

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

11 STATE OF CALIFORNIA

12 DAVID SHAPIRA & ASSOCIATES, INC.,  
13 a corporation,

14 Petitioner,

15 vs.

16 MARTIN KOVE, an individual, and  
17 STAGEFRIGHT PRODUCTIONS INC., a  
18 corporation, and DOES 1-20, inclusive,

19 Respondents.

**CASE NO.: TAC-52833**

**DETERMINATION OF CONTROVERSY**

20 **I. INTRODUCTION**

21 The above-captioned matter, a Petition to Determine Controversy under Labor Code  
22 section 1700.44, came on regularly for hearing in Los Angeles, California, on July 27, 2022, before  
23 the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner,  
24 DAVID SHAPIRA & ASSOCIATES INC., a corporation (hereinafter, referred to as “SHAPIRA”)  
25 was represented by S. Michael Kernan, Esq. and R. Paul Katrinak, Esq. of THE KERNAN LAW  
26 FIRM. Respondents, MARTIN KOVE, an individual; and STAGEFRIGHT PRODUCTIONS  
27 INC., a corporation (hereinafter, collectively referred to as “KOVE”) were represented by Richard  
28 M. Rosenthal, Esq. and Valentina Kudryavtseva, Esq. The matter was taken under submission and  
post-trial briefs submitted. Based on the evidence at this hearing and on the other papers on file  
in this matter, the Labor Commissioner adopts the following decision.

1 **II. FINDINGS OF FACT**

2 1. Petitioner, SHAPIRA, is a California licensed talent agency. SHAPIRA has been licensed  
3 as a talent agency for 54 years.

4 2. KOVE is an actor best known for his performances in the “*Karate Kid*” films and the  
5 sequel series “*Cobra Kai*”. *Cobra Kai* is a popular television series broadcast on Netflix.

6 3. In 2017, KOVE entered into an employment contract for seasons 1-3 of the television series  
7 *Cobra Kai* (hereinafter “*Cobra Kai I*”). In December 2018, after the first season of *Cobra Kai*,  
8 Gary Ousdahl began representing KOVE as his personal manager.

9 4. During 2019, the future of *Cobra Kai* was uncertain as the series didn’t have a distributor.  
10 Sometime thereafter, Netflix agreed to distribute the series. Before Netflix’s participation, there  
11 was no guarantee the series would be picked up for additional seasons.

12 5. In or about October 2019, SHAPIRA ran into KOVE at a film screening and KOVE told  
13 SHAPIRA he wanted SHAPIRA as his talent agent. After that meeting, Ousdahl reached out by  
14 telephone to SHAPIRA seeking to convince SHAPIRA to represent KOVE. SHAPIRA claimed  
15 that, in this call, Ousdahl stated SHAPIRA would be compensated for future seasons of *Cobra*  
16 *Kai*. Ousdahl denied making this statement and testified he never entered into any agreement for  
17 SHAPIRA to commission *Cobra Kai*.

18 6. On or around November 7, 2019, the parties orally agreed that SHAPIRA would act as  
19 KOVE’s talent agency, and in return SHAPIRA would receive 10% commissions. There was no  
20 written contract between the parties.

21 7. The parties disagree as to whether the oral agreement enabled SHAPIRA to commission  
22 all jobs negotiated and performed by KOVE during the term of the contract, or as KOVE argues,  
23 commission only new jobs directly procured by SHAPIRA. SHAPIRA directly procured two jobs  
24 for KOVE and KOVE paid 10% commission on those jobs. The only commissions in dispute here  
25 are for *Cobra Kai* seasons 4-7. The testimony of the parties differs dramatically on whether  
26 SHAPIRA is entitled to commission *Cobra Kai* seasons 4-7.

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1 8. SHAPIRA testified he would be KOVE's agent if he could commission any deals he was  
2 involved in, including *Cobra Kai*. But SHAPIRA also testified that neither KOVE nor Ousdahl  
3 told SHAPIRA he wouldn't commission *Cobra Kai*. SHAPIRA also testified he did not recall  
4 KOVE ever telling him he would commission *Cobra Kai*. SHAPIRA's testimony was unclear.

5 9. Conversely, KOVE testified that he told SHAPIRA, in their first meeting, that he could not  
6 commission *Cobra Kai*. KOVE testified he asked SHAPIRA to obtain any other employment, such  
7 as branding, TV, movies, series, or anything else. KOVE testified he would commission  
8 SHAPIRA on anything that he obtained.

