

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
4 By: MELANIE V. SLATON, State Bar #137565
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9 Special Hearing Officer

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BEFORE THE STATE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

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| RICHELL RENE WRIGHT, |) | Case No. TAC 19-03 |
| |) | (Cal Labor Code § |
| Petitioner, |) | 1700.44) |
| |) | |
| |) | DETERMINATION OF |
| vs. |) | CONTROVERSY |
| |) | |
| |) | |
| GILBERT A. CABOT, |) | |
| |) | |
| Respondent, |) | |
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20 The above-entitled controversy came on regularly for
21 hearing on February 25 and 26, 2004 before the Labor Commissioner,
22 Division of Labor Standards Enforcement, State of California by
23 Melanie V. Slaton, serving as Special Hearing Officer under the
24 provisions of Labor Code Section 1700.44.

25 Petitioner, Richell Rene Wright, (hereinafter "Petitioner" or
26 "Ms. Wright") appeared through Stokes, Bartholomew, Evans &
27 Petree, P.A, by Paul S. Davidson and respondent, Gilbert A. Cabot,

1 and film. Ms. Wright testified that Mr. Cabot "guaranteed" that
2 he would be able to get Ms. Wright work as a television artist.
3 Ms. Wright stated that Mr. Cabot claimed that he had vast
4 experience and contacts in the film and television industry and
5 that he had gotten Elizabeth Shue the role in the film "Leaving
6 Las Vegas".

7 There was no evidence that Mr. Cabot acted in conjunction
8 with, and at the request of, a licensed talent agency in the
9 negotiation of an employment contract.

10 Ms. Wright testified that Mr. Cabot arranged for her to meet
11 with and audition for producers of a new network series, "Second
12 Noah." In fact, the evidence showed Mr. Cabot provided Ms. Wright
13 with a number of scripts that Ms. Wright could use to audition for
14 parts in the television and film industry.

15 In 1996, Mr. Cabot and Ms. Wright entered into a written
16 agreement which identifies Mr. Cabot as a "consultant and packager
17 in the entertainment and leisure industries..." It compensates
18 Mr. Cabot with "twenty-five percent (25%) of gross payments under
19 any indirect contract as reimbursement for administrative costs
20 and fees." The agreement was signed by Ms. Wright and
21 Mr. Cabot.

22 After signing the agreement, there is evidence that Mr. Cabot
23 "pitched" Ms. Wright for the upcoming television season, including
24 an offer for two days for \$7500.00 as a singer (on camera) and a
25 TV movie package for five days and \$42,000. (Exhibit 11)

26 Ms. Wright testified that her sole purpose in retaining Mr.
27 Cabot was to find acting work in television and film. Mr. Cabot

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1 purchased an ad in Hollywood Reporter to advertise Ms. Wright's
2 availability as an actress. (Exhibit 45)

3 Additionally, the oral and documentary testimony reflected
4 that fact that Mr. Cabot made a pitch to a potential distributor
5 to have Ms. Wright appear on television as a celebrity to market
6 her line of clothing. (Exhibits 13, 14 and 15)

7 Mr. Cabot was the sole witness for Respondent. Mr. Cabot
8 denied that he was involved with procuring employment for Ms.
9 Wright as an actor, describing his role as one of an entertainment
10 partnership only.

11 Counsel for Ms. Wright sought to impeach Mr. Cabot's
12 testimony with evidence of felony convictions. These felony
13 convictions have been duly noted in evaluating Mr. Cabot's
14 credibility. Additionally, counsel for Ms. Wright, highlighted
15 the fact that Mr. Cabot has been found in violation of two prior
16 determinations of controversy under the Talent Agencies Act.
17 (Exhibits 37 and 38) (Michelle Edith Martin vs. Gilbert A. Cabot,
18 TAC 21-96 and Mary-Margaret Humes vs. Margil Ventures and Gilbert
19 A. Cabot, TAC 19-81)

20 Given the above, the evidence is overwhelming that Mr. Cabot
21 was operating as a talent agent who actively solicited employment
22 on Ms. Wright's behalf in a manner of instances.

