

In the Matter of
Bubbajohn Howard Washington

Case No. 92-00

October 10, 2000

SYNOPSIS

Respondent Bubbajohn Howard Washington employed Claimant as a parking lot attendant and failed to pay Claimant any wages upon termination, in violation of ORS 652.140(2). Respondent's failure to pay the wages was willful, and Respondent was ordered to pay civil penalty wages. ORS 652.140(2), 652.150.

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Jack Roberts, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on August 10, 2000, in a conference room in the Salem office of the Bureau of Labor and Industries, located at 3865 Wolverine N.E., E-1, Salem, Oregon.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by Cynthia L. Domas, an employee of the Agency. Wage claimant Dale Roth ("Claimant") was present throughout the hearing. Respondents did not appear at the hearing by 9:30 a.m. and were held in default.

The Agency called as witnesses, in addition to Claimant: Jacqueline Winters, owner of Jackie's Ribs; Rhonda Buffington, Claimant's stepdaughter; and Margaret Trotman, Wage and Hour Division Compliance Specialist.

The forum received into evidence:

a) Administrative exhibits X-1 to X-10 (submitted or generated prior to hearing) and X-11 (submitted at hearing);

b) Agency exhibits A-1 to A-8 (submitted or generated prior to hearing) and A-8 to A-10 (submitted at hearing).

Having fully considered the entire record in this matter, I, Jack Roberts, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

FINDINGS OF FACT – PROCEDURAL

1) On September 20, 1999, Claimant filed a wage claim with the Agency alleging that Respondent John Washington had employed him and failed to pay wages earned and due to him.

2) At the time he filed his wage claim, Claimant assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent.

3) Claimant brought his wage claim within the statute of limitations.

4) On February 4, 2000, the Agency issued Order of Determination No. 99-3540 based upon the wage claim filed by Claimant and the Agency's investigation. The Order of Determination alleged that Respondents "Bubbajohn Howard Washington and Christine Marie Dean, partners, aka Inside Out Training Assoc. and aka Inside Out Training Associates, Inc." owed a total of \$279.50 in unpaid wages and \$1,560.00 in civil penalty wages, plus interest, and required that, within 20 days, Respondents either pay these sums in trust to the Agency, request an administrative hearing and submit an answer to the charges, or demand a trial in a court of law.

5) On March 22, 2000, the Agency issued Amended Order of Determination No. 99-3540 that realleged all matters alleged in the original Order of Determination, but changed the caption to identify Respondents as "Bubbajohn Howard Washington and Christine Marie Dean, partners, aka Inside Out Training Assoc. and aka Inside Out

Training Associates, Inc., and Inside Out Training Associates, Inc.” The Agency served this Amended Order on Respondents’ attorney, Dirk L. Pierson, by certified mail on March 23, 2000.

6) On March 23, 2000, Respondents, through counsel Pierson, filed an answer and request for hearing. Respondents’ answer denied the allegations and included four alternative affirmative defenses:

- a) Claimant was never an employee of Respondents;
- b) Respondents Washington and Dean were acting in an agency capacity for Respondent Inside Out Training Associates, Inc., and were not liable for any wages owed by Respondent Inside Out Training Associates, Inc.;
- c) Respondents’ actions were not willful as required by ORS 6592.150 (sic) to allow for penalty wages because Respondents Washington and Dean had no knowledge of any facts that would put them on notice that they had employed Claimant;
- d) Claimant was not an “employee” as defined by ORS 652.210(2) and 652.310(2) because Respondents never paid or agreed to pay for Claimant’s services.

7) On March 27, 2000, Respondents Washington and Dean were served with the Amended Order of Determination.

8) On April 20, 2000, the Agency filed a “BOLI Request for Hearing” with the forum.

9) On May 2, 2000, the Hearings Unit issued a Notice of Hearing to Respondents, the Agency, and the Claimant stating the time and place of the hearing as August 10, 2000, at 9:00 a.m., at 3865 Wolverine Street NE, Bldg. E-1, Salem, Oregon. Together with the Notice of Hearing, the forum sent a copy of the Order of Determination, a document entitled “Summary of Contested Case Rights and Procedures” containing the information required by ORS 183.413, and a copy of the forum’s contested case hearings rules, OAR 839-050-000 to 839-050-0440. These documents were mailed to Respondents at 780 Commercial SE, Suite 105, Salem,

Oregon 97301. None of these documents were returned to the Hearings Unit by the U.S. Postal Service.

