

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of:

DEREK DEHAAN

from a final order of the Director,
Office of Labor Standards

Hearing Examiner File:
LS-20-004

Department Reference:
2020-00189-LS

Derek DeHaan (“Appellant”) filed an appeal on behalf of himself of a final order entered by the Director of Labor Standards, finding that Mr. DeHaan violated the Wage Theft Ordinance, Seattle Municipal Code (SMC) 14.20. The matter was heard on December 7, 2020, before the Hearing Examiner. At the hearing, Mr. DeHaan represented himself *pro se*, and Cindi Williams, attorney-at-law, represented the City (“City”).

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. Having considered the evidence in the record and the arguments of counsel, the Examiner enters the following findings of fact, conclusions, and decision on the appeal.

Findings of Fact

1. The Office of Labor Standards (“OLS” or “Department”) initiated an investigation on March 4, 2020, and alleged violations of the Wage Theft Ordinance, Seattle Municipal Code (“SMC”) 14.20. The alleged violations involved work that took place in Seattle and occurred between December 17, 2019, and January 5, 2020.
2. In December 2019 and January 2020 (“relevant time period”), Robert Lee DeHaan hired two workers, Fred Sundstrom and Janus “Jay” Krall, in succession to repair damaged drywall around a leaking skylight in a private residence located at 539 NE 100th St., Apt A, Seattle, Washington 98125. Robert Lee DeHaan advertised for drywallers on Craigslist and hired and communicated with Sundstrom and Krall regarding hourly rates and job instructions. Sundstrom was hired at \$30 per hour, and Krall was hired at \$35 per hour.
3. Northwest Quality Management is a residential construction company which performs work in the Puget Sound region, including within Seattle city limits. Derek Robert DeHaan, Robert Lee DeHaan’s son, is the sole governing agent (“principal”) for the business entity. Northwest Quality Management’s office is located in the principal’s home at 1223 SW 128th St., Apt. 103, Burien, Washington 98146. The business provides general handyman services for repairs, renovations, and construction. In his first communication to OLS regarding this case, Derek Robert DeHaan described the company as “a small business consisting of myself, my father, two full-time employees and occasional part or full-time temporary

employees as needs arise." Northwest Quality Management hires temporary employees in specialty skill areas, such as electrical work or countertop installation.

4. Sundstrom completed several jobs for Robert Lee DeHaan prior to the skylight drywall repair job, mostly in late 2019. Derek Robert DeHaan provided Sundstrom's payment in each prior instance that Sundstrom performed work for Robert Lee DeHaan. Sundstrom provided screenshots of text messages regarding prior jobs wherein Robert Lee DeHaan provided Sundstrom with Derek Robert DeHaan's name, phone number, and address. Sundstrom testified that on each prior occasion when Robert Lee DeHaan had hired him, upon completion of the job, Sundstrom drove to Derek Robert DeHaan's residence to collect cash payment for his hours worked. Derek Robert DeHaan's residence is also the office location for Northwest Quality Management.
5. In December of 2019 and January 2020, Sundstrom and Krall each performed nine hours of work at 539 NE 100th St., Apt A, Seattle, Washington 98125, and Sundstrom incurred employer expenses for materials related to the repair work. Robert Lee DeHaan reserved lumber from Home Depot for Sundstrom to pick up and use to reach the skylight; when Sundstrom picked up the lumber reserved in DeHaan's name, he learned that the payment card provided by DeHaan was declined. Sundstrom paid \$56.98 for the lumber, which he needed in order to commence work.
6. Sundstrom's efforts to repair the drywall at 539 NE 100th St., Apt A were complicated by mold issues he uncovered in the course of the work. Sundstrom informed Robert Lee DeHaan that he would resume repair work after an upcoming trip and asked to be paid for his hours worked to date. Robert Lee DeHaan stated that Derek Robert DeHaan would deposit payment into Sundstrom's bank account. Robert Lee DeHaan then told Sundstrom that Derek Robert DeHaan had attempted to deposit the payment, but it did not go through.
7. On January 4, 2020, Robert Lee DeHaan notified Sundstrom via text that he was being replaced by another worker. Sundstrom returned to the residence to drop off the materials he had paid for, for use by the next worker.
8. Robert Lee DeHaan hired Krall to complete the repair job at the residence. Krall and Robert Lee DeHaan agreed to meet at the residence towards the end of Krall's first day on-site to provide partial payment. When Robert Lee DeHaan did not arrive as planned, Krall concluded that Robert Lee DeHaan did not intend to pay him, and Krall did not return.
9. Sundstrom and Krall reported that they did not receive any payment for their work, and that Sundstrom was not reimbursed for employer expenses. Sundstrom contacted Robert Lee DeHaan by text message regarding payment. After a lengthy text exchange, on January 4, 2020, Robert Lee DeHaan texted Sundstrom, "Let us

