

## **ARBITRATION**

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**In the Matter of the Arbitration between:**

**[Claimant],**

**Claimant,**

**-and-**

**ARBITRATOR LEE HORNBERGER**

**[individual Respondent], and**  
**[corporate Respondent],**

**Respondents.**

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### **AWARD OF THE ARBITRATOR**

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Agreement For Arbitration of Dispute entered into by the above-named Parties, dated February 28, and March 3, 2006, and having been duly sworn and having duly heard the proofs and allegations of the Parties at the July 13 and 14, 2006, hearing, hereby FIND as follows:

1. Whether Claimant proved her claims to the satisfaction of the Arbitrator?

Claimant claims that she is contractually entitled to 2½ percent of the net billings of the \_\_\_ for the period of time that she worked there minus \$2,000 already paid to her. Respondents claim that there was no such contract and Claimant is not entitled to anything. The Arbitrator finds that there was a contract providing that [corporate Respondent] would pay Claimant 2½ percent of the \_\_\_ net paid billings while Claimant was employed by the \_\_\_. [\_\_\_, \_\_\_], and Claimant testimony and Exh 3 contemporaneous notes.] M Civ J I 142.

2. If so, what recovery is appropriate in accordance with Michigan law? The appropriate recovery is 60 percent of the \$1,391,642.20 gross billings, Exh 5, minus the \$2,000 already paid. This is consistent with [individual Respondent]'s testimony that an amount equal to 60 percent of gross billings is what would actually be paid. Although this is approximately the same as the \_\_\_\_ billing records, Exh 1, those latter records are not used as the ultimate measurement because there are at least three months missing from the \_\_\_\_ records and, as to some entries, it is not clear whether they derive from \_\_\_\_ or the [corporate Respondent] location. This results in \$1,391,642.20 \_\_\_\_ gross billings times 60 percent equals \$834,985.32 net paid billings times 2½ percent equals \$20,874.63 minus \$2,000.00 already paid equals \$18,874.63. M Civ J I 142.30-.31.
3. Whether [individual Respondent] is individually liable to Claimant under the standards of Michigan law? Claimant claims that [individual Respondent], is individually liable under the standards of Michigan law. Respondents claim that [individual Respondent], is not individually liable under the standards of Michigan law. The Arbitrator finds that [individual Respondent] is not individually liable under the standards of Michigan law. *L & R Homes, Inc v Jack Christenson Rochester, Inc*, 475 Mich 853 (2006); *Daymon v Fuhrman*, 474 Mich 920 (2005); and *Foodland Distributors v Al-Naimi*, 220 Mich App 453; 559 NW2d 379 (1996), lv appeal denied, *Foodland Distributors v Metropolitan Grocery, Inc*, 454 Mich 895 (1997). [Corporate Respondent] maintained in good faith its corporate

structure and operations distinct from [individual Respondent], concerning, in part, billings, checking accounts, corporate records, employee handbook, paychecks and payroll, W-2's, and transfer of \_\_\_\_ assets to \_\_\_\_\_. [ \_\_\_\_ and [individual Respondent] testimony and Exh's 1, 8, and 9.]

4. Should Claimant have to pay Respondents' attorney fees for having to defend the individual liability claim? Respondents claim that Claimant should have to pay Respondents' attorney fees for having to defend the individual liability claim. Claimant claims that Claimant should not have to pay Respondents' attorney fees for having to defend the individual liability claim. The Arbitrator finds that Claimant should not have to pay Respondents' attorney fees for having to defend the individual liability claim. The individual liability claim was brought in good faith and had a reasonable basis albeit ultimately unsuccessful. *L & R Homes, id;* *Daymon, id;* and *Foodland Distributors, id.*

Accordingly, I AWARD as follows:

- A. [Corporate Respondent] shall pay the sum of EIGHTEEN THOUSAND EIGHT-HUNDRED SEVENTY-FOUR DOLLARS and SIXTY-THREE CENTS (\$18,874.63) for her claim.
- B. Claimant shall recover nothing from [individual Respondent], and a no cause of action is rendered against Claimant on her claim against [individual Respondent].

This AWARD is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

DATE:\_\_\_\_\_

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LEE HORNBERGER  
Arbitrator

I, Lee Hornberger, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

DATE:\_\_\_\_\_

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LEE HORNBERGER  
Arbitrator