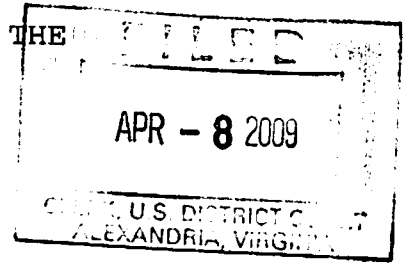


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



CHARLES ALFORD, III,)
)
Plaintiff,)
)
v.)
)
MARTIN & GASS, INC., et al.,)
)
Defendants.)
)
)
)

1:08cv595 (LMB/TRJ)

ORDER

The plaintiff, Charles Alford III, sued his former employer, Martin & Gass, Inc., and its president, Samuel Gass, to recover overtime wages under the Fair Labor Standards Act ("FLSA"), 29 U.S.C.A. §§ 201 et seq. Because the parties stipulated that the defendants misclassified Alford under the FLSA and that Alford was entitled to receive overtime pay, the only questions left for the jury to determine were whether the defendants' failure to pay Alford overtime was willful, and the number of overtime hours Alford had worked. The jury found that the failure to pay overtime was not willful, and that Alford proved he had worked 288 hours of overtime during the period of time for which he was permitted to recover damages.¹ The Court withheld entering a final judgment based on the jury's verdict to allow the parties to address liquidated damages pursuant to 29 U.S.C. § 216(b). Both

¹The jury's finding that the failure to pay overtime was not willful limited Alford to recovering overtime pay for the two years before he filed his Complaint. See 29 U.S.C.A. § 255(a).

parties have briefed the issue.²

In addition to opposing liquidated damages, the defendants, for the first time, have argued that Alford's award for overtime should not be calculated by multiplying one and a half times his hourly rate, but rather, that he should receive only one half times his hourly pay. Defs.' Br. 4. Defendants have raised the issue too late. On multiple previous occasions, defendants have taken the position that Alford should receive one and a half times his normal hourly rate for any overtime hours. Indeed, defendants' proposed jury instructions [104] explicitly directed the jury that "an employee who is not exempt [from overtime pay requirements] is entitled to receive one and one-half times his or her regular rate of pay," and defendants' proposed verdict form would have directed the jury to "[m]ultiply [the product of the number of overtime hours Alford worked and his regular rate of pay] by 1.5."³ Finally, after the jury found that Alford had worked 288 hours of overtime, the Court asked counsel for both parties how much money Alford was owed, and defense counsel stated, "It ends up being ballpark 12,000" - a number that

²Oral argument is unnecessary because the facts and legal contentions are adequately presented in the briefs and argument would not aid the decisional process.

³Because the parties did not appear to dispute the rate of overtime pay, the Court, with the consent of the parties, simplified the proposed verdict form by directing the jury only to determine the number of overtime hours Alford worked and whether the failure to pay him overtime was willful.

approximates \$11,793.60, the result of multiplying 288 (Alford's overtime hours) by \$40.95, which represents one and a half times Alford's normal hourly rate. Accordingly, the Court finds that defendants waived any objection to paying Alford time-and-a-half for his overtime hours, and will adopt the amount of compensatory damages to which the parties agreed following the verdict:

\$11,793.60.

The issue properly before the Court is the amount, if any, of liquidated damages that Alford should receive. The FLSA mandates that an employer who violates the overtime requirements "shall be liable . . . in the amount of . . . unpaid overtime compensation . . . and in an additional equal amount as liquidated damages." 29 U.S.C. § 216(b). However, "if the employer shows to the satisfaction of the court that the act or omission giving rise to [the failure to pay overtime] was in good faith and that [the employer] had reasonable grounds for believing that [the] act or omission was not a violation of [FLSA], the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed [an amount equal to the unpaid overtime compensation]." 29 U.S.C. § 260.

"Liquidated damages in an amount equal to the unpaid overtime compensation are the norm," rather than the exception. Mayhew v. Wells, 125 F.3d 216, 220 (4th Cir. 1997). The employer bears a "plain and substantial burden to persuade the court the failure to obey the statute was both in good faith and predicated upon such

reasonable grounds that it would be unfair to impose . . . more than a compensatory verdict." Id. Although this is normally considered a two-prong test, it is not an abuse of a court's discretion to decline to award liquidated damages if it is satisfied only as to the employer's good faith. Id. In addition, the Fourth Circuit has endorsed an approach to liquidated damages that accounts for the "totality of [the] circumstances" in the case. Id. at 221.

A few factors are relevant to the liquidated damages analysis here. The jury found that the defendants' actions were not willful. However, although lack of willfulness is a factor that a court may consider as evidence of good faith, Brinkley-Obu v. Hughes Training, Inc., 36 F.3d 336, 357 (4th Cir. 1994), it is insufficient to demonstrate good faith by itself. See Chao v. Barbeque Ventures, LLC, 547 F.3d 938, 942 (8th Cir. 2008), citing Reich v. S. New England Telecomm., 121 F.3d 58, 71 (2d Cir. 1997). In addition, Samuel Gass testified that he and his company believed that Alford was exempt from the overtime provisions of the FLSA because Alford received a fixed salary and had some supervisory responsibilities. However, Gass also admitted that the defendants did not consult with legal counsel; in fact, the defendants did not present evidence of any authority on which they relied in classifying Alford as exempt. Cf. Burnley v. Short, 730 F.2d 136, 140 (4th Cir. 1984) (finding good faith where the

employer, although it did not consult counsel, relied on trade association newsletters). Moreover, at one time, the defendants did correctly designate Alford as non-exempt. Thus, the defendants recognized that the FLSA applied to certain employees and not to others, yet based on their own conclusions, unsupported by authority, re-classified Alford as exempt. On these facts, the defendants were at best extremely careless as to their obligations under the FLSA, and have not met their "plain and substantial burden" to show that their failure to pay Alford overtime was in good faith and predicated upon reasonable grounds.

Under the "totality of these circumstances," Mayhew, 125 F.3d at 221, given the strong presumption in favor of liquidated damages, as well as the defendants' failure to make any inquiry before they misclassified Alford as exempt, the Court finds that an award of liquidated damages equal to Alford's uncompensated overtime wages, \$11,793.60, is appropriate. Accordingly, it is hereby

ORDERED that the plaintiff be and is awarded \$11,793.60 in compensatory damages and \$11,793.60 in liquidated damages, for a total award of \$23,587.20.

The Clerk is directed to enter judgment in favor of plaintiff pursuant to Fed. R. Civ. P. 58 and to forward copies of this Order to counsel of record.

Entered this 8th day of April, 2009.

Alexandria, Virginia