

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

| | |
|-------------------------------------------|------------------------------|
| IN THE MATTER OF THE WAGE CLAIM) | Case No. 1870-2014 |
| OF GERI G. LEWIS,) | |
|) | |
| Claimant,) | |
|) | |
| vs.) | FINAL AGENCY DECISION |
|) | |
| BEARMOUTH, INC., an Oregon) | |
| corporation registered with the Montana) | |
| Secretary of State,) | |
|) | |
| Respondent.) | |

* * * * *

I. INTRODUCTION

In this matter, the purported employer, Bearmouth, Inc. (Bearmouth), appealed a determination by the Wage and Hour Unit finding it owed the claimant, Geri. G. Lewis, additional wages. Hearing Officer David A. Scrimm convened a telephonic contested case hearing in this matter on March 18, 2015. Lewis appeared and represented herself. Philip C. Shadwick, Jr., attorney at law, represented Bearmouth. Documents 1 through 79 and Respondent’s A to I were admitted into evidence. Respondent’s Exhibit K (a document originally submitted as attachment 9 to a November 3, 2014 letter to the Hearing Officer), and Respondent’s Exhibit L (the invoices submitted by Rod Hampton and Geri Lewis to the Department of Natural Resources and Conservation) were also admitted. Exhibit H and J were originally admitted but it was determined that H was a duplicate of Documents 2-4 and that J was a duplicate of Documents 30-39 so they are therefore excluded. Lewis, Jeff St. Clair, co-owner and president, Rod Hampton, co-owner and caretaker, Anada McNeely, former corporate secretary, Paul Alamo, Frank Hinman, Casey Fellows, and Rhea Blankenship testified under oath. Based on the evidence, exhibits, and arguments presented at the hearing, the hearing officer makes the following findings of fact, conclusions of law, and final order.

II. ISSUE

Is Lewis due additional wages as alleged in her complaint?

III. FINDINGS OF FACT

1. On May 13, 2014, the claimant, Geri G. Lewis, filed a claim for wages alleging that Bearmouth, Inc. had failed to pay her \$4,400.00 in unpaid regular and overtime wages.

2. Bearmouth, Inc. (hereinafter “Bearmouth”) is an Oregon corporation registered to do business in Montana. Relevant to this matter, Bearmouth was the owner of Bearmouth Chalet near Drummond, Montana. Bearmouth’s Montana registration became inactive in November of 2014. Jeffrey St. Clair was the sole director and president of Bearmouth and had the sole authority to hire and fire its employees. Docs. 18-24. Rod Hampton was another shareholder of Bearmouth but he had no authority to hire any employees without St. Clair’s approval. Lewis was Hampton’s girlfriend, who came to live with Hampton on or about July 2012.

3. Bearmouth was engaged in the business of providing camping facilities and cabin rentals.

4. Bearmouth consisted of three incorporators: Jeff St. Clair, Rodney Hampton, and Clint Hampton. Docs. 18-24. Jeff St. Clair was named President. Exhibit B. Rodney Hampton was named as Secretary. Id. Clint Hampton was named as Vice President. Id.

5. Ultimately, the business came to be shared between St. Clair and Rodney Hampton as 50/50 owners. Exhibit C.

6. As President, St. Clair was the “principle executive officer.” Exhibit D, Page 9. He was charged with the responsibility of supervising and controlling “all of the business affairs of the corporation.” Id. St. Clair made Bearmouth’s mortgage and insurance payments.

7. As Secretary, Hampton was charged with keeping meeting minutes and providing notices to the members, maintaining a post office box with the states of Oregon and Montana, and maintaining corporate records. Id. at Page 10.

8. Unless authorized by the President or by the board of directors, Hampton had no other responsibilities or authority. Id.

9. Bearmouth’s By-Laws provided that the directors may authorize other officers to enter into contracts. The authority may be general or confined to specific instances. Id. St. Clair never gave Hampton any authority to hire anyone because

the business was not making any money and after May 2013 did not have any workers' compensation insurance.

10. In 2013, the facility was open from May 1st to October 1st. Due to the condition of the lodge, only one cabin and the camping grounds were open. Bearmouth did not rent lodge rooms. The restaurant was closed, as was the bar. Bearmouth did not have a restaurant license or liquor license.

11. Bearmouth did not have any employees. Because Bearmouth did not have any employees and was up for sale, St. Clair dropped Bearmouth's workers' compensation insurance in March 2013, effective May 2013.

12. As a part owner, Hampton resided at the facility and served as a caretaker. Bearmouth allowed some campers to stay at the campgrounds free of charge in return for being "camp hosts" for the season.

13. In July of 2013, Hampton informed St. Clair that he had started a relationship with Lewis and that she was living with him at the lodge. St. Clair expressly informed Mr. Hampton that Lewis was not to become involved in the business.

14. Lewis did not pay rent to Bearmouth for her lodging. Exhibit D.

15. In August of 2013, a forest fire ignited in the area. Mary Blankenship, an employee of the Montana Department of Natural Resources and Conservation (DNRC), contacted Hampton and inquired about housing a fire crew at the facility. Hampton contacted St. Clair to discuss the fire crew staying at Bearmouth. St. Clair agreed that the lodge could be opened to accommodate the fire crew, but expressly instructed Hampton that he was to hire no one in conjunction with the fire crew. He again reminded Hampton that they had little money, no workers' compensation insurance, and that the property was on the market to be sold.

