

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

LINDA KIDD

CLAIMANT

vs.

CASE NO. 2011-0013

**AL KHAN, personally and individually,
AND CANDLEWOOD SUITES**

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Tuesday, January 10, 2012. Mr. Al Khan has appealed an agency finding of unpaid wages due to Ms. Linda Kidd. Ms. Kidd appeared in person on her own behalf, along with her fiancé and witness, Mr. Jeff Gruber. Mr. Al Khan, owner of the Candlewood Suites franchise in Hot Springs, Arkansas, appeared and was represented by his attorney, G. Ben Bancroft.

FINDINGS OF FACT

Linda Kidd, employee, filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on July 29, 2011. She claimed six days and two hours of unpaid wages during her employment with Candlewood Suites from February 4, 2011 through July 7, 2011. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on September 22, 2011 finding that Kidd was owed \$1,699.94. Khan filed an appeal of this finding on October 11, 2011.

Ms. Kidd testified she began her employment with Candlewood Suites on or about February 4, 2011. She worked one day (eight hours) before having to take an absence due to the death of her father. She returned to her employment on or about February 14, 2011. She worked in the position of Director of Sales for the hotel until her resignation on or about July 7, 2011. Ms. Kidd testified that she was occasionally absent due to personal health problems, but stated she never consulted a physician. Her testimony indicated that her work sometimes

included after-hours engagements including city council meetings or other community networking functions and that she also was required to handle business after-hours in cases of emergencies. Ms. Kidd did not provide any records of her days worked or the amount of hours that she worked outside of her normal schedule of Monday through Friday, 8:00 a.m. until 5:00 p.m.

Mr. Bancroft, attorney for Mr. Khan and Candlewood Suites, presented two exhibits that were accepted into the record. Respondent Exhibit One is a summary of payments made to Ms. Kidd that showed deductions that were made for the weeks in which she did not work her fully scheduled week. The summary includes only the number of days and the amount of the payment made to Ms. Kidd. It did not include a record of specific dates or hours that were worked by the Claimant. Respondent Exhibit Two is a copy of the payroll drafts that were made payable to Ms. Kidd.

Mr. Khan testified that Ms. Kidd was offered a position with a salary of \$34,000 per year and that her wages were paid biweekly. He stated that she frequently missed work for illness and indicated that her days missed usually fell on Mondays or Tuesdays. However, no records were provided to show what days or times were worked or were not worked by the claimant. Mr. Khan stated that the policy regarding sick leave is that he requires employees to submit a doctor's note for absences on the next day they are at work and failure to do so results in termination. Mr. Khan stated that Ms. Kidd did not submit any doctor's notes for her absences. There was no testimony to indicate that she had ever been disciplined or dismissed for her failure to do so. Mr. Khan was unable to produce a copy of this policy or indicate that this applicability of this policy had been conveyed to Ms. Kidd at any point during her employment.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. 11-4-303(a).

2. After final hearing by the director or person appointed by him, a copy of findings and facts and any award shall be filed in the office of the Department of Labor. Ark. Code Ann. 11-4-303(b).

3. The amount of the award of the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee. Ark. Code Ann. 1-4-303(c).

4. The wage claimant carries the burden of proof for any claim of unpaid wages.

5. The employer carries the burden of proof for any set-off or affirmative defense.

6. In the present case, the documents in the record indicate Ms. Kidd was a salaried employee who was to be paid a bi-weekly salary.

7. ADL Labor Standards Regulation 010.14-112 provides “The department may rely on the interpretations of the U. S. Department of Labor and federal precedent established under the Fair Labor Standards Act in interpreting and applying the provisions of the [state] Act.” There is no contract or employer policy in the present case defining “salaried” or outlining when deductions from a salary may be made. In construing the federal Fair Labor Standards Act, the U. S. Department has examined what it means to be paid on a salary basis. 29 C.F. R. § 541.602 (2) states “Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability.”

