

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 By: FRANK C. S. PEDERSEN,
3 Special Hearing Officer
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BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

10	DIANA ZIMMERMAN,)	
11)	TAC 23-79
	Petitioner,)	SFMP 50
12	vs.)	
13	BETTE KAYE and BETTY KAYE PRODUCTIONS,)	
14)	
	Respondents.))	
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16	RICHARD ZIMMERMAN,)	
17)	TAC 27-79
	Petitioner,)	SFMP 55
18	vs.)	
19	BETTE KAYE and BETTE KAYE PRODUCTIONS,)	
20)	<u>DETERMINATION</u>
	Respondents.))	
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21 The above-entitled controversy came on regularly for hearing
22 in Hollywood, California, on April 27, 1981, and in Sacramento,
23 California, on June 26, 1981, before the Labor Commissioner of
24 the State of California by Frank C. S. Pedersen, Counsel for the
25 Division of Labor Standards Enforcement, serving as Special Hear-
26 ing Officer under the provisions of Section 1700.44 of the Labor
27 Code of the State of California; petitioners Diana Zimmerman and

1 Richard Zimmerman appearing by Larry Ball and respondents Betty
2 Kaye and Bette Kaye Productions appearing by Richard L. Thurn
3 of Gray and Thurn, Inc.

4 Evidence, both oral and documentary having been introduced,
5 and the matter having been briefed and submitted for decision,
6 the following determination is made:

7 It is the determination of the Labor Commissioner:

8 1. That respondents return to the partnership known as
9 Kaye-Zim the sum of \$13,500.00 representing nine weeks' commis-
10 sions paid by said partnership to the respondents arising out
11 of the production known as "Sorcery '79" for Harrah's Club, State
12 Line, Nevada.

13 2. That the Labor Commissioner does not have jurisdiction
14 over any other matters arising out of the partnership for any
15 claims of petitioners.

16 I

17 INTRODUCTION

18 Petitioner Richard Zimmerman is a writer and producer of
19 magic acts and Diana Zimmerman is an actress, and both of them
20 are artists as defined in Section 1700.4 of the Labor Code, and
21 respondent is a duly licensed talent agency.

22 The respondent wrote a letter to petitioner Richard Zimmer-
23 man on November 11, 1977 suggesting that they get together to
24 discuss a magic show for Harrah's, Lake Tahoe, and shortly there-
25 after the parties hereto met at the Highlands Inn in Carmel and
26 they agreed to co-produce "Sorcery '79" with Diana Zimmerman
27 as the featured star, and on June 14, 1978 respondents entered

1 into an agreement with Harrah's for the production of "Sorcery
2 '79" and subsequently a Casual Engagement Agreement was executed
3 between Diana Zimmerman and Bette Kaye compensating Diana Zimmer-
4 man at the rate of \$2,000 per week, and a partnership agreement
5 was executed by and between respondent, Bette Kaye, her husband
6 and the two Zimmermans, forming a partnership known as Kaye-Zim
7 for the purpose of producing the "Sorcery '79" show. Bette Kaye
8 was the executive producer and Richard Zimmerman was a writer,
9 technical producer, builder of magic equipment, etc.

10 After the show had run for three weeks respondent fired
11 Diana Zimmerman without notice or cause as claimed by Diana
12 Zimmerman and with good cause as claimed by respondent. At the
13 time that Diana Zimmerman was fired it is alleged that Richard
14 Zimmerman left the show.

15 Diana Zimmerman claimed unpaid wages of \$12,000 and Richard
16 Zimmerman claims \$9,000 and other expenses.

17 II

18 DISCUSSION

19 The partnership agreement entered into between the parties
20 is a comprehensive document prepared by a reputable law firm
21 and all the evidence would indicate that "Sorcery '79" was a
22 business venture entered into by a legitimate partnership known
23 as Kaye-Zim consisting of petitioners and respondent and any
24 disputes arising out of such a partnership agreement are not
25 within the jurisdiction of the Labor Commissioner.

26 It is immaterial whether Diana Zimmerman's wage claim
27 against respondent is within the jurisdiction of the Labor

1 Commissioner of Nevada or California as the evidence clearly
2 shows that the partnership, and not Bette Kaye, was the employer.

3 Respondent's Exhibit "A" is an agreement between Kaye-Zim
4 and Leonard Moss for his services as a composer/music arranger.
5 It is signed by both Bette Kaye and Richard Zimmerman on behalf
6 of Kaye-Zim Company.

7 At the time of the second hearing at Sacramento financial
8 records disclosed that the respondent's talent agency did re-
9 ceive commissions of \$1500 per week for nine weeks, totalling
10 \$13,500. There is no contract or any agreement providing for such
11 commissions. It is noted that Bette Kaye pretty much ran the
12 financial details of the partnership as well as being the execu-
13 tive producer of the show.

14 Respondent cannot, on the one hand, contend that the Labor
15 Commissioner has no jurisdiction in this matter as it is a part-
16 nership dispute, and on the other hand seek commissions as a
17 talent agency from the partnership.

18 It obviously appears to be a unilateral act by respondent
19 to which the petitioners as co-partners did not agree, and in
20 this respect the Labor Commissioner does have jurisdiction over
21 a licensed talent agency involving commissions received unsup-
22 ported by any contract or agreement.

23 The Hearing Officer therefore makes the following Findings
24 of Fact and Conclusions of Law:

25 FINDINGS OF FACT

26 1. Diana Zimmermann and Richard Zimmerman and Betty Kaye
27 and her husband were co-partners in a partnership known as Kaye-

1 Zim which produced a show known as "Sorcery '79" at Harrah's,
2 Lake Tahoe, which ran for nine weeks.

3 2. Petitioners rendered services either as employees of
4 the partnership or as co-partners and any claims they may have
5 as individuals against respondent are not within the jurisdic-
6 tion of the Labor Commissioner.

7 3. Bette Kaye illegally paid herself commissions totalling
8 \$13,500.

9 4. Bette Kaye and Bette Kay Productions is a talent agency
10 licensed by the State of California.

11 5. Petitioners are entitled as partners to have returned
12 to the partnership all commissions paid to respondent.

13 CONCLUSIONS OF LAW

14 1. Petitioners, while artists within the meaning of Labor
15 Code Section 1700.4, are for the purposes of this controversy
16 co-partners of Kaye-Zim.

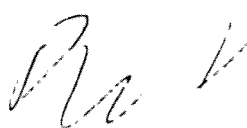
17 2. Any action for wages or partnership accounting is not
18 within the jurisdiction of the Labor Commissioner.

19 3. Respondent is ordered to return to the partnership known
20 as Kaye-Zim the sum of \$13,500.00 to constitute part of an
21 accounting to be rendered between the parties in a court of
22 competent jurisdiction.

23 DATED: January 21, 1982.


Frank C. S. Pedersen
Special Hearing Officer

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25 ADOPTED: 


Patrick W. Henning
Labor Commissioner
State of California

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