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STATE OF CALIFORNIA
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DIVISION OF LABOR STANDARDS ENFORCEMENT
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8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 THE BROGAN AGENCY,

CASE NO. TAC 10393

**DETERMINATION OF
CONTROVERSY**

12
13 Petitioner,

14 vs.

15
16 DENYCE LAWTON,

17 Respondent.
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19 The above-captioned matter, a Petition to Determine Controversy under
20 Labor Code §1700.44, came on regularly for hearing on May 7, 2009 in Los Angeles,
21 California, before the undersigned attorney for the Labor Commissioner assigned to hear
22 this case. Petitioner, THE BROGAN AGENCY, (hereinafter, "Petitioner"), appeared
23 through its owner and agent, Shawn Brogan, and was represented by Nake M. Kamrany,
24 Esq. of Law Offices of Nake M. Kamrany. Respondent DENYCE LAWTON, who was
25 properly served with the Petition via personal service on September 16, 2008, failed to
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1 appear at the hearing.

2 Based on the evidence presented at this hearing and on the other papers on
3 file in this matter, the Labor Commissioner hereby adopts the following decision.
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5 FINDINGS OF FACT

6 1. Petitioner, THE BROGAN AGENCY, (hereinafter, "Petitioner"), is a
7 licensed talent agency.

8 2. On October 11, 2007, Petitioner and Respondent DENYCE LAWTON,
9 (hereinafter, "Respondent"), an actress, entered into a one year written contract whereby
10 Petitioner agreed to serve as Respondent's talent agent in exchange for Respondent paying
11 Petitioner 10% of Respondent's gross compensation. Per the terms of the parties' written
12 contract, "gross compensation" includes residuals earned after a show goes into
13 syndication.
14

15 3. On October 29, 2007, Petitioner obtained an audition for Respondent for a
16 role on an episodic television show called "Tyler Perry's House of Payne" appearing on
17 TBS cable. Once Respondent booked the show, Petitioner negotiated a contract for
18 Respondent as a re-occurring role which later turned into a series regular role.
19 Respondent began working on the show on November 2, 2007.
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21 4. Ms. Brogan testified that to date, Respondent has paid Petitioner only
22 \$843.88 in commissions for this job. Ms. Brogan also testified that she has never received
23 a "drop" letter or any type of notice from Respondent as to why Respondent was not
24 honoring their written agency contract by paying commissions due.
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26 5. Per Ms. Brogan, Respondent continues to work on the job, which films in
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1 Atlanta, Georgia.

2 6. Petitioner is seeking 10% of all gross earnings from Respondent on this job.
3
4 Petitioner produced earning statements from the production company showing that
5 between November 2007 and December 11, 2008, Respondent has earned \$96,048.56 on
6 which she has not paid Petitioner commissions. Petitioner is therefore seeking \$9,604.85
7 (10%) in unpaid commissions.

8
9 7. Petitioner was unable to determine how much Respondent has collected in
10 earnings since December 12, 2008. Accordingly, Petitioner seeks an accounting for all
11 earnings from December 12, 2008 to the present.

12 8. Ms. Brogan also testified that "Tyler Perry's House of Payne" is in
13 syndication and consequently, Petitioner seeks an accounting from Respondent of all
14 residuals earned by Respondent.

15
16 9. On August 18, 2008, Petitioner filed its Petition to Determine Controversy
17 seeking unpaid commissions from Respondent. Petitioner also seeks \$3,500.00 in
18 reasonable attorney's fees.

20 CONCLUSIONS OF LAW

- 21 1. Petitioner is a licensed talent agent.
- 22 2. Respondent is an "artist" within the meaning of Labor Code §1700.4(b).
- 23 3. Labor Code §1700.44(a) provides that in cases of controversy arising under
24 this chapter, the parties involved shall refer the matters in dispute to the Labor
25 Commissioner, who shall hear and determine the same, subject to an appeal within 10
26 days after determination, to the superior court where the matter shall be heard de novo.
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1 4. Labor Code §1700.23 provides that the Labor Commissioner is vested with
2 jurisdiction over “any controversy between the artist and the talent agency relating to the
3 terms of the contract.” The Labor Commissioner’s jurisdiction has been held to include
4 the resolution of contract claims brought by artists or agents seeking damages for breach
5 of a talent agency contract. See *Garson v. Div. of Labor Law Enforcement* (1949) 33
6 Cal.2d 861; *Robinson v. Superior Court* (1950) 35 Cal.2d 379. Accordingly, the Labor
7 Commissioner has jurisdiction to determine this matter.
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10 5. The evidence presented by Petitioner shows that from November 2007 to
11 December 11, 2008, Respondent earned a total of \$96,048.50 in her role on “Tyler Perry’s
12 House of Payne,” which Petitioner procured for Respondent. Moreover, the parties’
13 written contract provides that Petitioner is entitled to 10% of all gross earnings for work
14 procured on behalf of Respondent, such as Respondent’s role on “Tyler Perry’s House of
15 Payne.” Ms. Brogan testified that Petitioner has been paid only \$843.88 in commissions
16 from Respondent on this engagement. Accordingly, Petitioner is entitled to be paid
17 \$8,760.97 which reflects 10% of Respondent’s earnings from November 2007 to
18 December 11, 2008 less \$843.88.
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21 6. Petitioner is also entitled to an accounting from Respondent reflecting all
22 earnings from December 12, 2008 to the present and any residuals received since “Tyler
23 Perry’s House of Payne” went to syndication.
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25 7. Petitioner was unable to provide legal authority for its claim for attorney’s
26 fees. Additionally, the written contract between the parties does not provide for an award
27 of attorneys’ fees. As such, Petitioner’s request for attorney’s fees is denied.
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ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that Petitioner is entitled to \$8,760.97 in unpaid commissions from Respondent for the period of November 2007 to December 11, 2008. It is also ORDERED that within 10 days of this determination being served, Petitioner provide Respondent with an accounting reflecting all earnings received by Respondent in her role on "Tyler Perry's House of Payne" from December 12, 2008 as well as any residuals received by Respondent while "Tyler Perry's House of Payne" has been in syndication. If Petitioner receives an accounting from Respondent within 10 days of service of this decision, Petitioner can file a *new* Petition to Determine Controversy to collect any unpaid commissions (from earnings and residuals) not included in this Order.

DATED: August 18, 2009

Respectfully submitted,

By:




EDNA GARCIA EARLEY

Attorneys for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: August 20 2009 By:



ANGELA BRADSTREET
State Labor Commissioner