23 The remaining issue concerns Petitioner's request for
24 sanctions for Respondent's alleged failure to comply with the
25 hearing officer's order dated December 26, 2003. Respondent was
26 ordered to provide documents requested by Ms. Wright's counsel in
27 his letter of August 26, 2003. Mr. Cabot testified that his

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1 former counsel withdrew from the instant matter without ever
2 informing Mr. Cabot that Petitioner had requested documents. Mr.
3 Cabot stated that he had asked his former counsel for his legal
4 file and had not received it. Mr. Cabot said that he had never
5 received the order dated December 26, 2003 and the letter
6 requesting documents of August 26, 2003.

7 Counsel for Ms. Wright disputed the allegations of Mr. Cabot
8 concerning whether Mr. Cabot was properly served with the request
9 for documents. At the conclusion of the first day of hearing, the
10 hearing officer requested that Mr. Cabot bring any documents
11 responsive to Petitioner's August 26, 2003 letter to the second
12 day of hearing.

13 At the second day of hearing, Mr. Cabot testified that he
14 attempted to obtain any additional documents responsive to Ms.
15 Wright's request, and that Mr. Cabot had in fact produced all
16 documents responsive to the request. Given that there is no
17 evidence that any existing documents were withheld, there is no
18 prejudice to Petitioner. Petitioner's request for sanctions is
19 denied.

20 CONCLUSIONS OF LAW

- 21 1. Petitioner is an "artist" within the meaning of Labor
22 Code Section 1700.4(b)
- 23 2. The Labor Commissioner has jurisdiction to determine
24 this controversy pursuant to Labor Code Section
25 1700.44(a).
- 26 3. Respondent acted as a "talent agency" within the meaning
27 of Labor Code Section 1700.4(a). "'Talent Agency' means
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1 a person or corporation who engages in the occupation of
2 procuring, offering, promising, or attempting to procure
3 employment or engagements for an artist or artists..."

4 The evidence in this matter goes far beyond satisfying
5 the minimal standard requirement established in Waisbren
6 v. Peppercorn Production, Inc. (1995) 41 Cal. App. 4th
7 246, 255-260. The Wasibren court held that Labor Code
8 Sections 1700-1700.47 require talent agency license even
9 where procurement activities are only incidental.

10 4. The exclusion of the licensing requirement pursuant to
11 Labor Code Section 1700.44(d) does not apply here
12 because there is no evidence that Respondent acted in
13 conjunction with, and at the request of, a licensed
14 talent agency in the negotiation of an employment
15 contract.

16 5. Respondent Gilbert A. Cabot violated Labor Code Section
17 1700.5, in that he engaged in and carried out the
18 occupation of a talent agency without first procuring a
19 license from the Labor Commissioner. The written
20 agreement between Respondent and Petitioner is
21 accordingly void ab initio and is unenforceable for all
22 purposes (Waisbren v. Peppercorn Productions, Inc,
23 supra., 41 Cal App. 4th 246; Buchwald v. Superior Court
24 (1967) 254 Cal.App. 2d 347)

25 6. Respondent has no right to any commissions regarding
26 Petitioner. There was no evidence presented that
27 Petitioner actually paid any commissions to Respondent.

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Petitioner is therefore not seeking any recovery of commissions paid.

7. Petitioner's request for sanctions is denied.

DETERMINATION

The written contract entered into between Petitioner Ms. Wright and Respondent Mr. Cabot is void and unenforceable for all purposes.

DATED: March 30, 2005

By: Melanie V. Slaton
Melanie V. Slaton
Special Hearing Officer

The above determination is adopted in its entirety.

Dated: April 1, 2005 By: Donna Dell
Donna Dell
Labor Commissioner

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. §1013a)

(RICHELL RENE WRIGHT v. G.A. CABOT)
(TAC 19-03)

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102.

On April 4, 2005, I served the following document:

DETERMINATION OF CONTROVERSY

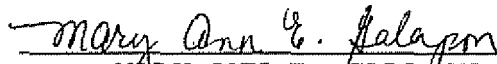
by placing a true copy thereof in envelope(s) addressed as follows:

PAUL S. DAVIDSON, ESQ.
MARK A. BOGDANOWICZ, ESQ.
STOKES BARTHOLOMEW EVANS & PETREE, P.A.
424 Church Street, Suite 2800
Nashville, TN 37219-2386

GILBERT A. CABOT
REO GROUP
Post Office Box 144
Hollywood, CA 90078-0144

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on April 4, 2005, at San Francisco, California.



MARY ANN E. GALAPON