

No. A09219

OFFICE OF
APPELLATE COURTS*State of Minnesota*

MAY - 8 2009

FILED

*In Court of Appeals***James P. Meder,***Relator,*

vs.

Rapid Sports Center, Inc.,*Respondent,*

and

Dept. of Employment and Economic Development,*Respondent.*

RELATORS RESPONSIVE BRIEF

James P. Meder**16134 Golf View Road****New London, MN 56273****(320) 796-5266***Relator - Pro Se***Rapid Sports Center, Inc.****1343 Andover Blvd. NE****Ham Lake, MN 55304****(763) 434-1111***Respondent - Employer - Pro Se***Minnesota Dept. of Employment and Economic Development****332 Minnesota Street, Suite E220, 1st Natl Bank Bldg.****St. Paul, MN 55101****(651) 259-7117***Lee B. Nelson & Katrina I. Gulstad - Attorneys for Respondent - Department*

STATE OF MINNESOTA
IN COURT OF APPEALS

JAMES P. MEDER,
Relator,

RELATORS RESPONSIVE BRIEF
No. A09-219

vs.

RAPID SPORTS CENTER, INC.
Respondent,

And

DEPARTMENT OF EMPLOYMENT AND
ECONOMIC DEVELOPMENT,
Respondent.

Relator questions the accuracy of the Statement of Facts as set out in Respondent's Brief. The Relator cannot find the word "accure" in the transcript. What the evidence shows is that the Employer completely agrees that the Relator had done everything that he could do when the Relator sold the boat. (T.18). Exhibit B which is in evidence and prepared by the Employer specifically states that the figures listed in the column labeled "Gross Amount Earned" were for commissions earned during the lay-off.

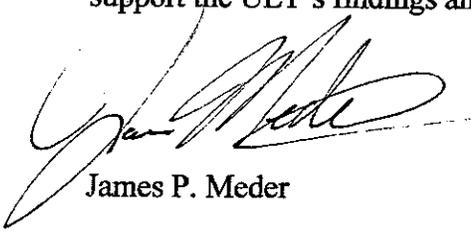
There is no scheduled date of payment for Relators commissions. The boat can be picked up, completely paid for and in use be the customer (T.15) and the Relator still may not have been paid. When the Relator sells the boat, his work is done and the commission is earned. (T.11).

The Respondent's Brief, page 9, states the Minnesota Statute, Sec. 268.035, subd 30a is not applicable. The Brief does not give any analysis of that statute, nor does it say why the statute is not applicable. The statute is clear on its fact and precisely applies to this situation. This conclusion is confirmed by Exhibit C, received by the Judge, not requested, so therefore, it should be part of the Record. Exhibit C states that it is the Department of Employments position that commissions for services performed prior to a lay-off do not have to be reported. Therefore, the statement in the Brief that this is not a new or novel question is correct, because the Departments stated position is completely consistent with the statute.

It would appear the Minnesota Statute Sec. 268.035, subd. 30a, or least in part, was designed to prohibit employers of commission based employees form stacking or loading up commissions and then paying them out after a lay-off to diminish unemployment compensation liability.

The case cited by the Respondent, *Pachter v. Bernard Hodes Group, Inc.*, 10 N.Y.3d 609 (2008) is not in point. That case did not involve unemployment compensation nor consideration of any statute resembling Minnesota Statute Sec. 268.035, subd 30a.

Therefore, it is the respectful contention of the Relator that the evidence does not support the ULT's findings and that the law is contrary to the findings.



James P. Meder