16. Ultimately, DNRC contracted with Rod Hampton and Lewis to house and feed the firefighters. Lewis would also clean the rooms, wash laundry, and prepare and serve breakfast, lunch, and dinner. Hampton and Lewis would also set up a location for meetings with the public and the fire crew. Rod Hampton's Tax ID number was used for the transaction. Lewis testified that she and Rhea Blankenship agreed that Lewis and Hampton would receive \$20.00 per hour to cover the costs of their labor, food, and lodging. This was not accurate. The invoices that Hampton and Lewis sent to Blankenship broke out the costs per room (most at \$40.00 per night) and \$38.00 per day for meals. There were some additional minor costs bringing the total invoice to \$8,360.00 (which is less than the subtotals identified

but no explanation is provided). There was no separate hourly labor cost included in the invoice. Based on the invoice, Lewis could not have earned the \$20.00 per hour she claims as a significant amount of the room would have to include the cost of purchasing the food and maintaining the rooms. Hampton agreed with St. Clair that at least some of the proceeds of the fire crew deal should have gone to Bearmouth despite Lewis claiming all of them in her claim. Rec. 5 at 41:52. Bearmouth paid Hampton \$1,478.00 for food costs incurred during this time.

17. St. Clair agreed to allow Hampton to house the fire crew at Bearmouth. No agreement was made to feed them. St. Clair found out about the agreement Hampton and Lewis made regarding the meals after the fact.

18. DNRC knew that it could not hire Bearmouth because it was not licensed to serve food.

19. The fire crew arrived on August 17, 2013, and its members were assigned rooms. Exhibit E. They largely departed by August 27, 2013.

20. St. Clair found out about the deal to both house and feed the firefighters at Bearmouth and demanded DNRC send the payment to him on behalf of Bearmouth instead of to Rod Hampton. DNRC did so.

21. Hampton demanded that he personally receive \$4,000.00 from the proceeds collected by Bearmouth for accommodating the fire crew. St. Clair informed him that the proceeds from the state were to be used to pay off the business's debts and that as an owner, Hampton would receive his fair distribution of any profits upon the sale of the company. Id.

22. In September and October of 2013, Bearmouth's bookkeeper noticed that \$10,557.12 in cash was missing from the business. Because Hampton was no longer receiving a salary from Bearmouth because the business was not making any money, he began keeping all the cash proceeds from the camping and cabin rentals. Ultimately, Hampton accepted a 1099 in lieu of paying Bearmouth for the missing \$10,557.12. Exhibit F.

23. Bearmouth closed operations in February of 2014 and on March 12, 2014, St. Clair and Hampton sold Bearmouth for \$351,000.00. Exhibit G.

24. Lewis testified that DNRC or "the state" hired her and/or Hampton numerous times. Rec. (3) at 32:52 ("hired me and Rod Hampton"); Rec. (3) at 34:17 ("that was our business, they hired us not Bearmouth"); Rec. (3) at 4:57 ("[Rhea] did not hire Bearmouth Rhea hired her"); Rec. (3) at 15:20 ("State of

Montana hired me and Rod”); (“St.Clair was not involved in the deal with the state at all”); Rec. (3) at 19:25 (“State hired me and Rod”); Rec.(5) at 0:33 (“[I] worked for the state of Montana”); Rec.(5) at 1:20 (“[I] did not work for Bearmouth”); Rec.(5) at 14:02 (Q: “Rhea hired you when?” A: “In August”); Rec (8) at 1:17:14 (“I did not work for Bearmouth”).

25. Lewis’ testimony that she did not work for Bearmouth was supported by Blankenship, Casey Fellows, Frank Hinman, and Hampton who stated the fire crew deal was a contract with the state. Rec. (5) at 46:13. Blankenship had no dealings with St. Clair regarding the fire crew deal. None of the documentary evidence in this case indicates that St. Clair had any role in hiring Lewis.

IV. DISCUSSION¹

Montana law requires that employers pay wages when due, in conformity with the employment agreement. Mont. Code Ann. § 39-3-204. Except to set a minimum wage, the law does not set the amount of wages to be paid. That determination is left to the agreement between the parties. Lewis bears the burden of persuading the trier of fact that she is entitled to the wages she claims she is due. *Berry v. KRTV Communications* (1993), 262 Mont. 415, 426, 865 P.2d 1104, 1112. See also, *Marias Health Care Services v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that lower court properly concluded that the plaintiff’s wage claim failed because the plaintiff failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

As a preliminary matter, St. Clair contended that Lewis was never his employee. Lewis testified multiple times that DNRC was her employer during the time in question. She testified that Blankenship, a DNRC employee, hired her and Rod Hampton. The “State of Montana hired me and Rod.” Doc. 76. Digital Recording 2 at 34:17. Lewis also stated that “St. Clair was not involved in the deal with the State at all.” *Id.* at 34:30.

The evidence fails to demonstrate preponderantly that Lewis was an employee of Bearmouth and that it owed her any wages. What she testified to on multiple occasions was that she and Rod Hampton independently contracted with the State of Montana to house and feed a fire crew in August 2013. It appears that Bearmouth’s facilities and its funds were used to support this contract without the express consent of St. Clair. When St. Clair found out about the operation, he demanded and received the funds associated with the operation because he, as the president of the

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

company, had the exclusive right to provide such services and receive payment for them.

Whether Lewis has any claim against St. Clair for claiming the funds disbursed by the State of Montana is beyond the jurisdiction of this tribunal.

Lewis failed to produce any evidence at hearing to prove that Bearmouth, Inc. owes her any additional wages or even if it did, what that rate of pay should be. She has failed to prove any portion of her wage claim.

V. CONCLUSIONS OF LAW

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

2. Lewis has failed to demonstrate by a preponderance of the evidence that she is due additional wages.

VI. ORDER

As Lewis has failed to demonstrate that she is due additional wages, her claim fails and must be dismissed.

DATED this 20th day of July, 2015.

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 the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702.