9 10. In June 2020, after *Cobra Kai* was picked up again, Ousdahl sent the 2017 *Cobra Kai I*  
10 contract to SHAPIRA. Ousdahl wanted SHAPIRA to be aware of the exclusivity portion of the  
11 contract for any other employment solicited for KOVE. In or about October 2020, KOVE and  
12 Ousdahl brought in entertainment attorney Eric Feig and his firm, Eric Feig Entertainment and  
13 Media Law, to engage in the negotiation of KOVE's contract renewal on *Cobra Kai* with Sony,  
14 which was producing the series through Mesquite Productions Inc. Feig initially conversed with  
15 Sony in October 2020 regarding the negotiation of the renewal of the *Cobra Kai* contract for  
16 seasons 4-7 (hereinafter "Cobra Kai II"). KOVE and Ousdahl testified that on or about November  
17 12, 2020, KOVE instructed Ousdahl and Feig to keep SHAPIRA apprised of the status of the  
18 "Cobra Kai II" contract.

19 11. Feig then arranged a call on or about November 12, 2020, to brief Ousdahl, SHAPIRA  
20 and KOVE about the status of the negotiations. SHAPIRA had another call with Feig and Ousdahl  
21 on or around December 18, 2020, when the latest offer was discussed. A third and final call was  
22 held on or about December 29, 2020. The deal was closed with Sony by Feig two days later. The  
23 parties disagree as to SHAPIRA's involvement with the negotiations.

24 12. SHAPIRA admitted he never spoke to or negotiated with anyone at Sony regarding  
25 KOVE's employment on *Cobra Kai*. He testified that he never emailed or called anyone at Sony  
26 regarding *Cobra Kai* and that Eric Feig was handling the negotiations on KOVE's behalf.  
27 SHAPIRA testified that Feig handled the negotiations on his own and did a good job. Feig testified  
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1 that he was directly communicating and negotiating with Sony. Feig testified that SHAPIRA was  
2 not on any call with Sony, nor did he rely on or use SHAPIRA’s advice in negotiating the deal.

3 13. In contrast, SHAPIRA testified that he offered numerous suggestions for the negotiations  
4 and to raise Respondent's salary, including the signing bonus, which was ultimately agreed to at  
5 \$150,000. SHAPIRA testified he was involved at every step of the way in discussing the  
6 negotiations with Feig and Ousdahl. SHAPIRA testified the team would discuss the strategy in  
7 going back to Sony resulting in an increase of KOVE’s salary. Ultimately, the deal was closed on  
8 December 30, 2020, and KOVE received a \$150,000 signing bonus plus \$175,000 per episode  
9 guaranteed. KOVE complemented SHAPIRA on the job that he did. KOVE then said he would  
10 pay a commission to SHAPIRA of \$15,000 on the signing bonus but would pay no commission  
11 on the remainder of the contract. SHAPIRA objected to KOVE’s proposal and testified that was  
12 not the deal and that he was entitled to commission all of “Cobra Kai II” (seasons 4-7).

### 13 III. ARGUMENT

14 Labor Code section 1700.4(b) includes “artists rendering professional services in television  
15 ... and other entertainment enterprises” in the definition of “artist.” Petitioner is therefore an  
16 “artist” within the meaning of Labor Code section 1700.4(b). It was stipulated that SHAPIRA is a  
17 California licensed talent agency.

18 Labor Code section 1700.23 provides the Labor Commissioner is vested with jurisdiction  
19 over “any controversy between the artist and the talent agency relating to the terms of the contract,”  
20 and the Labor Commissioner’s jurisdiction has been held to include the resolution of contract  
21 claims brought by artists or agents seeking damages for breach of a talent agency contract.  
22 *Robinson v. Superior Court* (1950) 35 Cal.2d 379, *Garson v. Div. Of Labor Law Enforcement*  
23 (1949) 33 Cal.2d 861. Therefore, the Labor Commissioner has jurisdiction to determine this  
24 matter.