- know when you want your \$125 cash which we can legally pay you as a casual laborer otherwise screenshot me a signed W-2 and we'll submit payroll for January 15th END OF STORY One more narrative and I'll block your number!@" Krall also followed up by text message regarding payment. Robert Lee DeHaan stated that the residence owner refused to pay because the work had not been completed. On January 12, 2020, DeHaan texted Krall saying, "If you continue your harrassing [sic] dialogue past this point I will call the King County Sheriff and report your behaviors DO NOT TEXT ME AGAIN." In these text exchanges, Robert Lee DeHaan cited the incomplete status of the repair job as the reason for non-payment, and in his texts with Krall specified the residence owner's refusal to pay for incomplete work as the reason he would not be paid for his hours. Respondents did not provide any evidence that the complainants were paid for their hours worked or that Sundstrom was reimbursed for employer expenses. Additional witness information corroborates Sundstrom's and Krall's assertion that they were not paid.
10. At several points in the investigation, Derek Robert DeHaan and Robert Lee DeHaan claimed that Robert Lee DeHaan was not affiliated with Northwest Quality Management. In addition to the above facts regarding Robert Lee DeHaan's involvement in coordinating work on behalf of the company, OLS located a LinkedIn profile for a Robert DeHaan in Tacoma (Robert Lee DeHaan's city of residence) who lists a job title of "Regional Sales Director" for Northwest Quality Management. Robert Lee DeHaan also communicated with Krall via a phone number which is emblazoned on Northwest Quality Management's work van.
 11. OLS also gathered testimony from the owner of the 539 NE 100th St. property where work was performed, Mary Hendrickson, who stated that Derek Robert DeHaan invoiced her for work coordinated by Robert Lee DeHaan and that those invoices bore a company logo and the term 'Northwest' in the name, though she did not recall the full name of the company. Other witness accounts of the work performed also confirmed that Robert Lee DeHaan worked on behalf of the business and Derek Robert DeHaan.
 12. The Department issued Findings of Fact, Determination and Order on July 17, 2020. The Department found violations of the Wage Theft Ordinance and imposed financial remedies.
 13. A timely appeal of the Department's Findings of Fact, Determination and Order was filed by Derek Robert DeHaan ("Derek DeHaan") on July 28, 2020.
 14. At a prehearing conference held October 5, 2020, Derek DeHaan appeared and indicated that the appeal was filed on behalf of Northwest Quality Management LLC, Robert Lee DeHaan, and himself and that he was appearing as the representative for all the named respondents.

