STATE OF CALIFORNIA Department of Industrial Relations Division of Labor Standards Enforcement EDNA GARCIA EARLEY, State Bar No. 195661 320 W. 4th Street, Suite 430 Los Angeles, California 90013 Tel.:(213) 897-1511 Fax: (213)897-2877 Attorney for the Labor Commissioner BEFORE THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA 10 Case No.: TAC 38-06 RYAN ALBERT HANSEN. 11 12 **DETERMINATION OF** CONTROVERSY Petitioner, 13 14 16 ROBIN BROOKS BUFANDA, 17 individually and d/b/a/ROBIN BROOKS 18 TALENT MANAGEMENT, 19 Respondents. 20 21 The above-captioned matter, a Petition to Determine Controversy under Labor 22 Code §1700.44, came on regularly for hearing on June 22, 2007 in Los Angeles, 23 24 California, before the undersigned attorney for the Labor Commissioner assigned to hear 25 this case. Petitioner RYAN ALBERT HANSEN, An Individual, appeared and was 26 represented by Michael H. Porrazzo, Esq. of The Porrazzo Law Firm. Respondent 27 28 ROBIN BROOKS BUFANDA, individually and d/b/a ROBIN BROOKS TALENT

**DETERMINATION - 1** 

MANAGEMENT, appeared through her attorney, Donald V. Smiley, Esq. Brad Hansen appeared as a witness on behalf of Petitioner RYAN ALBERT HANSEN.

Based on the evidence presented at this hearing and on the other papers on file in this matter, the Labor Commissioner hereby adopts the following decision.

## **FINDINGS OF FACT**

- 1. Petitioner RYAN ALBERT HANSEN, (hereinafter, referred to as "Petitioner"), is an actor who has appeared on the UPN/WB one-hour drama, "Veronica Mars."
- 2. At all times relevant, Respondent ROBIN BROOKS BUFANDA, individually and d/b/a ROBIN BROOKS TALENT MANAGEMENT, (hereinafter, referred to as "Respondent"), has not been licensed as a talent agent with the State of California.
- 3. Petitioner was referred to Respondent by his aunt in June, 2000. In 2000, Petitioner signed a two year term management agreement whereby he agreed to pay Respondent 15% commissions in exchange for Respondent acting as Petitioner's personal manager. At the expiration of the initial two year term, the parties entered into a subsequent written management agreement on April 15, 2002 for a three year term. The second contract was based on the same terms as the first contract.
- 4. Petitioner testified that in August, 2004, Respondent sent him to audition for the role of "Dick" on the "Veronica Mars" show. Petitioner got the role and was asked to guest star in a total of 10 episodes during the first season. Petitioner was paid \$600-800 per episode.

- 5. In March, 2005, Petitioner scheduled a personal trip to Africa to work on a documentary. At the time of scheduling this trip, Petitioner was under the impression that his work on "Veronica Mars" had been completed and did not anticipate appearing on any future episodes of the first season. However, prior to leaving for Africa, he received a phone call from Respondent who informed him that she had been working hard on his behalf and had negotiated with "Veronica Mars" to have him appear on the last two episodes for \$6,000 per episode. Consequently, Petitioner postponed his African trip and appeared on the last two episodes of "Veronica Mars," received \$6,000 per episode for the two episodes and paid Respondent her commissions.
- 6. On cross examination, Petitioner admitted that during March, 2005, licensed talent agents Kazarian/Spencer & Associates, Inc., ("KSA"), represented him as his talent agents as evidenced in the *Renewal SAG Motion Picture / Television Agency Contract* he signed for a three year term commencing on March 22, 2002, which was introduced into evidence by Respondent's attorney. Additionally, Petitioner testified that he did not know what, if any, authorization KSA had given Respondent with respect to employment procured on his behalf or any other terms of Respondent and KSA's relationship. Petitioner testified that all communication with respect to any potential employment was always communicated to him by Respondent. Moreover, all earnings received for his performances on "Veronica Mars," were received directly from Respondent, and not any of his licensed talent agents.
  - 7. Brad Hansen, Petitioner's father, corroborated Petitioner's testimony.

