

Resident Manager Loses at Labor Commissioner Proceeding!

by Dale Alberstone, Esq.

Readers of my column know that each January I endorse a New Year's resolution for apartment owners and management companies, namely, that they sign a written employment agreement with their resident managers. Because California Wage and Hour laws do not allow the owner or management company to credit reduced rent (or entirely free rent) of an apartment unit to a manager's minimum wage absent a written agreement, I have explained that the best defense to a manager's wage claim filed with the California Labor Commissioner is for the employer to produce a signed written agreement.

A voluntary written agreement executed by the manager and his/her employer is the key to successfully defending a wage and hour claim brought by the manager before the Labor Commissioner, as well as to successfully defending such a claim if the manager files an action in the Superior Court.

Unfortunately, a sizeable number of apartment owners only enter into a verbal, not written, agreement with their manager concerning the terms of employment. The vast majority of those verbal contracts provide that the manager shall perform specified duties in exchange for reduced rent or free rent. While such agreements are equitable in principle, state law, including Industrial Welfare Commission Order 5-2001, render them invalid merely because they are not in writing.

Occasionally, and certainly with great difficulty, an owner can prevail against a complaining manager even in the absence of a written manager agreement. One such incidence is illustrated by one of my client's cases which I defended at the Labor Commissioner's Settlement Conference conducted in Los Angeles on May 11, 2005. There, the manager sought \$50,322.44 in back wages, but the case settled, with a Deputy Labor Commissioner's written approval, for the token sum of \$2,895.00. That sum was paid by the owner to the manager as "nuisance" value in exchange for an immediate dismissal of the proceedings and a one-way release by the manager against the owner of all wage claims. The relevant facts are as follows.

On December 2, 2001, the owner hired the manager to perform normal managerial duties for his 20-unit apartment building located in Los Angeles. Because the unit was small, it had a normal rental value of \$450 per month. The owner and the manager verbally agreed that in exchange for the manager's services, she would receive a free apartment unit, but no monetary wages.

The manager terminated her employment and vacated the unit on September 30, 2004.

On April 14, 2005, the Labor Commissioner for the State of California notified the owner that the manager had filed a claim against him for unpaid wages of \$50,322.44 for the 2-3/4 years during which she was employed. On less than 30 days' written notice to the owner, a deputy Labor Commissioner scheduled a "conference" at his local office in Los Angeles to discuss the validity of the manager's claim and to inquire whether the case could be settled. The owner retained my law firm to represent him at the conference.

In connection with her wage claim, the manager provided the Labor Commissioner with time records which reported that she worked a minimum of 42 hours each week during her employment, with some weeks claiming labor in excess of 60 hours.

Two weeks before the conference my firm drafted and submitted to the Deputy Labor Commissioner a "Confidential Conference Brief." Among other things, the brief set forth the legal authorities that provide that even in the absence of a written employment agreement, a manager is only entitled to be compensated for the hours he/she actually works, not for time during which she is present at the building on an "on call" basis.

At the commencement of the May 11 conference, the Deputy Labor Commissioner came out wildly in support of the manager. He explained that the manager was entitled to be compensated at the \$6.75 California minimum wage for all hours she worked during her 2-3/4 years of employment and that, because there was no written agreement, the owner could not offset the wages due with the free apartment rent that was given. He asserted that "hours worked" included all the time the manager was present at the property. I then had to educate the Deputy on the state of the law and on the credibility of the manager.

After intense verbal exchanges, the Deputy Labor Commissioner came to understand that the manager was only entitled to receive compensation for the time she actually spent performing her duties, not the time that she just happened to be present at the apartment building. By our citing judicial and other law to the deputy Commissioner, as was previously set forth in detail in our brief, the Commissioner acknowledged that we were correct.

Next, we provided our own summary of time that the manager worked in the building. Our estimates totaled no more than 13 hours per month, as contrasted with the manager's claim of over 175 hours per month. Following a great amount of argument and our promise to pursue the defense of the case at a subsequent Labor Commissioner evidentiary hearing followed by a Superior Court appeal, the Deputy Labor Commissioner backed down.

We told the Commissioner that the owner would pay \$2,895 as his one and only settlement offer. Finally, after nearly two hours of acrimonious exchanges, the Deputy Commissioner turned toward the manager and recommended that she accept our offer in full settlement of her claims. The manager capitulated.

The Commissioner printed a set of settlement agreement papers off his computer and then he and the manager signed off, with both giving their approval to the token payment. That was a huge defeat for the manager as well as the Deputy Commissioner, who seemed to be negotiating to obtain as much money for the employee as he could, regardless of what was actually owed.

CONCLUSION

Each Deputy Labor Commissioner conference is unique, but based on all that I have attended, there seems to be a common theme. That is, the Commissioner always sides with the employee at the outset and retreats only when he/she realizes that the owner is not about to give in to the claim.

Although I was able to successfully represent my client at his May 11, 2005 conference, my task would have been much easier if only my client had signed a written employment agreement with the manager which provided that the reduced rent, or at least the allowable portion thereof, would be offset from the manager's minimum wages.

Not all conferences are as successful for an owner as this one. For that reason, I encourage all owners and management companies to sign a written employment agreement with all existing and new managers. My firm drafts those agreements because most of the commercially prepared documents are either inadequate or contain provisions violative of the law. However, as I have espoused many times in previous columns, just about any written agreement is better than no written agreement.

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The foregoing discussion is intended as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.

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