

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

<b>IN RE THE WAGE CLAIM</b>	) <b>Case No. 2300-2001</b>
<b>OF DANIEL L. KLEMANN,</b>	)
	)
<b>Claimant,</b>	)
	)
<b>vs.</b>	) <b>FINAL AGENCY DECISION</b>
	) <b>and NOTICE OF APPEAL</b>
	) <b>RIGHTS</b>
<b>MONTANA HOMES OF MISSOULA, INC.,</b>	)
<b>a Montana corporation d/b/a</b>	)
<b>MONTANA HOMES OF BELGRADE,</b>	)
	)
<b>Respondent.</b>	)

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**I. Introduction**

The hearing officer convened an in-person hearing on this wage claim on February 6, 2003, in Bozeman, Montana. The claimant, Daniel L. Klemann, appeared on his own behalf and testified. Respondent appeared through counsel, Alice J. Hinshaw, and called Steven Crofts, designated representative for the respondent, who testified. The hearing officer admitted into evidence exhibit numbers 30-33, 39-45, 370-373 (referring to the Bates stamp numbers as exhibit numbers), A, A-1, B, C (last page only) and F. At the close of the evidentiary presentations, the claimant elected not to give a closing statement and the respondent concurred. The hearing officer deemed the case submitted for decision.

**II. Issue**

The issue in this case is whether Montana Homes of Missoula, Inc., a Montana corporation doing business as Montana Homes of Belgrade, owes wages for work performed, commissions, bonuses and vacation pay as alleged in the complaint filed by Daniel L. Klemann, in accord with the evidence adduced at hearing.

**III. Findings of Fact**

1. Effective February 5, 2001, Montana Homes of Missoula, Inc., a Montana corporation doing business as Montana Homes of Belgrade ("MHB") terminated the employment of Daniel L. Klemann, a sales manager in its Belgrade, Montana, enterprise of selling manufactured homes.

2. At the time of the discharge of Klemann, MHB had an existing policy that it had published to its employees, that commissions on sales of manufactured homes were not earned and due until the home sale "closed" and MHB received the final payment. Klemann knew or reasonably should have known of this policy. Although MHB sometimes advanced money (on request) to its sales personnel based upon anticipated commissions, no employee had a vested entitlement to a commission unless that person was still an employee of MHB on the day MHB received final payment for the home.

3. The sale of a manufactured home involved continued work after the customer signed an order and MHB ordered the home from the manufacturer. Assistance and input from the sales person involved in a sale routinely addressed financing, installation and set-up and any customer complaints about the product when it was delivered and installed. If a sales person left employ while a sale was in process, his replacement or other sales staff would assume these duties, and receive the commission when MHB received final payment.

4. As of February 5, 2002, MHB had paid Klemann all commissions he had earned for completed sales and Klemann had no outstanding advances for anticipated commissions not yet due to him.

5. The policy regarding commissions applied also to bonuses paid to Klemann as sales manager for home sales. MHB paid this bonus quarterly. At the time of his discharge, Klemann was entitled to one \$250.00 bonus. Because of his discharge, he had no further entitlement for bonuses on sales closed after his discharge.

6. Klemann had purchased a manufactured home from MHB during his employ. He had represented to MHB that he would "refinance" the home after he took delivery of it. Relying both upon that representation and upon Klemann's employment with MHB, his employer paid the manufacturer for production of the home and delivered it to Klemann. He did not obtain financing. MHB proposed, and Klemann accepted, an arrangement under which MHB applied his quarterly bonus on houses sold against his debt. MHB applied the \$250.00 bonus, to which Klemann had a vested entitlement when he was discharged, against his debt for the balance due on the manufactured home.

7. Before his discharge, MHB paid Klemann the wages due for his work at all times prior to February 1, 2002. For his work from February 1 to his discharge, MHB owed Klemann \$346.15. It applied that amount against his debt for the balance due on the manufactured home.

8. Klemann, when MHB discharged him, had a vested entitlement to one week of paid vacation (\$562.50 of wages). MHB applied that amount against his debt for the balance due on the manufactured home.