10) On June 15, 2000, the case was reassigned from ALJ Hadlock to ALJ McCullough.

11) On June 19, 2000, the forum ordered the Agency and Respondent each to submit a case summary including: lists of all persons to be called as witnesses; identification and copies of all documents to be offered into evidence; a brief statement of the elements of the claim (for the Agency only); a brief statement of any defenses to the claim (for Respondent only); a statement of any agreed or stipulated facts; and any wage and penalty calculations (for the Agency only.) The forum ordered the participants to submit case summaries no later than July 31, 2000, and notified them of the possible sanctions for failure to comply with the case summary order.

12) On June 21, 2000, Respondents' attorney filed a letter stating that he no longer represented Respondents and that all future correspondence should be sent directly to Respondents at 780 Commercial St., Suite 105, Salem, Oregon 97302.

13) On June 30, 2000, the forum issued another Case Summary Order that was mailed to Respondents at 780 Commercial St., Suite 105, Salem, Oregon 97302 and included a case summary form designed to assist *pro se* Respondents and authorized representatives in filing a case summary. This document was not returned to the Hearings Unit by the U. S. Postal Service.

14) On July 12, 2000, Cynthia L. Domas filed a letter with the forum stating that she had been substituted as Agency case presenter.

15) The Agency filed its case summary, with attached exhibits, on July 28, 2000. The Agency filed an addendum to its case summary on August 7, 2000.

16) On August 10, 2000, at 9 a.m., Respondents did not appear for the hearing. The ALJ went on the record and announced that he would wait until 9:30 a.m., pursuant to OAR 839-050-0330, to commence the hearing and that Respondents would be in default if they did not make an appearance by that time.

17) At 9:15 a.m., Respondent Washington telephoned and asked where the hearing was and what time it started, claiming he had no prior notice of the hearing date, time, or location. The ALJ advised him of the hearing location and that he needed to arrive no later than 9:30 a.m. if he wished to avoid being in default. Washington stated he would try to be there.

18) At 9:30 a.m., Respondents had not appeared at the hearing. Pursuant to OAR 839-050-0330, the ALJ declared Respondents to be in default. The ALJ then explained the issues involved in the hearing, the matters to be proved, and the procedures governing the conduct of the hearing.

19) At 9:50 a.m., Respondent Washington ("Washington") appeared at the hearing. Washington advised the ALJ he had never received a copy of the Notice of Hearing, and the ALJ allowed Washington to state, on the record, why he should not be declared in default. At the conclusion of Washington's statements, which included a statement that his attorney had not informed him of the hearing date, the ALJ concluded that Washington had not stated facts to support a finding of good cause for not appearing timely at the hearing and denied him relief from default. Washington advised the forum that he wanted the Proposed Order mailed to P.O. Box 21174, Keizer, Oregon 97308, then left the hearing.

20) The evidentiary record of the hearing closed on August 10, 2000.

21) The ALJ issued a proposed order on September 7, 2000 that notified the participants they were entitled to file exceptions to the proposed order within ten days of

its issuance. The Agency filed a timely exception, and Respondent did not file any exceptions. The forum has changed the date in Procedural Finding of Fact 20 in response to the Agency's exception.

FINDINGS OF FACT – THE MERITS

1) Inside Out Training Assoc. was registered as an assumed business name on July 14, 1993, with John H. Washington as the registrant and authorized representative. On January 3, 1994, Inside Out Training Assoc. was voluntarily cancelled. On January 3, 1994, Inside Out Training Associates, Inc., was incorporated with Christine Dean as the registered agent and secretary and John Washington as president. On February 4, 1997, Inside Out Training Associates, Inc. was voluntarily dissolved by its shareholders. On February 4, 1997, Inside Out Training Assoc. was registered again as an assumed business name with Christine Dean as the registrant and authorized representative. On February 5, 1999, Inside Out Training Assoc. became inactive as an assumed business name.

2) In 1999, Jacqueline Winters was president of a corporation that owned and operated a restaurant named Jackie's Ribs that is located across the street from the Oregon State Fair in Salem, Oregon, and has an extra parking lot that will accommodate about 100 cars. In years prior to 1999, Winters had hired staff to rent spaces in the parking lot during the State Fair. In 1999, it was her intent to hire Claimant to manage the parking lot during the Oregon State Fair as an employee of Jackie's Ribs.