15. At the opening of the hearing on this matter December 7, 2020, Derek DeHaan appeared, and indicated he was appearing only on his own behalf and was not representing either Northwest Quality Management LLC or Robert Lee DeHaan. No other individual appeared on behalf of Northwest Quality Management LLC or Robert Lee DeHaan. The Hearing Examiner granted the City's motion for default against Northwest Quality Management LLC and Robert Lee DeHaan for failure to appear, and limited the hearing to addressing the appeal of Derek DeHaan only.¹
16. At hearing, Fred Sundstrom testified that in his previous jobs for Robert DeHaan, he went to Derek DeHaan's apartment to be paid in cash. In addition, it was established that Robert DeHaan acknowledged Mr. Sundstrom's prior work; Robert DeHaan held himself out as part of Northwest Quality Management when he emailed Katie Wright regarding a previous project at the same property; Robert DeHaan told Mr. Sundstrom that he would be paid for the skylight job by Derek DeHaan; and, Mary Hendrickson told SOLS that she was invoiced by Derek DeHaan for work even though she primarily communicated with Robert DeHaan.
17. SOLS Investigator Daron Williams testified regarding the damages and penalties that were levied in Interim Director Jahn's Final Order. His calculation of the hourly rate for each worker was consistent with the workers' testimony.
18. Derek DeHaan's sole defense at hearing was that he was not directly involved with the hiring or project management for Fred Sundstrom.

Applicable Law

1. SMC 14.20.010 defines "Adverse Action" as follows:

"Adverse action" means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against any person for any reason prohibited by Section 14.20.035. "Adverse action" for an employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment
2. SMC 14.20.025.A lists the following rights afforded under SMC Chapter 14.20:

¹ The Hearing Examiner noted that the original appeal only named Derek DeHaan and his "company," but did not name Robert Lee DeHaan.

1. The right to be paid all compensation owed by reason of employment on an established regular payday at no longer than monthly intervals as guaranteed under the terms of this Chapter 14.20;
 2. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 14.20; and
 3. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 14.20, including an employer's failure to pay all compensation owed by reason of employment, and an employer or other person's retaliation against an employee or other person for engaging in an activity protected by this Chapter 14.20.
3. SMC 14.20.070 provides the procedure for an appeal to the Hearing Examiner contesting an OLS decision under this chapter. It states:
- A. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases. The review shall be conducted *de novo* and the Director shall have the burden of proof by a preponderance of the evidence before the Hearing Examiner. Upon establishing such proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that the Director abused discretion. Failure to appear for a contested hearing will result in an order being entered finding that the employer committed the violation stated in the Director's order. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.
 - B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying, or reversing the Director's order.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapter 14.20 SMC. Under SMC 14.20.070, the general rule is that the hearing is conducted *de novo*, and the OLS carries the burden of proof by a preponderance of the evidence.
2. An Order of Default was entered against Northwest Quality Management and Robert DeHaan. To the degree appeals were filed by either Robert DeHaan or Northwest Quality Management LLC, those appeals are **DISMISSED**.

3. Given the evidence in the record supporting OLS' position, and the lack of any evidence submitted by Derek DeHaan other than his own testimony, the Examiner concludes that the required burden of proof has been met by OLS to demonstrate that Derek DeHaan violated the Wage Theft Ordinance. Derek DeHaan failed to adequately rebut the Department's findings and evidence at hearing.
4. The preponderance of the evidence shows that Derek DeHaan is an "employer" under SMC Chapter 14.20 and is personally liable for the unpaid wages, interest, liquidated damages, and civil penalties imposed by the Seattle Office of Labor Standards.

Decision and Order

1. The Order entered by the Director of the Office of Labor Standards in Case No. 2017-00726-LS-R is **AFFIRMED**.
2. For ease of reference, the following excerpt is included from the Director's Order and made a part of this Order by the Examiner:

FINAL DIRECTOR'S ORDER

I. GENERAL TERMS

1. **Complete Compliance.** Respondents shall comply with all provisions of the Ordinance.
 2. **No Retaliation.** There shall be no discrimination or retaliation of any kind against any person because of opposition to any practice prohibited under SMC 14.20 or because of the filing of a charge or notice of investigation, giving of testimony or assistance, or participation in any manner in any investigation, proceeding or hearing thereunder.
 3. **Remedies if Respondents Fail to Comply.** In the event Respondents fail to promptly comply with any term of this Order, the Director may take appropriate steps to secure compliance.
 4. **Public Disclosure.** This Finding and Order can be disclosed to the public, in accordance with RCW 42.56.070 and SHRR 140-135.
3. The calculation of financial remedies imposed by the Order entered by the Director of the Office of Labor Standards in Case No. 2017-00726-LS-R is **AFFIRMED**.
 4. For ease of reference, the following excerpt is included from the Director's Order and made a part of this Order by the Examiner:

II. FINANCIAL REMEDIES

5. **Complete Financial Respondents.** Respondents shall pay a complete financial remedy of \$3,050.18, which includes \$674.08 in backpay and interest and \$1,283.96 in liquidated damages payable to 2 employees, and \$1,092.14 in civil penalties payable to the City of Seattle.
6. **Payments due to the City of Seattle.** Within 10 days of the Director's execution of this Order, Respondents shall remit a single check to OLS payable to the City of Seattle for \$1,092.14, the total amount of civil penalties due.
7. **Methods for Respondents to Make Payment Due to Former Employees.** With respect to payments owed to former employees under this Order, Respondents shall distribute monies owed within 10 days of the OLS Director's execution of this Order in the manner set forth below:
 - a. **Former Employees.** Respondents shall distribute monies owed to former employees under this Order by remitting checks to OLS payable to Fred Sundstrom and Janus Krall for the respective amounts listed in section C of the Determination, subject to Paragraph 8. Respondents must not send these checks using a method that requires signature upon receipt as OLS's reception is temporarily closed due to a government public-health order. OLS will arrange for the distribution of checks to former employees.
 - b. **Unclaimed Checks.** After attempting to distribute checks to former employees for however long the checks are valid or 180 days, whichever is shorter, OLS will return all unclaimed checks to Respondents. Within 10 days of receiving the returned checks, Respondents shall remit a single check payable to the City of Seattle for the total amount of unclaimed checks, subject to Paragraph 8. These funds will be held by OLS for further distribution either by check to the missing employee or by escheatment to the State of Washington.
8. **Withholding.** With respect to all monies owed to former employees, Respondent shall withhold lawful taxes and withholdings on amounts due to employees, adhering to all reporting requirements, and remitting all withheld amounts to the appropriate government agencies.

III. PROOF OF COMPLIANCE

9. **Future Compliance Monitoring.** For a period or one year following the execution of this Order by the Director, Respondents shall provide OLS access to Respondent's place of business, records necessary to establish compliance with the Ordinance and this Order, and contact information for employees upon request. Respondents shall submit records to OLS within 10 days of a request for records under this Paragraph.

Entered this 8th day of February, 2021.

/s/Ryan Vancil
Ryan P. Vancil
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking to appeal this decision to consult Code sections and other appropriate sources to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. Any person aggrieved by the final order of the Hearing Examiner may obtain judicial review by applying for a Writ of Review in the King County Superior Court within 30 days from the date of this decision in accordance with the procedure set forth in Chapter 7.16 RCW, other applicable law, and court rules.

If a court orders a review of the decision, the person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **DEREK DEHAAN**, Hearing Examiner File: **LS-20-004**, in the manner indicated.

Party	Method of Service
Appellant Derek DeHaan 1223 SW 128th Street, Unit 103 206-261-4308 dehaan11611@gmail.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department Jenee Jahn Office of Labor Standards 206-256-5426 jenee.jahn@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department Legal Counsel Cindi Williams, Assistant City Attorney City Attorney's Office 206-727-8441 cindi.williams@seattle.gov Debra Hernandez City Attorney's Office 206-684-5218 debra.hernandez@seattle.gov Sheala Anderson City Attorney's Office 206-615-1982 sheala.anderson@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: February 9, 2021

/s/ Galen Edlund-Cho
Galen Edlund-Cho
Legal Assistant