9. Because it applied everything it owed Klemann to his debt for the balance of the manufactured home, MHB did not pay Klemann a final check when it discharged him.

10. Klemann did not agree, in writing or otherwise, to any withholding of wages or vacation pay from his final check, to apply to his debt for the balance due on the manufactured home. He

had not agreed in any way to withholding of any entitlement other than his bonus entitlement from his final check. At hearing, Klemann admitted that he and MHB had agreed to the application of his bonus payments to his debt for the balance due on the manufactured home, and that the agreement applied to his final check. He did not seek recovery of the bonus offset.

#### **IV. Opinion**

Montana law requires that employers pay employee wages when due in accordance with the employment agreement. Mont. Code Ann. § 39-3-204. Employers must pay their employees the wages they have earned, which is the money due to employees, whether paid by the hour, day, week, month, year or part thereof, including bonuses and piecework, Mont. Code Ann. § 39-3-201(6)(a). Discharged employees are entitled to immediate payment of all amounts due for wages, unless the employer has a written personnel policy extending the time of final payment to the employee's next regular pay period or 15 days from separation, whichever comes first. Mont. Code Ann. § 39-3-205(3).

MHB had an agreement with Klemann that permitted it to apply bonuses to the balance due on the manufactured house. There was no such agreement with regard to the wages and vacation pay offsets against the debt. MHB failed to prove that Klemann had actually or even impliedly agreed to the offsets. There was no contract for such offsets.

MHB also failed to demonstrate a basis in law for the offsets it took for wages due and vacation pay due. MHB's offsets of wages and vacation pay were not reasonable deductions for board, room and other incidentals supplied by the employer, with the deductions being part of the conditions of employment. Cf. Mont. Code Ann. § 39-3-204(1). MHB's offsets of wages and vacation pay were not done in accord with the provision allowing such an offset in cases of alleged theft, since Klemann must still have agreed to MHB holding unpaid wages in an amount sufficient to cover the value of the theft. Mont. Code Ann. § 39-2-205(3)(a). With no agreement, and no legal basis for offsets without an agreement, MHB failed to justify the wages and vacation pay offsets it took instead of issuing Klemann a final check.

Klemann failed to prove that additional commissions were due to him. His evidence of payment of commissions to other sales people before the sales concluded was satisfactorily explained by MHB. Thus, the wages and vacation pay to which he was entitled constituted the only amount due from MHB.

Mont. Code Ann. § 39-3-206(1) provides that, "A penalty must also be assessed against [an employer who fails to pay an employee as provided for in this part] and paid by the employer to the employee in an amount not to exceed 110% of the wages due and unpaid." Admin. R. Mont. 24.16.7566 provides that a maximum penalty equal to 55% of the wages determined to be due will be imposed unless any of the special circumstances of Admin. R. Mont. 24.16.7556 apply. In this matter, none of the special circumstances apply and a 55% penalty is proper.

#### **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. Montana Homes of Missoula, Inc., a Montana corporation doing business as Montana Homes of Belgrade, violated Mont. Code Ann. §§39-3-204 and 39-3-205, by failing to pay Daniel L. Klemann wages when due for days worked and accrued vacation pay. Montana Homes owes Klemann \$908.62 in wages.

3. Montana Homes is liable for a 55% penalty for failure to pay wages when due. Montana Homes owes Klemann a penalty of \$499.74.

## **VI. Order**

Montana Homes of Missoula, Inc., a Montana corporation doing business as Montana Homes of Belgrade, is hereby ORDERED to tender a cashier's check or money order in the amount of \$1,408.36, representing \$908.62 in wages and \$499.74 in penalty, made payable to, 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.

DATED this 18th day of February, 2003.  
DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU  
By: /s/ TERRY SPEAR  
Terry Spear  
Hearing Officer

NOTICE OF APPEAL RIGHTS: This order is the final decision of the department regarding the wage claims of Daniel L. Klemann. The parties are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 18-2-407(2), 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