DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
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Special Hearing Officer

DEFORE THE STATE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA

MICHELLE EDITH MARTIN,) No. TAC 21-96 pka MICHELLE WRIGHT,) DETERMINATION OF CONTROVERSY

GILBERT A. CABOT, Individually and dba REO BROADCASTING CONSULTANTS, REO GROUP, COMARTS COMMUNICATIONS ARTS AND MEDIA PLUS RICHARD E. OPPENHEIMER.

PLUS, RICHARD E. OPPENHEIMER, Individually and dba REO BROADCASTING CONSULTANTS, An unknown corporation.

Respondents

Respondents.

The above-entitled controversy came on regularly for hearing before the Labor Commissioner, Division of Labor Standards Enforcement, State of California by Thomas S. Kerrigan, serving as Special Hearing Officer under the provisions of Labor Code Section 1700.44.

Petitioner Michelle Edith Martin, aka Michelle Wright, appeared through Manatt, Phelps & Phillips by Diane L. Faber and respondents

vs.

appeared through the Law Offices of Malcolm S. McNeil by Malcolm S. McNeil.

Petitioner alleges that she is an artist within the meaning of Labor Code Section 1700.44 (b). She alleges that she entered into written and oral contracts with "respondents" whereby respondent Gilbert A. Cabot would "participate as a career consultant, with the formal and working title and arrangement of 'Production Partner,'" his "professional activities" to "embrace each and every element and level of Wright's career endeavors." Cabot, she alleges, was to obtain employment for petitioner in motion pictures and television pursuant to this agreement. She alleges that respondents engaged in numerous acts of procuring and attempting to procure employment or engagements during the period of said contracts, acting as a talent agent without being licensed as required by Labor Code Section 1700.5. Petitioner prays for a determination that the actions of respondents have violated the Talent Agencies Act; for a determination that these contracts are void and unenforceable; for an accounting; and for recovery of monies paid to respondents. Petitioner also asks for her costs and reasonable attorney's fees.

In response to the Petition, respondents submitted a "Request for Investigation for Determination of Jurisdiction" in which they asked that the Petition be dismissed. The motion was denied. It was renewed at the hearing and denied again. Respondents did not file an answer to the Petition.

ISSUES

The issues presented are twofold:

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Respondents labor under the misconception that Labor Code §1700.44 requires the Labor Commissioner to conduct an independent investigation of the allegations of the Petition prior to conducting a hearing. But the language of that section is plainly permissive and not mandatory.

2. If so, to what relief, if any, is petitioner [hereinafter "Wright"] entitled?

DISCUSSION AND FINDINGS

Evidence, both oral and documentary, was introduced during three days of hearing in the case. The key issue addressed by both sides was the specific nature of the relationship between petitioner [hereinafter "Wright"] and respondents. All parties stipulated at the hearing that respondents were not licensed talent agents.

Brian Ferriman, Wright's manager, acted as her sole artist manager for the nine years prior to June of 1994. During that period Wright entered into a recording contract with Arista Records in Nashville,

Tennessee, which released two of her albums. She had appeared on television in Canada and the United States on many occasions, including a spot on the Jay Leno Show. But Wright had ambitions beyond a singing career. Thus, on a number of occasions prior to being contacted in April of 1994 by a representative of respondents, she and Ferriman had discussed the possibility of finding work for for her as an actress in films and television.

Gilbert A. Cabot, a representative of REO Broadcasting Consultants, later communicated directly with Ferriman concerning the possibility of developing a "television package" featuring Wright as an actress. He represented that he was very active in the Hollywood community. He claimed he was involved in ongoing communications with the principle television networks regarding the development of various television projects. He requested information from Ferriman for the purpose of

exploring acting opportunities for Wright. He discussed the possibility of Wright appearing on "Northern Exposure" and "Murder, She Wrote."

Cabot, in fact, arranged for her to perform at the Neon Cactus at Disneyland on June 17, 1994. Ferriman testified that it was his understanding, based on his discussions with Cabot, that Cabot would assist in the realization of Wright's film and television aspirations by the solicitation of acting opportunities through his claimed connections in Hollywood. Wright also testified that her sole purpose in retaining Cabot and REO was to find acting work. In fact, as both sides concede, Cabot did many other things in supposed furtherance of Wright's acting and singing career, including, inter alia, coaching her in acting, appearance, working on the editing for a video she had recorded, and getting involved in resolving potential difficulties with her record label.

The June 21, 1994 agreement in writing, drafted by Ferriman and Cabot, identifies Cabot as a "career consultant" whose "professional activities will embrace each and every element and level of WRIGHT'S career endeavors." It compensates Cabot with a percentage of Wright's gross annual income. The agreement was signed by Wright, Ferriman and Cabot.

