

1 **STATE OF CALIFORNIA**
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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10
11 **BEFORE THE LABOR COMMISSIONER**
12 **OF THE STATE OF CALIFORNIA**

13 LEMON LIME AGENCY, INC.,

14 *Petitioner,*

15 v.

16 HORACE BROOKS,

17 *Respondent.*

18 Case No. TAC-52851

19 **DETERMINATION OF**
20 **CONTROVERSY**

21 **I. INTRODUCTION**

22 The Labor Commissioner heard the above-captioned Petition to Determine Controversy under
23 Labor Code § 1700.44 on September 21, 2022. Petitioner LEMON LIME AGENCY, INC.¹ (“Lemon
24 Lime”) appeared via its owner Chaim Magnum. Respondent HORACE BROOKS (“Brooks”), known
25 professionally as Horace Gold, was represented by Craig J. Englander.

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

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¹ The Petition failed to properly name the corporation but upon review of the evidence it is clear the named Petitioner is Lemon Lime Agency, Inc.

1 **II. FINDINGS OF FACT**

2 Lemon Lime is a licensed talent agency specializing in commercial and print advertising. Until
3 October 29, 2021, Lemon Lime was jointly owned by Robin Harrington and Chaim Magnum with Ms.
4 Harrington holding a 51% ownership interest. Brooks is an actor. On June 7, 2021, Lemon Lime and
5 Brooks entered into a written agreement (the “Written Agency Agreement”). According to the terms
6 of the Written Agency Agreement, Lemon Lime would serve as Brooks’ sole and exclusive agent in
7 commercial and print representation for a one-year term. Brooks agreed to pay Lemon Lime 10% for
8 commercial and related services and 20% for print and related services of his gross earnings from jobs
9 Lemon Lime procured. In addition, and pursuant to clause four (4) of the Written Agency Agreement,
10 Brooks agreed to pay Lemon Lime commissions on “...contracts entered into or negotiated for during
11 the term, including but not limited to...payments thereon, that are earned...or become due and payable
12 to [him] after the expiration of the term.” The clause contained an exception to the payment of
13 commissions to Lemon Lime if Brooks was obligated or became obligated to pay commissions to
14 another agent.

15 On October 25, 2021, Brooks attended a call back via Lemon Lime for Project A, a commercial
16 for Google. On October 28, 2021, Brooks booked the job for which he eventually earned a total
17 payment of approximately \$2,047.00. The commission due for this booking was 10% of the amount
18 earned.

19 On October 29, 2021, Ms. Harrington and Mr. Magnum entered into a Stock Purchase
20 Agreement (the “Purchase Agreement”) whereby Mr. Magnum became the sole owner of Lemon Lime.
21 During the hearing, Mr. Magnum testified there was no written agreement in existence as to the division
22 of Lemon Lime’s talent. He further testified the Purchase Agreement² is devoid of any instruction,
23 guidance, and/or understanding of the division of commissions, if any, due from talent. Instead, Ms.
24 Harrington and Mr. Magnum agreed to issue a pre-approved joint announcement (the “Joint
25 Announcement”) to their clients informing them of the change in ownership. The language of the Joint
26 Statement was attached as Exhibit A to the Purchase Agreement. Ms. Harrington sent the Joint
27

28 ² Due to confidentiality, the parties did not enter the Purchase Agreement in its entirety but Mr. Magnum and Brooks’ attorney testified as to its contents.

1 Announcement to Lemon Lime’s clients via their casting platform, Casting Networks, on that same
2 day. The announcement read in part:

3 ...we (Robin and Chaim) have decided to end our business alliance...it is our
4 sincere wish that **you experience a seamless transition** with continuous access to job
5 opportunities. Chaim will remain at Lemon Lime and become the sole owner of the
6 company. Robin and Lauren will begin operating their new talent agency. **We have**
7 **agreed to remain impartial in an effort to allow you, our trusted clients, the**
8 **opportunity to decide where you would like to continue to be represented. Each of**
9 **you has an open invitation to either agency.**

10 If you wish to remain at Lemon Lime, then nothing needs to be done. If you wish
11 to follow Robin and Lauren, simply respond to the email invitation to follow in a separate
12 thread.

13 Please know that this decision did not come easy for us. But in the end, it is our shared
14 belief that **empowering our clients to decide is the most honorable and amicable**
15 **pathway forward.** As L. Frank Baum...was famously quoted, “Everything has to come
16 to an end, sometime.” **May this end lead to bright new beginnings for us all.**
17 (Emphasis added.)

18 Shortly after the joint statement went out, Mr. Magnum sent his own message to Lemon Lime
19 clients via the same platform. In his message, he expressed his excitement in announcing he was the
20 sole owner of the agency. He also stated Ms. Harrington decided to retire from the company and remain
21 living in Mexico³. Mr. Magnum reiterated his commitment to the clients and asked them to contact
22 him to discuss the “new adventure” and he would answer any questions.

