

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 383-2008
OF PAMELA C. AMOS,	)	
	)	
Claimant,	)	<b>FINDINGS OF FACT;</b>
	)	<b>CONCLUSIONS OF LAW;</b>
vs.	)	<b>AND ORDER</b>
	)	
JEFF LARNERD AND BONNIE LARNERD,	)	
d/b/a MONTANA INN,	)	
	)	
Respondents. )	)	

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**I. INTRODUCTION**

In this matter, Claimant Pamela Amos appeals from a determination of the Wage and Hour Unit of the Department of Labor and Industry which found that Respondents Jeff and Bonnie Larnerd owed her less additional wages than Amos claimed to be owed in her complaint.

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on May 27, 2008. Amos appeared and represented herself. Jeff Larnerd appeared on behalf of the respondents. Both Amos and Larnerd testified under oath. The parties stipulated to the admission of Claimant's exhibits 60 and Respondents' exhibits 1-29. In addition, the parties stipulated to the admission of ERD exhibits 1 through 235. Based on the testimony, exhibits and arguments offered at hearing, the following findings of fact, conclusions of law and order are made.

**II. ISSUES**

Is Amos owed wages and penalty over and above that found to be due in the Wage and Hour determination?

### III. FINDINGS OF FACT

1. At all times pertinent to this case, Jeff and Bonnie Larnerd owned the Montana Inn and the Royal Oaks Inn in Colstrip, Montana.

2. The Larnerds hired Amos to work at the Royal Oaks Inn. Amos was scheduled to work from 3:30 a.m. or 4:00 a.m. until 7:00 a.m. or 7:30 a.m.

3. While Amos was working at the Royal Oaks, the Larnerds, being familiar with Amos' work and knowing her, approached Amos about the possibility of the Larnerds buying the Montana Inn, having Amos run the Inn, and then having Amos buy the Inn from the Larnerds. Amos was very excited about the prospect since it would give her the opportunity eventually to own her own business.

4. The Larnerds and Amos agreed to proceed with their venture. The Larnerds bought the Montana Inn. Immediately after the purchase, Amos began running the Inn as the parties had agreed. Amos also retained her job at the at the Royal Oaks.

5. The Amos and Larnerds recognized that the bank would not loan Amos the money needed to buy the Inn because of the run down condition of the Inn as well as Amos' financial circumstances. To overcome this problem, Amos and the Larnerds developed a plan whereby Amos would manage the Inn and be paid \$500.00 per week. In the meantime, Larnerd would complete repairs to the Inn to get it into adequate shape. After such time as the Inn was in shape and Amos had the financial wherewithal to obtain a loan, Amos would then purchase the Inn from the Larnerds.

6. Immediately prior to Amos coming on board to manage the Montana Inn, Colleen Hill performed Amos' tasks acting as the manager of the Montana Inn. Hill managed the office and did all of the laundry. Respondents' Exhibit 1. According to Hill, as a rule, she never worked more than 35 to 40 hours per week. She had an assistant (Modesta Martinez) who worked from 8:00 a.m. until 11:15 a.m. between the months of April and November. This assistant made beds and assisted in spring cleaning. She would be laid off between November 30<sup>th</sup> and April 1 of each year. During those winter hours, when Hill performed all functions at the Montana Inn on her own, in addition to her management duties, she "did all of the bed making and cleaning which was not that much during the winter hours." Respondents' Exhibit 1.

7. Hill and Martinez worked approximately 62 hours per week between the two of them. The work load did not change from the time that Hill managed the Inn to and through the time that Amos managed the Inn.

8. As Amos began managing the Inn, Jeff Larnerd began the remodeling process of the Inn in order to renovate it to the point that Amos could obtain a loan against the property. Amos claimed to have spent many hours working, for example, on the rebuilding of the leaky

roof. In fact, she spent no more than 10 hours doing such work. Larnerd himself completed almost all of the work on the roof.

9. Amos also claimed to have spent hundreds of hours working on the interior renovation of the Inn. However, she spent very little time doing so. The painting and sheet rocking completed on the interior were done by the two persons Larnerd hired to do the work, Dick Bell and Tom Neilson. Each of these gentlemen indicated that Amos did not do any of the renovations work she claimed to have done.

10. Amos spent no more than 63 hours per week completing her work around the Inn.

11. Amos brought a wage claim against the Larnerds alleging that she was owed additional wages. The Wage and Hour Unit determined that Amos in fact worked 63 hours per week. Based upon this finding, the Wage and Hour Unit found that Amos was due additional wages. The Larnerds paid the additional wages found to be due.

12. Amos disagreed with the finding that she worked 63 hours per week and asserted that she must have worked more hours than that. She then appealed the Wage and Hour determination to this tribunal.

#### IV. DISCUSSION<sup>1</sup>

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. “Wages” are money the employer owes an employee, including commissions. Mont. Code Ann. § 39-3-201(6); *Delaware v. K-Decorators, Inc.*, 1999 MT 13, 293 Mont. 97, 104-105, 973 P.2d 818.

Amos bears the burden of proof in this matter to show by a preponderance of the evidence that she is entitled to the additional wages she claims to be 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).

Amos contends that the Wage and Hour Unit’s determination shorts her on hundreds of hours of work she did in managing the Inn and in working on renovations. She has failed to meet her burden of persuasion in this case. Larnerd’s testimony demonstrates credibly and

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

persuasively that Amos did very little if any of the renovations that she claims to have done. Amos' argument that she spent substantial additional hours in completing her managing duties is significantly undercut by Larnerd's testimony and the statement of Colleen Hill. While there was some increase in the Inn's revenue during the summer months, that does not in this case prove that this increased revenue necessarily correlated to increased duties. Rather, at most it only shows that the Inn's revenues, both during the time that Hill worked as manager as well as during the time that Amos worked as manager, went up in the summer and went down in the winter. There is nothing to suggest that the increased revenues during Amos' tenure as manager were so much greater that the increased revenues show that more work was done during Amos' tenure as manager than during Hill's tenure as manager.

The substantial evidence in this matter shows that Amos worked no more than 63 hours per week. She was compensated for those hours that she worked in the finding of Wage and Hour determination which the Larnerds have paid. Because she has failed to carry her burden of proof, the hearing officer cannot find that she is owed any wages over and above what she was awarded and already paid as a result of the Wage and Hour Unit's determination.

## 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. Amos has failed to prove by a preponderance of the evidence that she is due additional hourly wages over and above what the Wage and Hour Unit found to be due to her.

## VI. ORDER

Based on the foregoing, Amos' contention that she is due additional wages over what the Wage and Hour Unit found to be due to her is dismissed.

DATED this 25th day of June, 2008.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT  
GREGORY L. HANCHETT  
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 service of the decision. See also Mont. Code Ann. § 2-4-702.

Amos FOF ghp