

1 PATRICK W. HENNING
2 LABOR COMMISSIONER OF THE STATE OF CALIFORNIA
3 By: Laurence T. Emert, Hearing Officer
4 107 South Broadway, Room 5015
5 Los Angeles, CA 90012
6 213/620-2500

7 Attorney for the Labor Commissioner

8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA

10 YVETTE MARIE HOLLAND, professionally) No. MP 115 - TAC 81-18
11 known as CHAKA KHAN,)
12) DETERMINATION
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)

Petitioner,

vs.

OTIS SMITH,

Respondent.

16 The above-entitled controversy came on regularly for
17 hearing before the Labor Commissioner for the State of California
18 on February 3, 1982 by Laurence T. Emert, Senior Counsel for the
19 State Labor Commissioner, serving as Hearing Officer under the
20 provisions of Section 1700.44 of the Labor Code of the State of
21 California. Petitioner, YVETTE MARIE HOLLAND, professionally
22 known as CHAKA KHAN, appeared by the Law Office of SILVERBERG,
23 ROSEN, LEON & BEHR, by SUSAN J. HELMS, and respondent, OTIS SMITH,
24 appeared by RONALD E. SWEENEY. Evidence, both oral and documen-
25 tary, having been introduced, and the matter being briefed and
26 submitted for decision on March 26, 1982, the following determin-
27 ation is made:

1 talent agency. Respondent affirmatively alleged that the agree-
2 ment called for him to perform creative consultant duties, and that
3 his duties under the agreement were not intended to, nor actually
4 did fall within the category of a talent agency as defined by
5 Labor Code §1700.4. Respondent, therefore, contended that the
6 Labor Commissioner was without jurisdiction to hear the controversy
7 in question, and asked that the Labor Commissioner decline to hear
8 the controversy.

9 The agreement which is the center of this controversy
10 was entered into between the parties in February of 1980. It is
11 in the form of a four-page letter signed by both parties. At
12 first blush, a reading of the agreement, which was drafted by
13 respondent's attorney, suggests that respondent would be required
14 in carrying out its term, to perform services which could possibly
15 include " . . . procuring offering, promising, or attempting to
16 procure employment or engagement for an artist . . ." (Labor Code
17 §1700.4) and thus come within the jurisdiction of the Labor
18 Commissioner. The terms of the agreement were not drafted with
19 sufficient clarity and are ambiguous as to exactly what was
20 expected of respondent. Under the normal rule of thumb, the con-
21 tractual-ambiguities would be construed against respondent who
22 prepared the agreement. Pacific Lumber Co. v. Industrial Acc.
23 Comm., 22 Cal. 2d 410(1943).

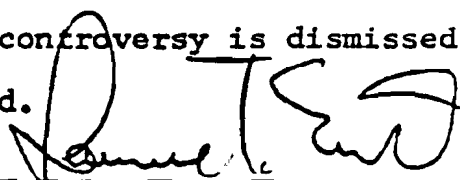
24 However, substance must control over form, and what is
25 controlling is the intention of the parties in entering into the
26 agreement. (Civil Code §1636) The testimony of respondent which
27 was corroborated by petitioner was that it was not the intention

1 of the parties for respondent to perform the services of a talent
2 agency. Rather, in retaining respondent, it was petitioner's
3 desire to have someone assist her in promoting her career and
4 marketing her records. Respondent was ideally suited for such a
5 job, having spent 22 years working in the record industry doing
6 promotion and advertising.

7 Furthermore, the uncontroverted evidence at the hearing
8 was that any services performed by respondent under the agreement¹
9 were in the nature of advising petitioner with regard to the pro-
10 motion and enhancement of her career. There was no evidence that
11 respondent performed any services normally furnished by a talent
12 agent. Indeed, petitioner admitted that she had no evidence that
13 respondent attempted to procure employment for her. Nor would
14 there be any reason for respondent to perform as a talent agent,
15 since petitioner already had one under contract.

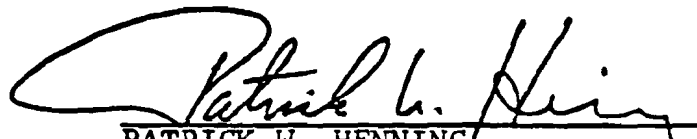
16 The petition to determine controversy is dismissed and
17 the relief requested therein is denied.

18 DATED: 4/16/82


LAURENCE T. EMERT, Attorney for
State Labor Commissioner

20 ADOPTED:

21 DATED: 4/16/82


PATRICK W. HENNING
STATE LABOR COMMISSIONER

24 _____
25 ¹Having decided that the Labor Commissioner has no
26 jurisdiction over the controversy in question, it is
27 unnecessary to decide whether respondent performed
under the agreement. Resolution of this question will
be resolved by the court.