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Mr. Hansen testified that in March, 2005, he had a telephone conversation with Respondent who informed him that she had negotiated a higher salary for Petitioner on the last two episodes of the first season of "Veronica Mars." This phone call took place prior to Petitioner leaving for Africa but after Petitioner had already purchased his plane Mr. Hansen testified that Respondent informed him that she had negotiated \$6,000 per episode for the last two episodes of the first season of "Veronica Mars." Prior to this, Petitioner had only been receiving \$600 per episode. Per Mr. Hansen, Respondent knew that Petitioner was going to Africa but opined to him that it would be well worth Petitioner's time to stay and take the role. Respondent also informed him that she negotiated the deal and was working hard for Petitioner. Per Mr. Hansen, during this phone call, Respondent never mentioned any agent being involved in the negotiations. On cross examination, Mr. Hansen testified that he did not speak directly with anyone at "Veronica Mars" and didn't have any specific knowledge as to who actually procured the last two episodes for Petitioner. The only information he had with respect to those two episodes is the information related to him by Respondent during their March, 2005 phone call, i.e., that she negotiated the higher salary for Petitioner.

8. Respondent was not present at the hearing and only appeared through her attorney. Thus, although her attorney stated in opening arguments that all employment on behalf of Petitioner was booked through one of his licensed talent agents, no

While Petitioner did not subpoena Respondent to attend the hearing, it was revealed that she was in fact in the building but refused to voluntarily testify or appear at the hearing.

testimony was presented by Respondent or any talent agent to support this defense. Moreover, no admissible evidence was produced to contradict Petitioner or his father's credible testimony that Respondent admitted that she had negotiated the increased salary on the last two episodes of "Veronica Mars" on behalf of Petitioner.

- 9. Petitioner is not claiming damages in this proceeding. He is only requesting a determination as to whether Respondent unlawfully procured employment in violation of the Talent Agencies Act thereby making the contract between the parties void *ab initio*.
- 10. Respondent filed a superior court action against Petitioner which has been stayed pending the outcome of this proceeding.

## Legal Analysis

- 1. Petitioner, an actor, is an "artist" as defined in Labor Code §1700.4(b).
- 2. At all times relevant herein, Respondent was not licensed as a talent agency.
- 3. Labor Code §1700.5 provides that "no person shall engage in or carry on the occupation of a talent agency without first procuring a license therefore from the Labor Commissioner." The term "talent agency" is defined at Labor Code §1700.4(a) as a "person or corporation who engages in the occupation of procuring, offering, promising or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing."

- 4. Petitioner credibly testified that Respondent informed him that she had been working hard on his behalf and had "negotiated" a higher salary for Petitioner to appear on the last two episodes of the first season of "Veronica Mars." This testimony was corroborated by his father, who credibly testified that he was also directly informed by Respondent that she had negotiated a higher salary for Petitioner to appear on the last two episodes of the first season of "Veronica Mars." The term "procure," as used in Labor Code §1700.4(a) means, "to get possession of: obtain, acquire, to cause to happen or be done: bring about." Wachs v. Curry (1993) 13 Cal.App.4<sup>th</sup> 616, 628. We find that Respondent's admissions that she "negotiated" a higher salary for Petitioner falls under the definition of "procure."
- 5. Respondent, through her attorney, argues that all employment obtained on behalf of Petitioner was done through his licensed talent agents. Relying on *Golden Brooks v. Lori Coats*, TAC 43-04, (hereinafter, referred to as "*Brooks*"), Respondent also argues that Petitioner has failed to meet his burden of proving that Respondent procured employment on his behalf in violation of the Talent Agencies Act, ("Act") because he does not have personal knowledge as to whether his licensed talent agents were involved

While Respondent's statements to Petitioner and his father regarding negotiation of a higher salary for Petitioner are hearsay statements, they are also admissions and thus, an exception to the hearsay rule. See Evidence Code §1220 and Nathaniel Stroman (pka Earthquake) v. NW Entertainment, Inc. dba New Wave Entertainment as Successor in Interest to Barry Katz Management, Inc., TAC 38-05, Statements made by personal manager in pleadings filed in superior court against artist constitute admissions of procurement in violation of the Talent Agencies Act.

in procuring work for him in connection with his guest appearances on "Veronica Mars." Unlike this case, in *Brooks*, <u>both</u> the petitioner and respondent testified at the hearing. In our *Brooks* determination, we noted that the burden of proof in establishing a violation under the Act falls on the petitioner. Specifically, we stated:

"The proper burden of proof in actions before the Labor Commissioner is found at Evidence Code §115 which states, '[e]xcept as otherwise provided by law, the burden of proof requires proof by preponderance of the evidence.' Further, McCoy v. Board of Retirement of the County of Los Angeles Employees Retirement Association (1986) 183 Cal.App.3d 1044, 1051 states 'the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by preponderance of the evidence [cite omitted].' 'Preponderance of the evidence standard of proof requires the trier of fact to believe the existence of a fact is more probable than its nonexistence.' In re Michael G. (1998) 74 Cal.Rptr.2d 642."

