

**STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU**

IN THE MATTER OF THE WAGE CLAIM) Case No. 573-2002
OF ROBERT C. SCHRAEGER,)
Claimant,)

vs.) FINDINGS OF FACT;
) CONCLUSIONS OF LAW;
) AND ORDER

TAMARACK PROPERTY MANAGEMENT)
COMPANY, a Montana corporation)
Respondent.)

I. INTRODUCTION

On October 2, 2001, Claimant Robert C. Schraeger filed a wage claim with the Department pursuant to § 39-3-201 et seq., MCA. The Claimant alleged to be owed \$2,175.88 in wages in the form of bonuses for work performed. The Employment Relations Division of the Department investigated the matter and issued its findings and determination of dismissal on November 20, 2001. The Claimant appealed the determination. As a result of the appeal, a hearing was held in this matter on June 19, 2002 by Hearing Officer Michael T. Furlong. The Claimant appeared and testified (pro se). Karen Brooks and Robert Gary Hulsey appeared as Claimant witnesses. The Respondent, Tamarack Property Management Company, was represented by Gregory MacDonald, co-owner, who appeared and testified pro se. Steve Inman appeared as a Respondent witness. The Claimant did not submit or offer exhibits. Respondent's Exhibits A through H were admitted into evidence. File Exhibits 1 through 38 were admitted into evidence.

II. ISSUE

Whether the Claimant is owed wages in the form of bonuses for services he performed.

III. FINDINGS OF FACT

1. Tamarack Property Management Company is a business engaged in management and consulting services to approximately 43 apartment properties throughout a number of western states, including Montana. Tamarack works in close association with the U.S. Department of Housing and Urban Development (HUD) which oversees the statutory and regulatory obligations of operation-related senior apartment complexes. Tamarack is owned by Gregory MacDonald and Dale Fasching with its corporate offices located in Billings, Montana.

2. Schraeger was employed in property management services for 17 years in California until 1997.
3. In October 1997, Schraeger applied for a position opening as vice president and executive property manager with Tamarack. Tamarack offered Schraeger the position on December 1, 1997 under a two year contract effective February 1, 1998 at an annual gross salary of \$70,000.00 (Exhibits 36, 37 and 38). Schraeger accepted the terms and conditions of employment and commenced working on February 1, 1998. Schraeger's duties included, in part, overseeing marketing of the company for new businesses.
4. On October 3, 2001, Tamarack did not renew Schraeger's written contract but he continued as vice president and executive property manager receiving an annual salary of \$70,000.00 under an oral agreement.
5. At the time of hire, Schraeger proposed a management fee for employees responsible for generating leads resulting in new property management accounts (Exhibits 12). Under his prior employment, Schraeger had been involved with a similar employee incentive resulting from the leads incentive.
6. Schraeger was personally responsible for generating a new account for Tamarack shortly after he began his employment in February 1998. He convinced directors of the Briarwood apartment complex located in California, which had previously been managed by his former employer, to transfer the management of the property to Tamarack.
7. The owners of Tamarack continued to discuss with Schraeger the incentive bonus concept. At a company-sponsored seminar, in August 1999, Tamarack announced to employees that the company was in the process of putting together an incentive bonus policy. Under the proposed policy, Tamarack would reward an employee who was responsible for generating a new lead resulting in a new management contract. The owners indicated that when the proposal was formalized, they would notify employees (Exhibit B).
8. Also in August 1999, Tamarack established an oral policy giving employees a one month management fee bonus if they were responsible for generating a new property account.
9. Tamarack paid Schraeger a management fee in the appropriate amount for obtaining the new Briarwood account shortly after he was hired. The owners believed that Schraeger should be paid the bonus for Briarwood in the spirit of the oral policy, even though it occurred before the announcement of the tentative policy in August 1999, because he had been solely responsible for bringing in the account.
10. In the process of setting up the new policy, the owners asked Schraeger to draft a written management fee proposal for employees responsible for establishing new accounts. The owners continued to encourage Schraeger to provide a draft proposal for their review and approval in the fall of 1999.

11. On December 28, 1999, Schraeger sent a memo to the owners with a copy of the draft for the incentive bonus for a new business and Tamarack Property Management employee participation program (Exhibit 30). Schraeger also sent the proposal to the 43 property managers (Exhibit 30). Schraeger's draft stated that Tamarack would offer a bonus to anyone (employee, vendor, friend) who brings in a new account. The bonus would be the first month's management fee.

12. Schraeger told the owners that he did not foresee the bonus incentive policy to go into effect before mid-February while the company was occupied converting to a new computer software system.

13. On January 31, 2000, co-owner Dale Fasching sent a copy of the draft proposal to Schraeger with a handwritten note informing him that they needed to discuss the proposal draft before it could be implemented.

14. On April 21, 2000, Fasching sent another note on a copy of the policy proposal to Schraeger which indicated the draft still had not been finished.

15. In April 2000, Schraeger gave the proposal to his receptionist to forward to the company's 43 individual property managers.

16. Prairie Towers is an apartment retirement complex in Billings managed by Tamarack. On April 14, 2000, Tamarack had a grand opening for a new computer center for two of its management properties, which was to be held at one of the Billings apartment complexes. Schraeger attended the session where he was introduced to an individual who was vice president of the board of directors for Hearthstone Apartments located in Anaconda. He was there with his wife who was involved as a computer program volunteer at the seminar. During the session, Schraeger discussed the possibility of Hearthstone considering a professional management program of its property by Tamarack (Exhibit 7).