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1 The issues are:

- 2 1. Was there an oral contract between the parties?
- 3 2. Did the oral contract enable SHAPIRA to commission all deals during the term of  
4 the contract or just jobs procured or negotiated by SHAPIRA?
- 5 3. Does Title 8, California Code of Regulations, section 12002 entitle SHAPIRA to  
6 commission “Cobra Kai II” (seasons 4-7)?
- 7 4. Did SHAPIRA procure or negotiate “Cobra Kai II” entitling SHAPIRA to 10%  
8 commissions for *Cobra Kai* seasons 4-7?

9 **1. Was there an oral contract?**

10 The essential elements of a contract were present - parties capable of contracting who  
11 consented with a lawful object and sufficient consideration. (Civil Code, “C.C”, §1550.) The  
12 parties’ agreement for the procurement of employment in the entertainment industry was for a  
13 lawful purpose and the understanding that SHAPIRA would seek 10% commission for  
14 engagements procured is sufficient consideration. KOVE’s acceptance established the requisite  
15 “meeting of the minds”. A contract was formed. (C.C. §1621)

16 The parties agreed SHAPIRA would act as KOVE’s talent agency for 10% commissions  
17 on earnings. An oral contract with an agent is as enforceable as a written one. *Beyeler v. William*  
18 *Morris Agency* (TAC 32-00, Sept. 5, 2001). But the issue here is whether the oral contract enabled  
19 SHAPIRA to commission all work performed by KOVE during the relationship or rather, only  
20 work directly procured by SHAPIRA?

21 SHAPIRA argues two legal theories, either of which if established, would entitle him to  
22 commission “Cobra Kai II”. First, SHAPIRA argues that SHAPIRA procured and negotiated  
23 “Cobra Kai II” as a part of the *Cobra Kai* team. Next, SHAPIRA argues that even if he didn’t  
24 procure or help to negotiate *Cobra Kai*, “Mr. Shapira would commission 10% on the deals made  
25 during the term of the contract.” This second argument doesn’t require actual procurement or  
26 negotiation of “Cobra Kai II” but rather entitles SHAPIRA to commissions 10% on any deal made  
27 during the term of the parties’ oral contract.

1           **2. Did the oral contract enable SHAPIRA to commission all deals during the term of**  
2           **the contract or just jobs procured or negotiated by SHAPIRA?**

3           For SHAPIRA to prevail on this theory, SHAPIRA must establish that the parties agreed  
4 that SHAPIRA would commission all deals during the term of the contract? The burden to  
5 establish that all deals are commissionable, whether procured by SHAPIRA, is on SHAPIRA.

6           SHAPIRA has not met his burden of proof on this issue. The proper burden of proof is  
7 found at Evidence Code section 115 which states, “[e]xcept as otherwise provided by law, the  
8 burden of proof requires proof by preponderance of the evidence.” Further, *McCoy v. Board of*  
9 *Retirement of the County of Los Angeles Employees Retirement Association* (1986) 183  
10 Cal.App.3d 1044 at 1051 states, “the party asserting the affirmative at an administrative hearing  
11 has the burden of proof, including both the initial burden of going forward and the burden of  
12 persuasion by preponderance of the evidence (cite omitted).” “The ‘preponderance of the  
13 evidence’ standard of proof requires the trier of fact to believe that the existence of a fact is more  
14 probable than its nonexistence.” *In re Michael G.* 74 Cal.Rptr.2d 642, 63 Cal.App.4th 700 (1998).

15           Here, there is no written contract. A written contract would likely provide express  
16 language whether an agent is entitled to commission all work negotiated and performed by the  
17 artist, or just jobs in which the agent directly participated in the procurement of the work. Without  
18 a written contract, we must weigh the testimony of the parties. Here, the evidence suggests it is  
19 more likely that KOVE advised SHAPIRA that SHAPIRA would not commission “Cobra Kai II”.  
20 KOVE’s testimony was clear and credible. SHAPIRA did not satisfy his burden of proof on this  
21 issue. We conclude, the parties did not have an understanding or a meeting of the minds as to  
22 whether SHAPIRA would commission future *Cobra Kai* seasons in November of 2019.  
23 Consequently, SHAPIRA is not entitled to commission “Cobra Kai II” on the theory that all jobs,  
24 whether procured by SHAPIRA or not, are commissionable.