23 On October 31, 2021, Brooks emailed Mr. Magnum to inform him he was leaving Lemon Lime
24 and desired to transfer the Google booking to Wildflowers, Ms. Harrington’s new agency. In response
25 to the October 31 email, on November 1, 2021, Mr. Magnum replied to Brooks stating Brooks could
26 not sign with Wildflowers because “Wildflowers [was] not registered with SAG.” He warned that doing
27 so was against Brooks’ membership agreement. During a telephone conversation with Brooks that
28 night, Mr. Magnum reiterated his warning, adding Brooks’ “membership with SAG could be
jeopardized” if he signed with Wildflowers. Mr. Magnum followed up with a text message and again
made the same assertion. On November 3, 2021, in a reply to a text message from Mr. Magnum

³ Through testimony, Brooks established the statement was inaccurate. Ms. Harrington did not retire, she left Lemon Lime to start her own agency.

1 regarding the status of a release for Project A, Brooks told Mr. Magnum he asked the production to
2 release payments to Ms. Harrington.

3 On or around November 15, 2021, Mr. Magnum's attorney, David Schnider, emailed Brooks a
4 letter with the subject "Breach of Commercial and Print Agency Contract." Mr. Schnider informed
5 Brooks he remained contractually obligated to pay Lemon Lime commissions on any work he obtained
6 through the end of his Written Agency Agreement. Mr. Schnider also made Brooks aware he would
7 be personally liable for payment of commissions made to another agency other than Lemon Lime
8 during that term.

9 According to Mr. Magnum, the Joint Announcement gave Lemon Lime talent the "freedom" to
10 stay with Lemon Lime or go to Wildflowers, Ms. Harrington's new agency. However, he claims the
11 announcement did not release Lemon Lime's talent of their obligations under the Written Agency
12 Agreement and as a result, talent who left, owed Lemon Lime commissions on jobs procured by Lemon
13 Lime prior to their separation, and remained liable until the end of the term contained in the Written
14 Agency Agreement.

15 Conversely, Brooks testified the Joint Statement offered him and other talent the ability to leave
16 Lemon Lime without any restrictions. He points to the language in the Joint Statement that says Mr.
17 Magnum and Ms. Harrington "wish[ed] to be impartial" in order to empower their clients and in order
18 to make their transition seamless. Neither party called Ms. Harrington as a witness to testify about the
19 Joint Statement and the intent, if any, regarding the division of commissions.

20 Lemon Lime seeks two things: (1) An award of 10% commissions from the gross earnings for
21 Project A; and (2) Commissions on commercials, if any, procured by Wildflowers after Brooks'
22 October 31, 2021, separation through the end of the term of his Written Agency Agreement.

23 III. LEGAL ANALYSIS

24 Lemon Lime is a talent agency within the meaning of Labor Code §1700.4(a). Brooks is an
25 artist under Labor Code §1700.4(b). The Labor Commissioner is vested with jurisdiction over any
26 controversies arising over the contract between talent agencies and the artists they represent. Lab.
27 Code, §1700.23. The Labor Commissioner's jurisdiction includes the resolution of contract claims
28 brought by artists or agents seeking damages for breach of a talent agency contract. *Garson v. Div. of*

1 *Labor Law Enforcement* (1943) 33 Cal.2d 861, *Robinson v. Superior Court* (1950) 35 Cal.2d 379.

2 The issues in this case is as follows:

- 3 1. Is Lemon Lime entitled to commissions on Project A?
- 4 2. Is Lemon Lime entitled to commissions on commercials Brooks booked after his
5 October 31, 2021 separation from Lemon Lime?

6 **A. Lemon Lime is Entitled to Commissions on Project A – the Google Commercial**

7 A talent agency is entitled to receive post-termination commissions for all employment secured
8 by the agency prior to its termination. *Paradigm Talent Agency v. Charles Carroll, et al.* (TAC No.
9 12728, pp. 13, 16). Commissions are owed post termination for monies negotiated by the agent during
10 the term of agreement and the artist cannot unilaterally determine there is no further obligation to pay
11 for work already performed. *The Endeavor Agency, LLC v. Alyssa Milano* (TAC No. 10-05 pp. 7, 8).
12 The Written Agency Agreement expressly provides that Brooks shall pay commissions to Lemon Lime
13 on all “...contracts entered into or negotiated for during the term, including but not limited
14 to...payments thereon, that are earned...or become due and payable to [him] after the expiration of the
15 term.” Brooks received the notice of audition and callback from Lemon Lime. He booked the
16 commercial on October 28, 2021, one day before Lemon Lime changed its ownership status and three
17 days before he notified Mr. Magnum of his departure. Brooks argues he should be allowed to transfer
18 Project A to Wildflowers because his Written Agency Contract with Lemon Lime was signed by Ms.
19 Harrington. Brooks’ argument is not persuasive. There is no dispute that Mr. Magnum and Ms.
20 Harrington owned Lemon Lime and worked as a team when Brooks booked Project A. Lemon Lime
21 procured Project A. Therefore, Lemon Lime is entitled to post-termination commissions on Project A.

