

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

10 JOHN SEBASTIAN,) No. TAC 1-95
11)
12) Petitioner,)
13) DETERMINATION
14) vs.)
15)
16) GEOFFREY BLUMENAUER, individually and)
17) dba GEOFFREY BLUMENAUER ARTISTS,)
18) Respondent.)
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INTRODUCTION

On January 12, 1995, JOHN SEBASTIAN (hereinafter "Sebastian" or "Petitioner") filed a petition to determine controversy pursuant to Labor Code §1700.44, alleging that GEOFFREY BLUMENAUER, individually and dba GEOFFREY BLUMENAUER ARTISTS (hereinafter "Blumenauer" or "Respondent") failed to pay Petitioner for musical engagements performed by Sebastian that had been procured by Blumenauer, and for which Blumenauer received petitioner's compensation from the engagements' promoters. Respondent failed to file an answer to the petition. Notices of hearing were duly served on all parties. The hearing was held as scheduled on October 19, 1995 in Los Angeles, California, before Miles E. Locker, attorney for the Labor Commissioner. Petitioner

1 was represented by his personal manager, David Bendett.
2 Respondent did not appear. Based upon the testimony and evidence
3 received, the Labor Commissioner adopts the following
4 determination of controversy.

5 FINDINGS OF FACT

6 1. In 1989, Sebastian and David Bendett, Sebastian's
7 manager, entered into an oral agreement with Blumenauer under
8 which Blumenauer was to serve as Sebastian's talent agent by
9 seeking to procure live musical engagements for Sebastian, for
10 which Sebastian agreed to pay Blumenauer a percentage of his
11 earnings from any engagements procured by Blumenauer.

12 2. In August 1994, Sebastian performed at three engagements
13 that had been procured by Blumenauer - - a set at Woodstock II on
14 August 13, a concert in Tampa, Florida on August 14, and a concert
15 in St. Louis, Missouri on August 18. Under the contracts between
16 Sebastian and the promoters of these engagements, Sebastian was to
17 receive a total of \$43,500 in compensation for these three
18 performances, half of which - - \$21,750 - - was paid by the
19 promoters directly to Blumenauer as a deposit prior to the dates
20 for the engagements, with the remaining half paid by the promoters
21 to Sebastian on the dates of the performances. Pursuant to his
22 agreement with Sebastian, Blumenauer was expected to remit the
23 deposits to Sebastian, less Blumenauer's commission. Blumenauer
24 breached this agreement by failing to remit any of the deposit
25 money to Sebastian, despite repeated written demands to do so.
26 Although Blumenauer acknowledged, in a written response to one of
27 petitioner's demand letters, that he wrongfully held (and spent)
28 this money, he has failed, and continues to fail, to remit these

1 funds to Sebastian.

2 3. Based upon a review of the Labor Commissioner's
3 licensing files, it does not appear that Blumenauer has ever been
4 licensed as a talent agent by the State Labor Commissioner.

5 4. Petitioner's manager testified that petitioner incurred
6 approximately \$2,500 in attorney's fees in connection with this
7 matter. Although petitioner was not represented by an attorney at
8 this hearing, petitioner used the services of an attorney to draft
9 correspondence to Blumenauer concerning this dispute, and to draft
10 the petition to determine controversy.

11 CONCLUSIONS OF LAW

12 1. Respondent, by procuring and offering or attempting to
13 procure live engagements for Sebastian acted as a "talent agency"
14 within the meaning of Labor Code §1700.4(a). Petitioner is an
15 "artist" within the meaning of Labor Code §1700.4(b). The Labor
16 Commissioner has jurisdiction to determine this controversy
17 pursuant to Labor Code §1700.44(a).

18 2. Labor Code §1700.5 makes it unlawful to act as a talent
19 agent without a license. An unlicensed talent agent is not
20 entitled to retain any commissions that are based upon unlawful
21 activity as a talent agent. Buchwald v. Superior Court (1967) 254
22 Cal.App.2d 347, Wachs v. Curry (1993) 13 Cal.App.4th 616.
23 Respondent is therefore not entitled to any commissions for
24 Sebastian's three August 1994 engagements.

25 3. Labor Code §1700.25 provides that whenever a talent
26 agent receives payment of funds on behalf of an artist, the agent
27 must immediately deposit the funds in a trust fund account and,
28 within thirty days after the receipt of the funds, make full

1 disbursement, less the agent's lawful commission, to the artist.
2 No such funds, except for the agent's lawful commission, may be
3 retained by agent beyond thirty days from the date of receipt.
4 Pursuant to Section 1700.25, Sebastian is entitled to immediate
5 payment of the \$21,750 in deposits wrongfully retained by
6 Blumenauer.

7 4. Blumenauer's failure to disburse the deposits to
8 Sebastian was "willful" within the meaning of Labor Code
9 §1700.25(e). A willful violation of a civil statute occurs when
10 the person owing the statutory duty intentionally fails to perform
11 that statutory duty. Hale v. Morgan (1978) 22 Cal.3d 388, Davis
12 v. Morris (1940) 37 Cal.App.2d 269. Here, there is overwhelming
13 evidence that Blumenauer intentionally failed to disburse the
14 deposits owed to Sebastian.

15 5. Under Labor Code §1700.25(e), the Labor Commissioner is
16 empowered to award reasonable attorney's fees to the prevailing
17 artist upon a finding of a willful violation. In view of the
18 limited nature of legal work performed by Sebastian's attorneys in
19 connection with this dispute, petitioner is entitled to \$1,000 in
20 attorney's fees.

21 6. Labor Code §1700.25(e) also authorizes the Labor
22 Commissioner to award interest on the funds wrongfully withheld at
23 the rate of 10% per year from the date the funds should have been
24 disbursed. Sebastian is therefore entitled to interest on the
25 withheld funds from September 15, 1994 until these funds are
26 disbursed, with interest presently amounting to \$2,628.12.

27 DETERMINATION

28 For the above-stated reasons, IT IS HEREBY ORDERED that

1 Respondent GEOFFREY BLUMENAUER, individually and dba GEOFFREY
2 BLUMENAUER ARTISTS, pay Petitioner JOHN SEBASTIAN a total of
3 \$25,378.12, consisting of \$21,750 for unlawfully retained funds,
4 \$2,628.12 for interest on these unlawfully retained funds, and
5 \$1,000 for reasonable attorney's fees pursuant to Labor Code
6 §1700.25(e).

7
8 DATED: 12/5/95

Miles E. Locker
MILES E. LOCKER, Attorney for
the Labor Commissioner

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The above Determination is adopted by the Labor Commissioner
in its entirety.

DATED: 12/9/99

Jose Millan
JOSE MILLAN
ACTING STATE LABOR COMMISSIONER