Additionally, we also referred to a past determination, A.C. Watson and Clarang Inc. v.

Richard Glasser, et al., TAC 24-99 at pp. 11-12, in which we held,

"When establishing a preponderance of the evidence, the moving party must supply more than 'he said/she said' when both parties testify credibly. There must be evidence of an offer, a promise, or an attempt by respondents to procure employment. Minimally, an element of negotiation established through documentary evidence or testimony from a witness with personal knowledge of respondents' procurement activity will suffice."

Accordingly, we held that the petitioner in *Brooks* had not met her burden of proof as she had not produced *any* evidence, (documentary or witness testimony), to support her contention that the respondent had procured work on her behalf in violation of the Act, especially in light of the respondent's testimony denying that she had procured any engagements on behalf of the petitioner.

 This case is distinguishable from the *Brooks* case because Petitioner testified that Respondent told him that she had been working on his behalf and had negotiated a higher salary for him on the last two episodes of "*Veronica Mars*." This testimony was corroborated by witness testimony from his father, who also credibly testified that Respondent had contacted him and informed him of the same. Evidence Code §411 provides: "Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact."

Moreover, unlike A.C. Watson and Clarang Inc., supra, this case does not present a situation where we have credible testimony from both sides. Here, Respondent had the opportunity to testify and deny that she made such statements to Petitioner and his father. She failed to do this. Likewise, Respondent had the opportunity to rebut Petitioner and his father's testimony by presenting documentation or witness testimony supporting her defense that all procurement was done through a licensed talent agent. Again,

Respondent failed to present such evidence. Evidence Code §413 provides in pertinent part: "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or deny by his testimony such evidence or facts in the case against him..." Thus, the only admissible evidence presented, which we find credible, is that Respondent admitted that she "negotiated" a higher salary for Petitioner on the last two episodes of the first season of "Veronica Mars."

6. Having found that Respondent procured employment for Petitioner on

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"Veronica Mars" without having obtained a license as a talent agent, and such evidence not having been rebutted by Respondent at this hearing, we deem all contracts entered into between the parties to be void ab initio.

## <u>ORDER</u>

For all the reasons set forth above, IT IS HEREBY ORDERED that all management agreements entered into between Petitioner RYAN ALBERT HANSEN and Respondent ROBIN BROOKS BUFANDA, individually and d/b/a ROBIN BROOKS TALENT MANAGEMENT, are void *ab initio*. Accordingly, Respondent ROBIN BROOKS BUFANDA, individually and d/b/a ROBIN BROOKS TALENT MANAGEMENT is not entitled to any compensation under any of the management agreements, including recoupment of any purported costs.

Dated: September 13, 2007

EDNA GARCÍA ÉARLEY

Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: Septombor 13,2007

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ANGELA BRADSTREET
State Labor Commissioner

## 1 PROOF OF SERVICE STATE OF CALIFORNIA COUNTY OF LOS ANGELES 3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, 320 W. 4<sup>th</sup> Street, Suite 430, Los Angeles, CA 5 90013. On September 14, 2007, I served the following document described as: 6 7 DETERMINATION OF CONTROVERSY on the interested parties in this action [38-06] by placing 8 9 the originals 10 a true copy thereof enclosed in a sealed envelope addressed as follows: [x]11 Michael H. Porrazzo, Esq. The Porrazzo Law Firm 26691 Plaza, Suite 260 12 Mission Viejo, CA 92691 13 (949) 367-0600 Fax 14 Donald V. Smiley, Esq. Law Offices of Donald V. Smiley 6080 Center Drive, Suite 600 Los Angeles, CA 90045 16 (310) 915-9993 Fax BY MAIL I deposited such envelope in the United States Mail at Los Angeles, California, П 18 postage prepaid. 19 [x]BY MAIL I am readily familiar with the firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service and said 20 correspondence is deposited with the United States Postal Service the same day. 21 BY FACSIMILE I sent a copy of said document by fax machine for instantaneous transmittal [x]via telephone line to the offices of the addressee(s) listed above using the following telephone number(s): as indicated above. 22 23 Executed on September 14, 2007, at Los Appeles, California. I declare under penalty of perjury the foregoing is true and correct. 24 25 ci Morales-Garcia 26 27 28 Proof of Service