22 **B. Lemon Lime Is Not Entitled to Commissions For Jobs Procured Post Brooks’ October**
23 **31, 2021 Separation?**

24 Parties to a contract requiring performance can agree to end or change their agreement at any
25 time. 6 Cal.Jur. § 230, p.382; *Tompkins v. Davidow*, (1915) 27 Cal.App. 327. The parties’ release of
26 their contractual obligations upon termination can be confirmed by language contained in the actual
27 writing or by evidence and testimony of the parties. *Id.* at 335. In the present case, Mr. Magnum and
28 Ms. Harrington did not enter into an agreement that delineated who was allowed to collect and retain

1 commissions from clients who terminated their representation from Lemon Lime. Aside from Mr.
2 Magnum and Brooks' testimony, the only information and evidence presented at hearing was the
3 Written Agency Agreement and the Joint Statement issued to Lemon Lime clients.

4 When Brooks signed the Written Agency Contract, Mr. Magnum and Ms. Harrington both
5 possessed ownership interest in Lemon Lime. Mr. Magnum and Ms. Harrington decided to part ways
6 and entered into a Purchase Agreement. Shortly thereafter, Lemon Lime issued the Joint
7 Announcement that allowed clients to choose between remaining at Lemon Lime under its new
8 ownership or gave them the freedom to terminate their relationship with Lemon Lime and join Ms.
9 Harrington at her new agency. To that end, through the Joint Announcement, Lemon Lime instructed
10 its recipients to do nothing if they wished to stay or respond to an email invitation if they decided to
11 leave.

12 Mr. Magnum argues the Joint Announcement invited Lemon Lime clients to stay and also gave
13 them the freedom to representation by Ms. Harrington. Yet, he argues clients who chose to separate
14 from Lemon Lime were not released from their contractual obligation to Lemon Lime and are obligated
15 to pay commissions until the termination of their Written Agency Agreement with Lemon Lime
16 regardless of who procures the work. Mr. Magnum provided no legal authority to support his claim.

17 Unfortunately, Mr. Magnum and Brooks did not call Ms. Harrington as a witness. But, even
18 without her testimony, it is clear that Mr. Magnum's actions and argument go against the spirit of the
19 announcement – to empower Lemon Lime's clients to choose and allow them to experience a “seamless
20 transition.” That language contained in the Joint Announcement is what Brooks relied on when he
21 decided to leave Lemon Lime with the belief that he could terminate his contract by mutual accord of
22 all parties and be released of all contractual obligations after October 31, 2021. Absent any evidentiary
23 evidence to the contrary, the Labor Commissioner must deny Magnum's requested relief for
24 commissions owed on jobs procured after Brooks terminated his relationship with Lemon Lime.

25 **IV. ORDER**

26 For the above-stated reasons, IT IS HEREBY ORDERED that this Petition to Determine
27 Controversy is granted in part and denied in part:

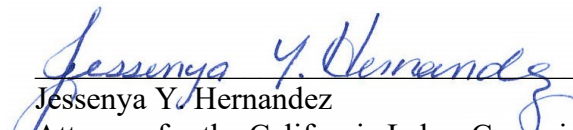
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1 Petitioner, LEMON LIME AGENCY, INC., is entitled to 10% commission for earnings
2 connected with Project A and interest calculated at 10% per annum through the date of satisfaction of
3 the award. Respondent, HORACE BROOKS shall provide an accounting⁴ to LEMON LIME, INC., of
4 all earnings from Project A within 30 days of receipt of this Determination and is required to remit
5 10% commission plus interest within 30 days of the accounting for unpaid commissions consistent with
6 this Order.

7 LEMON LIME AGENCY, INC. is not entitled to any commissions on jobs HORACE
8 BROOKS booked after his October 31, 2021 separation from LEMON LIME AGENCY , INC.

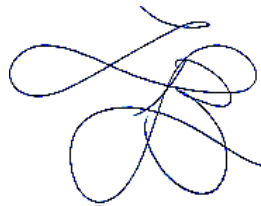
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10 Respectfully submitted,

11
12 Dated: 3/9/2023

13 
14 Jessenya Y. Hernandez
15 Attorney for the California Labor Commissioner

16 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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19
20 Dated: 3/9/2023

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22 Lilia Garcia-Brower
23 Labor Commissioner

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28 _____
⁴ An accounting of the earnings for Project A is necessary because \$2,047 was only an approximation.