3) In 1999, Washington asked Winters if he could rent the parking lot adjacent to Jackie's Ribs during the Oregon State Fair to make money for his counseling business that helps at risk youth. Winters agreed to this arrangement in exchange for a percentage of the revenue. Winters and Washington agreed that Washington would assume total responsibility of the parking lot, including hiring staff,

paying staff, and any the cost incurred in the conduct of doing business pertaining to the lot, including collecting all parking lot revenues. Winters also told Washington about her prior intention to hire Claimant, and Washington told Winters that he wanted Claimant to work for him.

3) A few days prior to August 26, 1999, Claimant met with Washington and Winters to discuss the situation involving Jackie's Ribs' extra parking lot during the State Fair. Winters asked Claimant if it mattered who he worked for. Claimant said it didn't matter. Immediately after that conversation, Claimant met with Washington outside Jackie's Ribs. Claimant asked Washington what time to report to work. Washington told him to come about noon. Claimant replied he thought that might be too late, and Washington told Claimant to come to work at 10 a.m. Claimant subsequently reported to work at 10 a.m. each day he worked for Washington.

4) Claimant and Washington did not agree upon a wage rate. Claimant assumed he would be paid minimum wage.

5) Washington instructed Claimant on the procedures he should use at the parking lot, telling him to make sure he got money from each customer, and to fill up the outside of the parking lot first, then work towards the center.

6) At all times material herein, Respondent Dean ("Dean") was Washington's "significant other."

7) On his first day of work, Claimant had to make change from his own money until Dean arrived on the parking lot later that morning. Dean reimbursed Claimant and took money from customers the rest of the day.

8) Dean gave Claimant a roll of tickets to use each day until she and Washington arrived at the parking lot. Washington and Dean showed up at the parking lot each day between 11 a.m. to noon. After Washington and Dean arrived at the

parking lot, Claimant parked cars and they took money from customers. Washington and Dean were at the parking lot most of the afternoon each day that Claimant worked.

9) On one of the days when he worked at the parking lot, Claimant cut brush in the parking lot, at Washington's direction, so that more cars could fit into the lot.

10) Washington never told Claimant not to show up for work or that he didn't want Claimant working for him.

11) Claimant worked 7 hours on August 26 and 27, 1999; 10 hours on August 28, 1999; 8 hours on August 30, 1999; 6 hours on August 31, 1999; and 5 hours on September 2, 1999, for a total of 43 hours. Claimant wrote the hours he worked down on a calendar the same day that he worked those hours. Claimant was not paid anything for his work.

12) Claimant voluntarily quit working for Washington after Claimant left work on September 2, 1999.

13) After Claimant left Washington's employment, he made three unsuccessful attempts to get his wages. On one of his attempts, he contacted Winters and informed her that he had not been paid. Winters then met with Washington, as Washington had not yet paid her. During that meeting, Winters advised Washington that Claimant had informed her that he had not been paid by Washington. Washington advised Winters that he had every intention of paying Claimant and for her to tell Claimant to call him and he would take care of the matter immediately.

14) Buffington, who is Winters' legislative assistant, then called Washington and asked why Claimant had not been paid. Washington told her that Claimant should call him, and all he needed was Claimant's social security number in order to issue a check, and that Claimant would be paid as soon as he provided his social security number.

15) The state minimum wage was \$6.50 per hour in 1999.

16) At the time Claimant left Washington's employment, Claimant was owed \$279.50 in unpaid wages (43 hours x \$6.50 per hour).

17) Margaret Trotman investigated Claimant's wage claim. In December 1999, during her investigation, she spoke with Washington. During that conversation, Washington admitted hiring David Kistner to park cars during the Oregon State Fair. Kistner parked cars for Washington at the same parking lot as Claimant.

ULTIMATE FINDINGS OF FACT

1) Respondent Bubbajohn Howard Washington employed Claimant from August 26, 1999, through September 2, 1999. During that time, Washington suffered or permitted Claimant to render personal services to him. Respondents Christine Dean and Inside Out Training Associates, Inc. were not Claimant's employers.

2) Washington agreed to pay Claimant for his work at Jackie's Ribs' extra parking lot during the Oregon State Fair, although he and Claimant did not agree on a specific rate of pay.

3) From August 26, 1999, through September 2, 1999, Claimant rendered personal services to Washington at Jackie's Ribs' extra parking lot. Claimant worked a total of 43 hours.