After the signing of this agreement, Cabot attempted to get Wright a second spot on the Jay Leno Show and a performance engagement at the House of Blues in Los Angeles. He was responsible for placing an advertisement about Wright in the July 29, 1994 issue of Daily Variety, bearing the legend, "Thanks for great scripts." A similar advertisement later appeared in the Hollywood Reporter.

There is abundant evidence from both sides that there were continuing disagreements between the three principals, and particularly between Wright and Cabot. These difficulties culminated on September 30, 1994,

when Wright sent Cabot a letter purporting to terminate their relationship. It is not clear, however, that this evidence of the conflict between the parties impacts upon the ultimate issue to be determined in this case. Furthermore, it is not unusual for artists and their representatives to be at odds with one another.

Cabot, the sole witness called by respondents, emphatically denied at the hearing that he was involved with procuring employment for Wright as an actor, describing his role as merely that of a "packager" of productions and as a consultant advising Wright on the details of her prospective acting career. He enumerated services he provided to Wright which clearly do not fall under the classification of solicitation of employment opportunities.

Counsel for Wright sought to impeach Cabot's testimony with evidence of multiple felony convictions for, inter alia, extortion, theft, and issuing checks without sufficient funds.² These felony convictions have been duly considered in evaluating Cabot's credibility.

Even in the absence of such impeachment, however, Cabot's testimony cannot be credited. To do so would require the discounting of conceded facts, e.g., the fact that Wright already had an experienced artist manager at the time she entered into this agreement with Cabot; the fact that Cabot successfully obtained an engagement for Wright at Disneyland; the fact that Cabot actively expended efforts to get Wright appearances on the Jay Leno show and elsewhere; and the fact that Cabot actively initiated an advertising campaign to get her film and television work.

Leaving no stone unturned, counsel also sought to introduce articles from the Los Angeles Times cataloguing Cabot's allegedly unsavory career as what that newspaper described as a "con man". While the Labor commissioner is not governed by the rules of evidence in these proceedings (6, Calif. Code of Regs. \$12030), the Special Hearing Officer has declined to consider this and other evidence of Cabot's prior alleged "bad acts".

This latter evidence is far more pervasive of the true nature of the relationship with Wright than respondents' self-serving characterization.

The totality of the evidence in this case, therefore, clearly establishes that Cabot and REO³ were operating as talent agents who actively solicited employment on Wright's behalf in a number of instances. This evidence goes far beyond satisfying the minimal standard requirement established in <u>Waisbren v. Peppercorn Productions</u>, Inc. (1995) 41 Cal. App. 4th 246, 255-260.

CONCLUSIONS OF LAW

- 1. Petitioner is an "artist" within the meaning of Labor Code \$1700.4(b).
- 2. The Labor Commissioner has jurisdiction to determine this controversy pursuant to Labor Code \$1700.44 (a).
- 3. Respondents Gilbert A. Cabot and REO Broadcasting Consultants violated Labor Code \$1700.5, in that they, and each of them, engaged in and carried out the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner. The oral and written agreements between said respondents and petitioner are accordingly void ab initio and are unenforceable for all purposes (Waisbren v. Peppercorn Productions, Inc., supra, 41 Cal. App. 4th 246; Buchwald v. Superior Court (1967) 254 Cal. App. 2d 347). Respondents accordingly had no right to the commissions collected from petitioner.
- 4. The petition is dismissed with respect to all other respondents named therein, on the ground that petitioner has made no showing with respect to

The petition also names as respondents "REO Group, Comarts Communications Arts and Media Plus, Richard E. Oppenheimer, individually and dba REO Broadcasting Consultants, an unknown corporation." No showing was made by petitioner that these individually named respondents violated the Talent Agencies Act.

these respondents sufficient to show a violation or violations by them of the Talent Agencies Act.

- 5. Petitioner is entitled to recover all commissions paid to respondents Gilbert A. Cabot and REO Broadcasting Consultants for the one year period preceding filing of the petition (Labor Code \$1700.44(c).
- 6. The request for an accounting is denied since petitioner has not made a showing that an accounting is necessary (St. James Church of Christ Holiness v. Superior Court (1955) 135 Cal.App. 2d 352, 359).
- 7. Since, in the absence of a stipulation between the parties concerning the amount of commissions paid, further proceedings will be necessary for determination of actual damages, jurisdiction is hereby retained for that purpose, and a hearing is hereby scheduled for August 12, 1997 at 10:00 a.m. at 107 S. Broadway, Room 5015, Los Angeles, CA 90012.

· DETERMINATION

The oral and written contracts entered into between petitioner and Gilbert A. Cabot and REO Broadcasting Consultants are each void and unenforceable for all purposes. Petitioner is to recover all commissions paid to said respondents pursuant to these agreements since June 10, 1995, the exact sum to be determined at a further hearing to be held on August 12, 1997.

DATED: June 12, 1997

THOMAS S. KERRIGAM Special Hearing Officer

The above determination is adopted in its entirety.

DATED: 6/25/97

Chief Deputy Director

Department of Industrial Relations