

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1341-2020
OF LUIS NAVARRO,)	
)	
Claimant,)	
)	FINAL AGENCY DECISION
vs.)	DISMISSING APPEAL
)	
COLLIN LARDY CONSTRUCTION, INC.,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On June 27, 2019, Luis Navarro filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging the respondent, Collin Lardy Construction, Inc., a Montana corporation (Lardy), owed him a total of \$1,122.00 for unpaid wages for work performed during the period of May 2, 2019 through May 6, 2019.

On January 2, 2020, the Wage and Hour Unit issued a determination finding Lardy owed Navarro \$1,122.00 in unpaid wages. The determination also imposed a 15% penalty on the unpaid amount pursuant to Mont. Code Ann. § 39-3-206, which amounted to \$168.30, for a total of \$1,290.30 (\$1,122.00 + 168.30). The determination also informed Lardy that if they did not pay the amount owed within 30 days, the penalty would increase to 55% or \$617.10 making the total due under those circumstances to be \$1,739.10. On January 15, 2020, Jeannie Schweigert, Lardy’s office manager, filed an appeal of the determination.

There is no evidence showing Lardy paid the wages and penalty due to Navarro.

Following mediation efforts, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH) on May 29, 2020.¹ On June 8, 2020, OAH issued a Notice of Hearing and Telephone Conference that stated:

¹ The date on the Transfer Document is erroneously shown as May 29, 2019.

Each party has the right to be represented by an attorney. Individuals are not required to be represented by an attorney. Corporations, partnerships, limited liability companies (LLCs), and similar entities are required to be represented by an attorney. Any party that is represented by an attorney must hire and pay for that counsel.

On June 17, 2020, the Hearing Officer held a scheduling conference at which neither party appeared. On June 18, 2020, the Hearing Officer issued a Scheduling Order setting a final pre-hearing conference for September 8, 2020. The Scheduling Order also included the following language in the first paragraph:

The respondent is advised that as a corporation it must be represented by an attorney licensed in the State of Montana.

Only Navarro was available for the final pre-hearing conference. Neither party had submitted their list of witnesses and exhibits prior to the conference.

On September 15, 2020, the Hearing Officer convened a hearing in this matter. Neither Navarro or Lardy appeared for the hearing although they were both called twice. No attorney had filed a notice of appearance on behalf of Lardy.

The Hearing Officer hereby dismisses the respondent's appeal on the basis of Lardy's failure to participate in these proceedings.

II. 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. A corporation can only appear in a legal proceeding through a licensed attorney. *Audit Services, Inc. v. Frontier West, Inc.*, (1992), 252 Mont. 142, 148, 827 P.2d 1241, 1246. A 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). 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. Collin Lardy Construction, Inc. failed to pay the amount found to be owed to Navarro. Therefore, a 55% penalty in the amount of \$617.10 is imposed and the total amount owed is \$1,739.10 (1,122.00 + 617.10).

III. ORDER

Based on the foregoing, the respondent's appeal is DISMISSED. The department's redetermination is final. The redetermination of the Wage and Hour Unit finding Collin Lardy Construction, Inc. owed Luis Navarro \$1,122.00 in unpaid wages and imposing a penalty of \$617.10 is affirmed. Collin Lardy Construction, Inc. is hereby ORDERED to tender a cashier's check or money order made payable to Luis Navarro in the amount of \$1,739.10. Lardy may deduct taxes and other required deductions from the unpaid wages, but not from the penalty.

All payments required above shall be mailed to the Employment Relations Division, P.O. Box 201503, Helena, MT 59620-1503, no later than 30 days after service of this decision. This dismissal is a final agency decision.

DATED this 22nd day of September, 2020.

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. Please send a copy of your filing with the district court to:

Department of Labor & Industry
Wage & Hour Unit
P.O. Box 201503
Helena, MT 59620-1503

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.