4) The state minimum wage during 1999 was \$6.50 per hour.

5) Washington was aware of the hours that Claimant worked, and never paid Claimant any wages for the work Claimant performed. At the time Claimant left Washington's employment, Washington owed Claimant \$279.50 in unpaid wages.

6) Washington's failure to pay Claimant's wages was willful and more than 30 days have passed since Claimant's wages became due.

7) Civil penalty wages, computed in accordance with ORS 652.150 and OAR 839-001-0470, equal \$1,560.00.

CONCLUSIONS OF LAW

1) ORS 653.010 provides, in pertinent part:

“(3) ‘Employ’ includes to suffer or permit to work * * * .

“(4) ‘Employer’ means any person who employs another person * * * .”

During all times material herein, Respondent Washington employed Claimant by suffering or permitting him to work as a parking lot attendant during the 1999 Oregon State Fair.

2) ORS 653.025 provides, in pertinent part:

“Except as provided by ORS 652.020 and the rules of the Commissioner of the Bureau of Labor and Industries issued under ORS 653.030 and 653.261, for each hour of work time that the employee is gainfully employed, no employer shall employ or agree to employ any employee at wages computed at a rate lower than:

“* * * * *

“(3) For calendar years after December 31, 1998, \$6.50. * * *”

Respondent Washington was required to pay Claimant at least \$6.50 for each hour he rendered personal services to Washington as a parking lot attendant during the 1999 Oregon State Fair.

3) ORS 653.055(1) provides, in pertinent part:

“(1) Any employer who pays an employee less than the wages to which the employee is entitled under ORS 653.010 to 653.261 is liable to the employee affected:

“(a) For the full amount of the wages, less any amount actually paid to the employee by the employer; and

“(b) For civil penalties provided in ORS 652.140.

“* * * * *

“(3) The Commissioner of the Bureau of Labor and Industries has the same powers and duties in connection with a wage claim based on ORS 653.010 to 653.261 as the commissioner has under ORS 652.310 to 652.445 * * * .”

Respondent Washington is liable to Claimant for \$279.50 in unpaid wages (43 hours x \$6.50 per hour) plus penalty wages.

- 4) At times material, ORS 652.140(2) provided:

“When an employee who does not have a contract for a definite period quits employment, all wages earned and unpaid at the time of quitting become due and payable immediately if the employee has given to the employer not less than 48 hours’ notice, excluding Saturdays, Sundays and holidays, of intention to quit employment. If notice is not given to the employer, the wages shall be due and payable within five days, excluding Saturdays, Sundays and holidays, after the employee has quit, or at the next regularly schedule payday after the employee has quit, whichever event first occurs.”

Respondent Washington violated ORS 652.140(2) by failing to pay Claimant all wages earned and unpaid not later than September 10, 1999, five business days after Claimant quit.

- 5) ORS 652.150 provides:

“If an employer willfully fails to pay any wages or compensation of any employee whose employment ceases, as provided in ORS 652.140 and 652.145, then, as a penalty for such nonpayment, the wages or compensation of such employee shall continue from the due date thereof at the same hourly rate for eight hours per day until paid or until action therefor is commenced; provided, that in no case shall such wages or compensation continue for more than 30 days from the due date; and provided further, the employer may avoid liability for the penalty by showing financial inability to pay the wages or compensation at the time they accrued.”

Respondent Washington is liable for \$1,560.00 in civil penalties under ORS 652.150 for willfully failing to pay all wages or compensation to Claimant when due as provided in ORS 652.140(2).

- 6) OAR 839-050-0330(1) and (2) provide, in pertinent part:

“(1) Default can occur in four ways:

“ * * * *

“(d) Where a party fails to appear at the scheduled hearing.

“(2) When a party notifies the agency that it will not appear at the specified time and place for the contested case hearing or, without such notification, fails to appear at the specified time and place for the contested case hearing, the administrative law judge shall take evidence to establish a prima facie case in support of the charging document and shall then issue a proposed order to the commissioner and all participants

pursuant to OAR 839-050-0370. Unless notified by the party, the administrative law judge shall wait no longer than thirty (30) minutes from the time set for the hearing in the notice of hearing to commence the hearing.”

