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DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
State of California  
JOAN E. TOIGO, Special Hearing Officer  
30 Van Ness Avenue, Room 4400  
San Francisco, CA 94102  
(415) 557-3827

Attorney of the Labor Commissioner

BEFORE THE LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

DAVID CRANE AGENCY, INC.	)	
	)	CASE NO. TAC 13-89
Petitioners,	)	
	)	DETERMINATION
vs.	)	
	)	
LLOYD LINDSEY YOUNG,	)	
	)	
Respondent.	)	

The above entitled controversy came on regularly for hearing before the Labor Commissioner, Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, by JOAN E. TOIGO, serving as Special Hearing Officer under the provisions of Section 1700.44 of the Labor Code of the State of California, Petitioner DAVID CRANE, appearing by the law offices of MCGUINN, HILLSMAN and PALEFSKY, by JOHN A. MCGUINN, and on behalf of Respondent, who was not present, THE LAW OFFICES OF TUTTLE AND TAYLOR, by MARIE RONGONE.

Evidence, both oral and documentary, having been introduced by Petitioner, the following determination is made:

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It is the determination of the Labor Commissioner that:

1. Since it is undisputed that Petitioner was the procuring cause of Respondent's employment with WWOR-TV, Petitioner is entitled to the compensation set forth in the written agreement between the parties.

2. The Labor Commissioner lacks jurisdiction over Respondent's counterclaim regarding the alleged insufficiency of Petitioner's performance under the agreement, and leaves that issue to the appropriate forum.

I  
INTRODUCTION

On May 31, 1989, Petitioner filed with the Labor Commissioner a Petition to Determine Controversy pursuant to Labor Code Section 1700.44.

On July 21, 1989, Respondent filed an answer to the Petition to Determine Controversy.

The Petition alleges that on or about June 16, 1983, the parties entered into a written contract whereby Petitioner was to act in the capacity of a licensed talent agent on behalf of respondent. Under the terms of the contract, Petitioner was to act as Respondent's exclusive talent agent to negotiate contracts for Respondent's professional services for which Respondent agreed to pay 7 percent of all compensation received by him pursuant to any contract so negotiated to Petitioner.

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2 In 1984, Petitioner, acting as agent for Respondent under  
3 the contract, secured a job and negotiated an employment agree-  
4 ment for Respondent with WWOR-TV in Secaucus, New Jersey, which  
5 expired December 3, 1989.

6 On or about June, 1988, Respondent terminated the agency  
7 relationship between the parties by means of a letter dated June  
8 23, 1988, in which Respondent stated that he would continue to  
9 honor all obligations to Petitioner in connection with existing  
10 agency agreements between the parties. Up until July, 1988,  
11 Respondent made the 7 percent payments to Petitioner as required  
12 by the agreement; however, as of July 1988, Petitioner alleges  
13 that respondent breached the agreement by failing to make pay-  
14 ments to Petitioner as required, and as Respondent had promised  
15 to do in the June 23, 1988 letter.

16 Petitioner alleges that he has been damaged in the amount of  
17 \$18,432.36, as well as attorneys fees and costs incurred in  
18 recovering the money due him under the contract between the  
19 parties.

20 In the Petitioner's prayer for relief, Petitioner has re-  
21 quested:

22 1. Payment of all monies due under the contract dated June  
23 16, 1983 between the parties;

24 2. All interest accrued thereon at the legal interest  
25 rate, compounded up to and including the day of payment;

26 3. Attorneys fees and cost incurred by Petitioner due  
27 Respondent's breach of contract; and

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2           4.    Such other relief as the Commissioner deems is right  
3 and just.

4           In the Answer to the Petition, Respondent denies the sub-  
5 stantive allegations raised therein and raises the following  
6 counterclaim:

7           1.    Petitioner represented Respondent in a contract nego-  
8 tiation in the State of New Jersey, resulting in the contract of  
9 employment with WWOR-TV in Secaucas, New Jersey;

10           2.    Petitioner was reckless, careless and negligent in his  
11 preparation for and negotiation of said contract, whereby Respon-  
12 dent has paid out monies to petitioner for services not received  
13 or provided in a negligent and unworkmanlike manner.

14           As a result of Respondent's counterclaim, he seeks relief  
15 from Petitioner in the form of all monies wrongfully paid under  
16 the contract.

17           Respondent, further, raises the following affirmative  
18 defenses;

19           1.    The clean hands doctrine;

20           2.    Petitioner materially breached the contract between the  
21 parties by failing to adequately, zealously, and properly nego-  
22 tiate and represent on behalf of the Respondent with third  
23 parties;

24           3.    Petitioner failed to meet all conditions precedent;

25           4.    Respondent relied, to his detriment, on Petitioner's  
26 negotiations and representations.  
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II

ISSUES

Inasmuch as there is no dispute between the parties that Petitioner was the procuring cause of Respondent's employment contract with WWOR-TV, the issues are as follows:

1. Does the Labor Commissioner have jurisdiction over Respondent's counterclaim that Petitioner unsatisfactorily performed his duties under the parties' written agreement?

III

APPLICABLE LAW

Petitioner brought this action under the provisions of Division 2, Part 6, Chapter 4 of the Labor Code commencing with Section 1700. This portion of the Labor Code is commonly known as the Talent Agency Act ("Act").

IV

DISCUSSION AND FINDINGS

The Legislature enacted the Act to provide for the licensing of all talent agents and approval of talent agent contracts by the Labor Commissioner in an attempt to protect artists from the unscrupulous practices rampant in the entertainment industry. The Labor Commissioner's authority to determine controversies under the Act, however, is limited to determinations relating to

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2 the bona fide procurement of employment which would entitle a  
3 talent agent to compensation pursuant to an existing agreement  
4 with an artist and/or the unlicensed procurement of employment by  
5 a personal manager, or other person, in which case the Labor Com-  
6 missioner may void the agreement in question between the un-  
7 licensed agent and an artist.

8 The issue of a party's quality of performance under a talent  
9 agent agreement, however, is outside the scope of that which is  
10 contemplated by the Act and, instead, lies in a private action  
11 for breach of contract and/or tort.

12 Since Respondent's counterclaim alleges that the Petitioner  
13 failed to adequately, zealously and properly negotiate and repre-  
14 sent Respondent, this issue goes to Petitioner's performance un-  
15 der the contract -- an issue which the Labor Commissioner lacks  
16 the jurisdiction and expertise to determine.

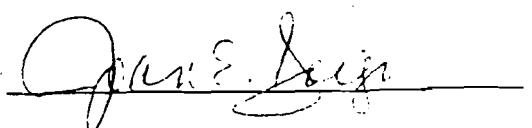
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19 CONCLUSION

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21 Consistent with the Labor Commissioner's authority under the  
22 Act, since it is undisputed that the Petitioner was the procuring  
23 cause of Respondent's employment contract with WWOR-TV, the  
24 talent agency agreement between the parties must be given full  
25 force and effect. Respondent's counterclaim regarding the  
26 quality of performance is left to the appropriate forum.  
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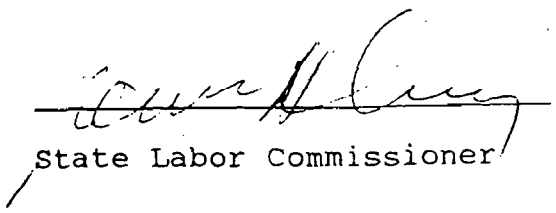
Dated: June 15, 1990



JOAN E. TOIGO  
Special Hearing Officer

ADOPTED:

Dated: ~~June 15~~ June 19, 1990

  
State Labor Commissioner