

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 By H. THOMAS CADELL, JR.
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6 BEFORE THE LABOR COMMISSIONER
7 OF THE STATE OF CALIFORNIA
8
9

10 MARY-MARGARET HUMES,
11 Petitioner,

12 vs.

13 MARGIL VENTURES, INC.,
14 a California corporation;
and GILBERT A. CABOT,

15 Respondents.
16

NO. TAC 19-81 SF/MP 116
DETERMINATION

17 The above entitled matter came on regularly for hearing
18 on March 17, 1982 before the Labor Commissioner of the State
19 of California; H. THOMAS CADELL, JR., attorney for the Labor
20 Commissioner, serving as Special Hearing Officer pursuant to
21 Labor Code § 1700.44; MARY-MARGARET HUMES, petitioner, appearing
22 by counsel JOHN P. REITMAN of the firm of JOHNSON, MANFREDI &
23 THORPE; respondents MARGIL VENTURES, INC. and GILBERT A. CABOT,
24 an individual, not otherwise appearing in person or by counsel.

25 Evidence, both oral and documentary, having been intro-
26 duced and the matter being submitted for decision, the following
27 determination is made:

CIV 5727

COURT PAPER
STATE OF CALIFORNIA
113 (REV. 8-72)

1 1. That MARY-MARGARET HUMES was, during all times in
2 question, an artist as that term is defined in Labor Code
3 § 1700.4.

4 2. That MARGIL VENTURES, INC. was, in fact, simply the
5 alter ego of GILBERT A. CABOT.

6 3. That GILBERT A. CABOT, as an individual and by and
7 through his alter ego, MARGIL VENTURES, INC., did, during all
8 times in question, act as a Talent Agent as that term is defined
9 in Labor Code § 1700.4.

10 4. That respondents during the time in question were
11 not licensed as Talent Agents pursuant to the requirements of
12 Labor Code § 1700 et seq.

13 5. That the contract dated September 22, 1980 between
14 MARGIL VENTURES, INC. and MARY-MARGARET HUMES, and any and all
15 amendments and/or attachments, written or oral, was a subterfuge
16 and sham designed to avoid the licensing provisions of Labor
17 Code § 1700 et seq. and is, therefore, null and void.

18 6. That respondents MARGIL VENTURES, INC. and GILBERT A.
19 CABOT, jointly and severally, are ordered to return to
20 petitioner MARY-MARGARET HUMES the sum of \$30,036.36, that
21 sum being the total amount of money earned by MARY-MARGARET
22 HUMES for services performed as an artist during the times in
23 question, which sum was diverted by respondents, and each of
24 them, to their own use and benefit.

25 DISCUSSION

26 The testimony in this case, both oral and documentary,
27 sets out a litany of events which leave no doubt in this

1 hearing officer's mind that the actions of respondents herein
2 were calculated efforts to deceive and defraud petitioner, a
3 young and aspiring actress, who was not necessarily wise in the
4 ways of business.

5 Respondents undertook to represent petitioner and
6 procure employment for her on a regular and continuing basis
7 both before and subsequent to the signing of the contract
8 dated September 22, 1980. That contract purported to engage
9 petitioner as an employee of the corporation. The corporation
10 (which, in fact, was nothing more than the alter ego of
11 respondent CABOT) was to collect all fees for the services of
12 petitioner in return for which the corporation was to pay
13 petitioner an unspecified salary of not less than \$6,000.00
14 per year.¹ No "salary" was ever paid.

15 The Labor Commissioner is "free to search out illegalities
16 lying behind the form in which a transaction has been cast for
17 the purpose of concealing such illegality" (Buchwald v. Superior
18 Court (1967) 254 Cal.App.2d 347).

19 The contract here is so patently a subterfuge that the
20 facts surrounding its execution by the parties involving duress
21 need not be addressed. However, the provisions of the contract
22 which purport to name petitioner as president of MARGIL VENTURES,
23 INC. and secure to her an equitable interest in said corporation
24 were obviously never intended to be performed. The respondent,
25 GILBERT CABOT, never took action further than filing articles of

26 ¹The figure \$6,000.00 was obviously intended to meet the
27 requirements of Civil Code § 3423.

1 incorporation. No statement of officers was ever filed and no
2 stock was ever issued. There is no evidence that any meetings
3 were held by the "corporation" or that there were any "corporate"
4 assets.

5 Monies received by CABOT as payment for services of
6 petitioner were sometimes placed in an account at the Hollywood
7 Branch of Garfield Bank in the name of MARGIL VENTURES, INC.
8 and sometimes placed in still another account at that bank in
9 an account in the name of "SUNRINTINE, LTD.," an organization of
10 which CABOT was a principal.

11 The prime objective of the contract was to procure
12 employment and further the career of petitioner. However,
13 since petitioner is a member of the class to be protected by
14 the provisions of Labor Code § 1700 et seq., she cannot be con-
15 sidered in pari delicto. (Lewis & Queen v. N. M. Ball Sons,
16 48 Cal.2d 141 at 153.)

17 As the facts presented at the hearing clearly demonstrate,
18 this was not a case of a minor infraction of some esoteric rule,
19 but a deliberately designed fraud perpetrated by respondents
20 upon the petitioner, the very type of activity which the law
21 seeks to prevent.

22
23 Dated: April 15, 1982

H. Thomas Cadell, Jr.
H. THOMAS CADELL, JR.
Attorney for Labor Commissioner
and Special Hearing Officer

24
25 ADOPTED

26
27 Dated: April 19, 1982

Patrick W. Henning
PATRICK W. HENNING
Labor Commissioner of
State of California