III. FINDINGS OF FACT

1. On April 11 and July 27, 2016, the Office of Administrative Hearings issued a Notice of Hearing and Scheduling Conference. The notices in part informed the parties that corporations, partnerships, and limited liability companies must be represented by an attorney and a failure to appear at the hearing could result in default.

2. On August 15, 2016, Munro did not participate at a scheduling conference, but Sessel Sagorin participated at the scheduling conference. Since Utah Transportation Group, L.C. did not have an attorney present, the Hearing Officer again advised Sessel Sagorin that Utah Transportation Group, L.C. was required to have legal counsel represent the limited liability company in these legal proceedings.

3. An August 16, 2016 Scheduling Order in part informed the parties this matter was set for a telephone hearing on November 15, 2016, at 9:00 a.m. MST. 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 November 7, 2016, Munro was not present for the final pre-hearing conference, but Sessel Sagorin talked to the Hearing Officer. The Hearing Officer again advised Sessel Sagorin that as a limited liability company, Utah Transportation Group, L.C. was required to have a licensed Montana attorney represent them at the November 15, 2016 scheduled hearing.

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 Utah Transportation Group, L.C.

6. On November 15, 2016, the Hearing Officer attempted to contact both Munro and Utah Transportation Group, L.C. for the telephone hearing by calling the only phone numbers that had been provided to OAH. When neither party answered the phone, the Hearing Officer left a voice message telling them why they were called and asked them to contact the Office of Administrative Hearings. As of 5:00 p.m. on November 15, 2016, neither party had contacted OAH. On November 16, 2016, the Hearing Officer closed the record in this matter.

7. Without good cause, the appellant, Utah Transportation Group, L.C., failed to appear at the scheduled hearing in this matter.

8. Utah Transportation Group, L.C. 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. Utah Transportation Group, L.C. owes Munro a total of \$1,496.50 in unpaid overtime wages.

10. Utah Transportation Group, L.C. is assessed penalties in the total amount of \$1,646.15 (110% penalty for overtime wages). Admin. R. Mont. 24.16.7561(1)(a)(b).

IV. DISCUSSION AND ANALYSIS¹

Utah Transportation Group, L.C., the appellant, 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 limited liability company can only appear in a legal proceeding through a licensed attorney. A limited liability company 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 (1990), and *H&H Development, LLC v. Ramlow*, (2012) MT 51, 364 Mont. 283, 272 P3d 657 (2012).

¹Statements 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.

Since late March 2016, Utah Transportation Group, L.C. has been on notice that an attorney licensed to practice law in Montana must represent Utah Transportation Group, L.C. in this legal proceeding. No attorney contacted the Office of Administrative Hearings to indicate Utah Transportation Group, L.C. was represented by legal counsel. On August 15 and November 7, 2016, Sessel Sagorin was again told that Utah Transportation Group, L.C. must have an attorney in this legal proceeding.

No one on behalf of Utah Transportation Group, L.C., the appellant, appeared at the November 15, 2016 hearing. As of the date of this decision, no one on behalf of Utah Transportation Group, L.C. has contacted the Hearing Officer or OAH about this matter. Utah Transportation Group, L.C. failed to follow the orders issued by the Hearing Officer. Therefore, Utah Transportation Group, L.C., the appellant, 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 limited liability company can only appear in a legal proceeding through a licensed attorney. A limited liability company 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) and *H&H Development, LLC v. Ramlow*, (2012) MT 51, 364 Mont. 283, 272 P3d 657 (2012). 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. Utah Transportation Group, L.C. failed to follow the August 16 Scheduling Order, the Hearing Officer's April 8, August 15, and November 7, 2016 directives to obtain a licensed attorney to represent the limited liability company, and failed to participate at the November 15, 2016 scheduled hearing.

4. By failing to appear at the hearing, the appellant Utah Transportation Group, L.C. has shown no basis to set aside the Wage and Hour Unit's determination. Munro is due a total of \$3,142.65 in unpaid overtime 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. Utah Transportation Group, L.C. owes Scott Munro \$1,496.50 in unpaid overtime wages and a penalty of \$1,646.15. Utah Transportation Group, L.C. is ORDERED to tender a cashier's check or money order in the amount of \$3,142.65 made payable to Scott Munro 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. Utah Transportation Group, L.C. may deduct applicable withholding from the wage portion, but not the penalty portion.

DATED this 18th day of November, 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.