Respondent Dean did not appear at the hearing at all, and Respondent Washington appeared at the hearing at 9:50 a.m. after notifying the forum at 9:15 a.m. that he would try to be at the hearing at 9:30 a.m. Neither counsel nor an authorized representative made an appearance on behalf of Inside Out Training Associates, Inc. Respondents were properly found in default when 30 minutes had elapsed after the specified time for the contested case hearing.

7) Under the facts and circumstances of this record, and according to the law applicable to this matter, the Commissioner of the Bureau of Labor and Industries has the authority to order Respondent Washington to pay Claimant his earned, unpaid, due and payable wages and the civil penalty wages, plus interest on both sums until paid. ORS 652.332.

OPINION

INTRODUCTION

The Agency alleged in its Amended Order of Determination that Claimant was not paid for 43 hours of work he performed for Respondents “Bubbajohn Howard Washington and Christine Dean, partners, aka Inside Out Training Assoc. and aka Inside Out Training Associates, Inc., and Respondent Inside Out Training Associates, Inc.” between August 26, 1999, and September 2, 1999. The Agency further alleged that Claimant was entitled to the minimum wage of \$6.50 per hour and is owed a total of \$279.50 in unpaid wages and \$1560.00 in penalty wages.

DEFAULT

Respondents filed an answer and request for hearing, but failed to appear at hearing and were held in default pursuant to OAR 839-050-0330. When a respondent

defaults, the Agency must establish a prima facie case to support the allegations of the charging document. *In the Matter of Leslie and Roxanne DeHart*, 18 BOLI 199, 206 (1999). The task of this forum, therefore, is to determine if a prima facie case supporting the Agency's Amended Order of Determination has been made on the record. *Id.* at 206.

PRIMA FACIE CASE

In this wage claim case, the elements of a prima facie case consist of proof of the following: (1) Respondents employed Claimant; (2) any pay rate upon which Respondents and Claimant agreed, if it exceeded the minimum wage; (3) Claimant performed work for which he was not properly compensated; and (4) the amount and extent of work performed by Claimant. *In the Matter of Barbara Coleman*, 19 BOLI 230, 262-63 (2000).

A. Respondent Washington Employed Claimant

The Agency alleges that Claimant was employed by multiple Respondents; however, the facts narrow the field to Respondent Washington. First, the undisputed facts show that Respondent Inside Out Training Associates, Inc. ceased to exist on February 4, 1997, and therefore could not have been Claimant's employer. Second, the Agency alleges that Washington and Dean were partners doing business as Inside Out Training Assoc. at the time of Claimant's employment. A partnership is never presumed; the burden of proving a partnership is upon the party alleging it. *In the Matter of Diran Barber*, 16 BOLI 190, 196 (1997). ORS 68.110(1) defines a partnership as "an association of two or more persons to carry on as coowners a business for profit." The essential test in determining the existence of a partnership is whether the parties intended to establish such a relationship. *Id.* at 195. In the absence of an express agreement, the status may be inferred from the conduct of the parties. *Id.* In

this case, Washington and Dean were each other's "significant others" during Claimant's employment. Previously, Washington was the authorized representative and registrant for the assumed business name of Inside Out Training Assoc. between July 14, 1993 and January 3, 1994; Dean was the authorized representative and registrant for the same assumed business name between February 4, 1997, and February 5, 1999; and Washington and Dean were both corporate officers of Inside Out Training Associates, Inc. between January 3, 1994, and February 4, 1997. Washington and Dean were both present on the parking lot while Claimant worked there. However, undisputed evidence shows that Washington negotiated the parking lot rental with Winters, Winters expected to receive an agreed percentage of revenues from Washington, Washington hired Claimant and directed his work, and Claimant considered Washington to be his employer and expected to get his pay from Washington. There was no evidence presented that Dean participated the decision to hire Claimant, that she directed Claimant's work in any way, that she shared in any profits or liability from the parking lot rentals, or that she controlled the operation of the parking lot, other than taking money from customers.¹ This evidence leads the forum to conclude that Respondent Washington was Claimant's employer, and sole employer at that.

Respondents' answer raised an affirmative defense that Claimant was not an "employee" as defined by ORS 652.210(2) and 652.310(2) because Respondents never paid or agreed to pay for Claimant's services. ORS chapter 653 governs minimum wage claims. For purposes of chapter 653, a person is an "employee" of another if that other "suffer[s] or permit[s]" the person to work. *In the Matter of Barbara Coleman*, 19 BOLI at 264. Because Respondent Washington suffered or permitted Claimant to work for him, Claimant was his employee for purposes of ORS chapter 653.