25           **3. Does Title 8, California Code of Regulations, section 12002 entitle SHAPIRA to**  
26           **commission the *Cobra Kai* series (seasons 4-7)?**

27           Both parties argue California Code of Regulations, Title 8, Section 12002 supports  
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1 their positions. Title 8, California Code of Regulation, (“CCR”) section 12002 states:

2  
3 A talent agency shall be entitled to recover a fee, commission or  
4 commission or compensation is sought to be charged shall have been  
5 procured directly through the efforts or services of such talent  
6 agency and shall have been confirmed in writing within 72 hours  
7 thereafter. Said confirmation may be denied within a reasonable  
8 time by the other party. However, the fact that no written  
9 confirmation was ever sent shall not be, in and of itself, be sufficient  
10 to invalidate the oral contract. [Emphasis added]

11 SHAPIRA maintains he is entitled to commission “Cobra Kai II” under section 12002  
12 because he directly procured or negotiated “Cobra Kai II”. Conversely, KOVE argues SHAPIRA  
13 is not entitled to commissions “Cobra Kai II” because he did not procure or negotiate “Cobra Kai  
14 II”.

15 **4. Did SHAPIRA procure or negotiate “Cobra Kai II”?**

16 A talent agent is a corporation or person who procures, offers, promises, or attempts to  
17 procure employment or engagements for an artist or artists. (See Labor Code § 1700.4(a)). While  
18 not specifically defined by the Talent Agencies Act (hereinafter, “TAA” or the “Act”), the different  
19 definitions for employment require an act on behalf of the employed. (See *Malloy v. Board of*  
20 *Education* (1894) 102 Cal. 642, 646; Industrial Welfare Commission Wage Order No. 12-2001,  
21 section 2(D)-(F)).

22 The Labor Commissioner has ruled the term “procure” means, “to initiate a proceeding;  
23 to cause a thing to be done; to instigate; to contrive, bring about, effect or cause. To persuade,  
24 induce, prevail upon, or cause a person to do something.” (*Maureen McDonald, p/k/a, Mozella*  
25 *v. Peter Torres, individually and dba Peter Torres Management, Case No. TAC 27-04, at p. 6*  
26 (2005) Procurement also includes the solicitation, negotiation, or acceptance of a negotiated  
27 instrument for the engagements at issue. (*Id.*, at p. 8.) Additionally, procurement “includes an  
28 active participation in a communication with a potential purchaser of the artist’s services aimed at  
obtaining employment for the artist, regardless of who initiated the communication.” (*ICM*  
*Partners v. James Bates, Case No. TAC-24469, at p. 5 (2017) (“Bates”)* (citing *Hall v. X*

1 *Management*, Case No. TAC 19-90, at pp. 29-31 (1992)).) “The Labor Commissioner has long  
2 held that ‘procurement’ includes the process of negotiating an agreement for an artist’s services.”  
3 (*Bates*, at p. 5) (citing *Pryor v. Franklin* (TAC 17 MP 114).) (*Creative Artists Agency, LLC v.*  
4 *Vagrant Inc.*, TAC 52833 pg. 12-13)

5 KOVE also relies on CCR section 12002 to support his position SHAPIRA did not procure  
6 *Cobra Kai*. KOVE claims SHAPIRA did not procure employment for KOVE on *Cobra Kai*, and  
7 we agree.

8 **i. SHAPIRA did not Procure Employment for KOVE in *Cobra Kai*.**

9 The evidence demonstrates SHAPIRA failed to procure the employment for KOVE in  
10 “*Cobra Kai II*”. In June 2020, Ousdahl sent the 2017 *Cobra Kai* contract to SHAPIRA but only  
11 to make SHAPIRA aware of the exclusivity portion of the contract for any other employment  
12 solicited for KOVE. In or about October 2020, KOVE and Ousdahl brought in entertainment  
13 attorney, Eric Feig and his firm, Eric Feig Entertainment and Media Law, to engage in the  
14 negotiation of KOVE’s contract renewal on *Cobra Kai* with Sony. It was Feig who dealt with  
15 Sony and negotiated the *Cobra Kai* contract. There was scant evidence to establish that SHAPIRA  
16 was involved with the negotiations. KOVE and Ousdahl testified that on or about November 12,  
17 2020, KOVE instructed Ousdahl and Feig to keep SHAPIRA apprised of the status of the renewal  
18 negotiation for “*Cobra Kai II*” and that occurred. SHAPIRA was kept apprised of the negotiations  
19 but was only a passenger to the negotiations and not an active participant. The evidence  
20 demonstrates that SHAPIRA was on three calls, which was the extent of SHAPIRA’s involvement.

