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Sing Tao Papers Sales Rep Loses Cert. Bid In OT Suit

By **Ben James**

Law360, New York (June 23, 2010) -- A federal judge in Manhattan has rejected a bid for collective action certification from a former Sing Tao Newspapers New York Ltd. employee who accused the company of failing to pay advertising sales representatives the required minimum wage or a premium rate for overtime hours.

However, Judge Alvin K. Hellerstein of the U.S. District Court for the Southern District of New York left the door open for plaintiff Wei Chu Wang to renew the motion after limited discovery, according to an order issued Tuesday.

The summary order didn't shed any light on why the collective certification motion wasn't up to snuff, pointing to "the reasons stated on the record" at a June 17 hearing for the court's rationale.

Judge Hellerstein said Wang hadn't offered sufficient evidence to show he was similarly situated to the proposed class members he sought to represent, said Anthony Rao, who represents Sing Tao.

Rao called the ruling a "rare victory" for a defendant fighting a motion for conditional collective action certification.

"What it tells me is that we, as defense counsel, shouldn't give up on conditional certification," Rao said.

The parties will now have 30 days to conduct limited discovery, and the court will then weigh whether Wang has met the burden for conditional certification, Rao added.

The Sing Tao Daily is one of the two biggest Chinese-language newspapers in circulation in the U.S., according to Wang's complaint, filed in December 2009.

In a March 22 memorandum opposing collective action certification motion, defendants Sing Tao and CEO Robin Mui said the paper had a daily circulation of 40,000 to 50,000 copies.

The defendants' memorandum accused Wang of presuming that the "lenient standard" for conditional certification under the Fair Labor Standards Act means no standard at all, citing Wang's short and "self-serving" declaration that they said fails to provide a shred of evidence supporting conditional certification.

Wang neglected to make a minimal factual showing that he was similarly situated to the current and former advertising salespeople he sought to represent, except for one "conclusory statement" in his declaration, Sing Tao's memorandum said.

Wang didn't identify any policy or practice that deprives members of the would-be class of minimum wage or overtime pay, the defendants said, going on to add that the need for "extensive individualized injuries is fatal to plaintiff's early, pre-discovery request for conditional certification."

Wang, who says he worked for Sing Tao and Mui from September 2003 through August 2008, claimed that the defendants violated the FLSA and New York labor law by not paying him overtime or minimum wage.

The FLSA class Wang proposed would include anyone employed by the defendants as a nonexempt ad sales representative within the past three years.

Wang said he was paid \$1,000 a month plus commission for his work for the defendants. The defendants claimed he was exempt from the applicable overtime pay and minimum wage requirements but didn't specify which exemption they were relying on in making that determination, according to his March 8 memorandum of law in support of conditional certification.

The "modest factual showing" necessary to win preliminary certification on FLSA claims has been met in this case, according to the memorandum.

Attorneys for Wang and the defendants could not be immediately reached for comment Wednesday.

Wang is represented by Kraselnik & Lee PLLC.

The defendants are represented by Rao Tiliakos LLP.

The case is Wang v. Sing Tao Newspapers New York Ltd. et al., case number 09-10454, in the U.S. District Court for the Southern District of New York.

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