

1 C. ROBERT SIMPSON, State Labor Commissioner
DIVISION OF LABOR STANDARDS ENFORCEMENT

2 By: Carl G. Joseph
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8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
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11 CLOUTMAN-MILLER AGENCY, INC. dba)
MILLER AGENCY, TALENT AGENCY,)

Case No. TAC 3-83
DETERMINATION

12 Petitioner,
13

14 vs.

15 ARTHUR BOTHAM,

16 Respondent.
17

18 The above-entitled controversy came on regularly for
19 hearing before the Labor Commissioner, Division of Labor Standards
20 Enforcement, Department of Industrial Relations, State of
21 California, by Carl G. Joseph, attorney for the Division of Labor
22 Standards Enforcement, serving as Special Hearing Officer under
23 the provisions of Section 1700.44 of the Labor Code of the State
24 of California. Petitioner CLOUTMAN-MILLER AGENCY, INC. appeared
25 by the law firm of William H. Simon, Jr., Inc. by William H.
26 Simon, Jr. Respondent ARTHUR BOTHAM appeared by the law firm of
27 Bilford and Bilford by David R. Bilford. Oral and documentary
evidence having been introduced, and the matter having been

1 briefed and submitted for decision, the following determination
2 is made:

3 1. Respondent, as a Director of Photography, was an
4 artist, as defined in Labor Code Section 1700.4.

5 2. Petitioner violated the 72 hour notice requirements
6 of Administrative Code, Title 8, Section 12002 and is therefore
7 not entitled to recover a fee or commission from Respondent with
8 respect to his employment as director of photography on Dukes of
9 Hazard for the 1982 season.

10 I

11 INTRODUCTION

12 On March 21, 1983, Petitioner, CLOUTMAN-MILLER AGENCY,
13 INC. dba MILLER AGENCY, TALENT AGENCY (hereinafter referred to as
14 "MILLER") filed a petition to determine controversy pursuant to
15 Labor Code Section 1700.44 with the Labor Commissioner of the
16 State of California, against ARTHUR BOTHAM (hereinafter referred
17 to as "BOTHAM"). The petition alleged that MILLER was entitled
18 to commissions in an amount equal to 10% of BOTHAM's compensation
19 as director of photography on the television series "Dukes of
20 Hazard", for the 1982 season.

21 Petitioner prayed for the following relief:

22 1. That the Labor Commissioner determine that MILLER
23 procured and negotiated BOTHAM's employment as director of
24 photography on "Dukes of Hazard" for the 1982 season.

25 2. That MILLER was entitled to commission of 10% of all
26 compensation received by Respondent pursuant to said employment,
27 plus interest and costs.

1 On May 2, 1983, Respondent filed an answer to the
2 petition denying the essential allegations and raising various
3 affirmative defenses.

4 A hearing took place on July 14, 1983. Petitioner's
5 opening brief was filed July 29, 1983. Respondent's reply brief
6 was filed August 24, 1983. Petitioner's reply brief was filed
7 September 1, 1983.

8 II

9 ISSUES

10 1. Was Respondent, BOTHAM, an "artist" as defined by
11 Labor Code Section 1700.4?

12 2. Did Petitioner comply with the 72 hour notification
13 requirements of Administrative Code Section 12002?

14 III

15 APPLICABLE LAW

16 The Labor Code, Section 1700.4 defines "artist" as
17 "artists and other persons rendering professional services in
18 motion pictures, theatrical, radio, television and other
19 entertainment enterprises."

20 Administrative Code, Title 8, Section 12002 provides as
21 follows:

22 "No artist's manager shall be entitled to recover a fee
23 or commission under an oral contract unless the particular
24 employment for which the fee or commission is sought shall have
25 been procured directly through the efforts or services of the
26 manager and shall have been confirmed in writing within 72 hours
27 thereafter."

DISCUSSION AND FINDINGS

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3 Re: RESPONDENT'S STATUS AS AN ARTIST:

4 In the instant case, the Labor Commissioner finds that
5 Respondent, BOTHAM, as director of photography on the television
6 series "Dukes of Hazard," was employed as a person rendering
7 professional services in a television enterprise, and therefore
8 was an artist, as defined by Labor Code Section 1700.4.

9 Re: PETITIONER'S COMPLIANCE WITH ADMINISTRATIVE CODE
10 SECTION 12002:

11 The evidence at the hearing in this matter established
12 that the alleged contract between Petitioner and Respondent was
13 oral and that Petitioner acted as Respondent's artist manager,
14 and therefore Petitioner was required to comply with the provisions
15 of 12002 of the Administrative Code. As previously cited, said
16 code section provides that the manager must provide written
17 confirmation of employment within 72 hours after procurement.

18 The evidence further established that Petitioner never
19 advised Respondent that an essential term of the subject contract
20 which had been confirmed by a written "deal confirmation memo,"
21 with respect to Respondent's wages, had been deleted. The Labor
22 Commissioner finds that the Administrative Code requires
23 Petitioner to provide Respondents with written notice of such
24 facts within 72 hours and that Petitioner failed to comply with
25 said provision. The Labor Commissioner further finds that
26 Petitioner is therefore not entitled to recover any fee or
commission under the subject contract.


1 Petitioner chose not to advise Respondent of the change
2 in an essential term of the agreement and to allow Respondent to
3 work under the agreement under the impression that the deal
4 confirmation memo was accurate as submitted. Therefore, Peti-
5 tioner violated his statutory obligations and the agreement
6 between Petitioner and Respondent was void and unenforceable.

7 v

8 CONCLUSION

9 The evidence in this case establishes that Petitioner
10 violated the Administrative Code Provisions of Section 12002 and
11 is therefore not entitled to any fee or commission pursuant to
12 the oral agreement with Respondent.

13
14 DATED: _____

15 
16 _____
17 CARL G. JOSEPH
18 Special Hearing Officer

19 ADOPTED

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21 DATED: _____

22 _____
23 C. ROBERT SIMPSON
24 California Labor Commissioner
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