However, as no formal written of such policy was presented, the hearing officer is unable to determine that such a plan exists. Certainly, if this were an overtime case under the FLSA or the Arkansas Minimum Wage Act, such deductions as made in this case would not qualify as being employed on a “salary basis.” In interpreting the terms of the present contract, this accepted meaning of the term “salary” is persuasive.

THEREFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the claimant for full salary from February 14, 2011 through July 7, 2011. The beginning week (February 14-17) indicates a partial pay period (four days) at a pro-rata rate of \$130.77 per day, or \$523.08. Salary for remaining biweekly pay periods are determined to be \$1,307.69 each for a total salary due of \$12,292.29. Mr. Khan is given credit for salary paid in the amount of \$11,376.99, leaving a difference of \$915.30 due to the claimant. The Respondent is directed to issue a check payable to Ms. Kid in the amount of \$915.30 within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

James L. Salkeld
Director of Labor

BY: _____
Barry Strange
Labor Mediator
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: _____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

NICOLETTE HUMPHREY

CLAIMANT

vs.

CASE NO. 2011-0012

ELITE OF BENTONVILLE, INC.

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Tuesday, January 10, 2012. Elite of Bentonville has appealed any agency order that unpaid wages are owed to Nicolette Humphrey. Humphrey appeared on her own behalf. Elite of Bentonville did not appear.

FINDINGS OF FACT

Humphrey filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on August 18, 2011. She claimed two hundred dollars (\$200.00) in unpaid wages earned between May 26, 201 and July 22, 2011. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on September 22, 2011, finding that Humphrey is owed two hundred ninety four dollars (\$294.00). Elite of Bentonville filed an appeal of this finding on September 26, 2011.

The hearing was set for 1:00 p.m. The hearing convened at approximately 1:10 p.m. The Claimant appeared, and the Respondent, appeared not. Therefore, judgment is entered for the Claimant in the amount of owed two hundred ninety four dollars (\$294.00). The Respondent is directed to issue a check payable to Ms. Humphrey in the amount of owed two hundred ninety four dollars (\$294.00) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY: _____
Barry Strange
Labor Mediator
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: _____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

JACOB WOODELL

CLAIMANT

vs.

CASE NO. 2011-0010

HOWARD HALL

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Tuesday, January 10, 2012. Howard Hall has appealed an agency order that \$510.47 in unpaid wages is owed to Jacob Woodell. Woodell and Hall each appeared in person on their own behalf.

FINDINGS OF FACT

Woodell filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on July 12, 2011. He claimed \$547.84 in unpaid wages earned between June 9 and June 21, 2011. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on September 22, 2011 finding that Woodell was owed \$510.47. Howard Hall filed an appeal of this finding on October 4, 2011.

At the appeal hearing, Mr. Woodell testified that he was employed to install tile. He stated his rate of pay was \$7.50 per hour. He stated that he had not been paid completely for 78.5 hours worked from June 9 through 21, 2011, but he did receive one payment of \$78.28 leaving \$510.47 still due to him.

Howard Hall testified that Mr. Woodell was hired to install tile and that the work done by Mr. Woodell was done poorly and in a manner that caused him to have to repair and replace the work done.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. § 11-4-303(a). The statute also covers “physical work actually performed by an independent contractor.” Ark. Code Ann. § 11-4-301.

2. The amount of the award of the director shall be presumed to be the amount of wages or remuneration, if any, due and unpaid to the employee. Ark. Code Ann. 1-4-303(c).

3. Mr. Woodell carried his burden of proving that he worked the hours he claimed for the period of June 9 through 21, 2011 at a rate of \$7.50 per hour and that he has only been paid \$78.28, leaving \$510.47 due to him.

4. Mr. Hall failed to provide evidence to support an affirmative defense for an offset or for non-payment.

5. THEREFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of \$510.47 The Respondent is directed to issue a check payable to Mr. Woodell in the amount of \$510.47 within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY: _____
Barry Strange, Labor Mediator
Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: _____