17. Schraeger informed the Tamarack owners of his discussion with the Hearthstone board member and the potential management of the facility. Thereafter, Schraeger and the Tamarack owners developed a formal bid to present to Hearthstone. Schraeger met with Hearthstone officials on two occasions (on one occasion with another Tamarack employee) with formal proposals. Hearthstone accepted the final bid, and effective April 1, 2001, Tamarack commenced providing formal management services of Hearthstone Apartments.

18. Prior to Schraeger's contract, Tamarack had begun efforts to provide management consulting services by contacting Hearthstone officials in 1992. HUD had also urged Hearthstone to consider several professional property management companies, including Tamarack, to manage its facility which resulted in additional communication between Tamarack and Hearthstone. In 1995, Tamarack invited Hearthstone officials to attend a property seminar put on by Tamarack in Billings to show what services it provided.

19. In 2000, HUD directed Hearthstone to secure services of a professional management entity. As a result, Hearthstone officials contacted Tamarack and asked if its personnel would again visit the property and make a bid to the Board for their consideration.

20. Because Tamarack personnel had been in communication with Hearthstone to offer the company's property managing services since 1992, the company determined that Schraeger was not solely responsible for establishing a new lead. Therefore, Tamarack did not pay him a bonus for the work he performed on the Hearthstone account.

21. Another manager, Steve Inman, was involved in circumstances similar to the Hearthstone account where he had followed up on a senior apartment complex which had been initially contacted for services by other employees at Tamarack. Therefore, he was not entitled to nor did he receive a management fee for his involvement with the account.

22. Due to the nature of the business, it is not unusual for developing property management contracts to take extended periods of time to complete due to the process of the properties removing existing management.

IV. DISCUSSION/RATIONALE

The claimant in this case is seeking \$2,175.88 in wages in the form of bonuses for work performed while employed by Tamarack Property Management. Therefore, this claim falls under the provisions of the Montana Wage Payment Act. Montana law requires that employers pay wages when due, in accordance with the employment agreement, pursuant to § 39-3-204, MCA. Except to set a minimum wage, the law does not set the amount of wages paid. That determination is left to the agreement between the parties. "Wages" are money due an employee by an employer, including bonuses. § 39-3-201(6), MCA.

Schraeger alleges that Tamarack owes him a bonus in the amount of \$2,175.88, an amount equal to the first month's management fee received from the Hearthstone properties account. He contends that, even though the owners had never formally adopted an incentive bonus policy for new business, the bonus agreement he proposed had in fact been executed. Further, he believes that he would be entitled to the same bonus amount under the oral policy that Tamarack maintains had been in effect at the time Tamarack commenced formal management of the Hearthstone account. Tamarack denies the allegations, instead contending that it owes Schraeger no bonus money because Tamarack had been actively pursuing the Hearthstone to manage its property prior to the time Schraeger had come into contact with the account. Therefore, he was not considered responsible for generating the Hearthstone account by himself in order to qualify for the bonus as required under the company's oral policy. Tamarack also denies that the bonus fee policy proposal Schraeger was working on had ever been approved by the owners or executed during the course of his employment.

Based on the evidence, Schraeger had no contractual right to claim a bonus for his services involved with the Hearthstone Apartment account. Schraeger failed to prove that the 'employee participation program' bonus proposal he drafted, which awarded a bonus to employees who brought in new accounts, was ever authorized or put into practice by the ownership. The record lacks any documentation that a formal policy ever existed. There is no evidence to show that other employees received a management fee as suggested under the guidelines of the proposal Schraeger had drafted.

Tamarack did announce at the company's seminar in August 1999 that an employee who generates a lead resulting in a new management account would receive a management fee. The evidence reveals that the oral policy was in effect at the time the Hearthstone account was acquired. This is supported by the fact that Schraeger's co-worker in Tamarack's corporate office testified he was not entitled to a bonus under the same set of circumstances while he was involved with acquiring a new account because Tamarack had been previously engaged in the solicitation of the account.

Even under the terms of the oral policy, however, Schraeger was not entitled to a bonus for the Hearthstone account. The record shows that prior to the time Schraeger made his initial contact with Hearthstone, Tamarack representatives had been engaged in efforts to solicit and bid the Hearthstone account on a number of occasions beginning in 1992. On one occasion, a Hearthstone official attended a Tamarack property management seminar upon invitation from Tamarack. As a result, Schraeger's effort with Hearthstone was treated as a follow-up contact on the basis that he was not by himself responsible for creating a new lead. This was consistent with the terms and conditions of the oral bonus policy under the employment agreement. In the absence of a different agreement, Schraeger has failed to demonstrate that he is owed a bonus.

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 § 39-3-201 et seq. MCA. State v. Holman Aviation, 176 Mont. 31, 575 P.2d 925 (1978).
2. Robert C. Schraeger is not entitled to wages in the form of bonuses.

VI. ORDER

The claim of Robert C. Schraeger is hereby dismissed.

DATED this 24th day of October, 2002.

DEPARTMENT OF LABOR & INDUSTRY

HEARINGS BUREAU

By: /s/ MICHAEL T. FURLONG

MICHAEL T. FURLONG

Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with § 39-3-216(4), MCA, by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also § 2-4-702, MCA.