21 SHAPIRA admitted he never spoke to or negotiated with anyone at Sony regarding  
22 KOVE’s employment on *Cobra Kai*. He testified he never emailed or called anyone at Sony  
23 regarding “*Cobra Kai II*” and that Eric Feig was handling the negotiations on KOVE’s behalf.  
24 Feig credibly testified he was directly communicating and negotiating with Sony. Finally,  
25 SHAPIRA was not on any call with Sony, nor did Feig rely on or use SHAPIRA’s advice in  
26 negotiating the deal.

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1 In contrast, SHAPIRA testified he offered numerous suggestions for the negotiations and  
2 to raise Respondent's salary, including the signing bonus. SHAPIRA testified he was involved at  
3 every step of the way in discussing the negotiations with Feig and Ousdahl resulting in an increase  
4 of KOVE's salary. We conclude that *Cobra Kai* was *not* procured directly through the efforts of  
5 SHAPIRA within the meaning of section 12002. SHAPIRA was not the procuring force behind  
6 the original "Cobra Kai I" contract (season 1-3), nor was he the procuring force behind the "Cobra  
7 Kai II" renewal contract (season 4-7) and was not directly involved in the negotiation of the  
8 financial terms. SHAPIRA cannot prevail on his request for commissions under CCR section  
9 12002 because he did not directly procure through his efforts or services "Cobra Kai II" with Sony.

10 SHAPIRA cites several Labor Commissioner Determinations supporting his argument he  
11 procured and is therefore entitled to commission "Cobra Kai II". Shapira cites *The Gersh Agency,*  
12 *Inc. vs. Langston Faizon Santisma* (TAC-52727) whereby the Labor Commissioner stated:

13 "... existence and terms of an implied contract are manifested by conduct, and such  
14 an implied contract is formed, in the absence of a written agreement, where the  
15 parties' conduct demonstrates a meeting of the minds."

16 Here, unlike in *Gersh v. Faizon*, there was no "meeting of the minds" as to whether  
17 SHAPIRA could commission "Cobra Kai II". Next, SHAPIRA cites *ICM v. Celine Dion* (TAC-  
18 52673). In *Dion* there was a 30-year relationship in which Dion paid commissions for more than  
19 30 years. Notably in *Dion*, it was clear ICM directly procured the employment. As discussed,  
20 SHAPIRA did not directly procure the *Cobra Kai* series. SHAPIRA also cites *ICM v. Holcomb*  
21 (TAC-47847) where the Labor Commissioner held the parties intended for ICM to commission  
22 comedy club dates. This was based on the conduct of the parties – including Holcomb's payment  
23 of commissions on comedy club dates until January 2016. *Holcomb* is distinguished because  
24 Holcomb paid commissions on the jobs and unilaterally ceased making commission payments on  
25 jobs directly procured by ICM. Unlike in *Holcomb*, KOVE never paid commissions on *Cobra Kai*  
26 and "Cobra Kai II" and these engagements were not directly procured by SHAPIRA. Finally,  
27 SHAPIRA cites *Endeavor Agency vs. Milano* (TAC-10-05). Again, in *Endeavor v. Milano* there  
28

1 was a long history of Milano making the commission payment for jobs directly procured by  
2 Endeavor. SHAPIRA did not procure “Cobra Kai I or II”. These cases are distinguished.

3 KOVE offered to pay 10% of the signing bonus to SHAPIRA and SHAPIRA argues this  
4 offer manifests KOVE’s intent to commission the entire *Cobra Kai* series. We disagree. KOVE’s  
5 offer to pay 10% of the signing bonus was not enough to conclude that KOVE intended SHAPIRA  
6 to commission seasons 4-7 of *Cobra Kai* (“Cobra Kai II”).

7  
8 **IV. ORDER**

9 The Petition is denied.

10 **IT IS SO ORDERED.**

11  
12 DATED: July 20, 2023

Respectfully submitted,

13  
14 By: 

15 DAVID L. GURLEY  
16 Attorney for the Labor Commissioner

17 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

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20 Dated: July 20, 2023

  
21 By: \_\_\_\_\_  
22 LILIA GARCIA-BROWER  
23 State Labor Commissioner  
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