B. Claimant's Rate of Pay

Claimant testified that he and Washington did not agree upon a rate of pay, and that he expected to receive minimum wage. Where there is no agreed upon rate of pay, the employer is required to pay at least the minimum wage, which was \$6.50 per hour in 1999. *Id.* at 262-63. Consequently, Claimant was entitled to be paid \$6.50 per hour for his work for Washington.

C. Claimant Performed Work for Which He was not Properly Compensated

Claimant testified credibly that he worked for Respondent Washington and was paid nothing. His testimony was supported by the credible testimony of Winters, who observed him working on the parking lot, and the credible testimony of Buffington, who testified that Washington told her that Claimant would be paid as soon as he provided his social security number. Based on this evidence, the forum concludes that Claimant performed work for Washington for which he was not paid.

D. The Amount and Extent of Work Performed by Claimant

The final element of the Agency's prima facie case requires proof of the amount and extent of work performed by Claimant. The Agency's burden of proof can be met by producing sufficient evidence from which "a just and reasonable inference may be drawn." *In the Matter of Majestic Construction, Inc.*, 19 BOLI 59, 58 (1999). A claimant's credible testimony may be sufficient evidence. *In the Matter of Ann L. Swanger*, 19 BOLI 42, 56 (1999).

Claimant testified credibly that he worked 43 hours for Respondent Washington and as to the dates he worked those hours. The credibility of his testimony was enhanced by his contemporaneous documentation of his hours. This is sufficient evidence to establish the amount and extent of Claimant's work.

PENALTY WAGES

An award of penalty wages turns on the issue of willfulness. Willfulness does not imply or require blame, malice, wrong, perversion or moral delinquency, but only requires that that which is done or omitted is intentionally done with knowledge of what is being done and that the actor or omittor be a free agent. *In the Matter of Barbara Coleman*, 18 BOLI at 219. Respondent Washington, as an employer, had a duty to know the amount of wages due his employees. *In the Matter of R.L. Chapman Ent. Ltd.*, 17 BOLI 277, 285 (1999). Based on Claimant's credible testimony that Washington told Claimant what time to report for work and was present at the parking lot during much of time that Claimant worked, the forum infers that Washington knew Claimant's hours of work. There is no evidence that Washington acted other than voluntarily or as a free agent. Accordingly, the forum concludes that Washington acted willfully and assesses penalty wages in the amount of \$1,560.00, the amount sought in the Amended Order of Determination. This figure is computed by multiplying \$6.50 per hour x 8 hours per day x 30 days, pursuant to ORS 652.150 and OAR 839-001-0470.

ORDER

NOW, THEREFORE, as authorized by ORS 652.332, and as payment of the unpaid wages and civil penalty wages he owes as a result of his violation of ORS 652.140, the Commissioner of the Bureau of Labor and Industries hereby orders **Bubbajohn Howard Washington**, to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, the following:

A certified check payable to the Bureau of Labor and Industries in trust for Dale Leon Roth in the amount of ONE THOUSAND EIGHT HUNDRED THIRTY-NINE DOLLARS AND FIFTY CENTS (\$1,839.50), less appropriate lawful deductions, representing \$279.50 in gross earned, unpaid, due, and payable wages and \$1,560.00 in penalty wages, plus interest at the legal rate on the sum of \$279.50 from October 1, 1999, until

paid and interest at the legal rate on the sum of \$1,560.00 from November 1, 1999, until paid.

ⁱ See, e.g., *In the Matter of Diran Barber*, 16 BOLI 190, 195 (1997), quoting *Stone-Fox, Inc. v. Vandehey Development Co.*, 290 Or 779, 626 P2d 1365, 1367 (1981) (“when faced with intricate transactions that arise, this court looks mainly to the right of a party to share in the profits, his liability to share losses, and the right to exert some control over the business.”) Compare *In the Matter of Flavors Northwest*, 11 BOLI 215, 224, 228-29 (1993) (Where respondents, a husband and wife, were co-registrants of an assumed business name, and where she was viewed as a co-owner by the public, and the claimants viewed her as a co-owner and operator of the business with her husband, and where she had an active role in obtaining applications and other documents, keeping records, and preparing payrolls for the business, the commissioner held that she was a partner and was liable for unpaid wages and penalty wages.)