DAVID L. GURLEY, Bar No. 194298
STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
300 Oceangate, Suite 850
Long Beach, California 90802
Telephone: (562) 590-5461
Facsimile: (562) 499-6438

Attorney for the Labor Commissioner

BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

ENRIQUE RENALDO, Petitioner, vs. BARON ENTERTAINMENT, INC, a California Corporation, Respondent.	CASE NO. TAC 9248 **DETERMINATION OF CONTROVERSY**

The above-captioned matter, a Petition to Determine Controversy under Labor Code §1700.44, came on regularly for hearing on March 25, 2010, in Long Beach, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner ENRIQUE RENALDO (hereinafter, "Petitioner") appeared in pro per. Respondent BARON ENTERTAINMENT, INC., a California Corporation (hereinafter, "Respondent"), appeared through his attorney, Allen B. Grodsky of Grodsky & Olecki LLP. The parties submitted their posttrial briefs on May 3, 2010 and the matter was taken under submission. Based on the evidence presented at this hearing and on the other papers on file in this matter, the Labor Commissioner hereby adopts the following decision.

FINDINGS OF FACT

1. Around December 1999, the Respondent filed with the Labor Commissioner's office an application to be licensed as a California Talent Agent. As required under California law, the Respondent filed with the Labor Commissioner both a contract to be used with artists (Labor Code §1700.23), and a schedule of fees which sets the maximum amount of commissions the Respondent may charge artists (Labor Code §1700.24). The contract and the schedule of fees were approved by the Labor Commissioner and provided the respondent may charge artists a maximum 10% commission rate[1]. Consequently, the Respondent became a licensed California Talent Agency in 1999.

2. Petitioner, an actor and model, met the Respondent around 2004 and sought representation in the entertainment industry. In 2004, the Respondent began to represent the Petitioner and submit Petitioner for various entertainment engagements. According to the parties, Respondent was to earn 10% commission on all Petitioner's earnings for television motion pictures and television commercials.

3. On or about April 11, 2007, Respondent obtained a nonunion photo shoot or print job for the Petitioner. The advertising client, Sprint-Nextel, promised payment of $3,000.00 for the days work. The evidence reflected the petitioner agreed to pay the Respondent a 20% commission rate for this project, which is a standard percentage for this type of entertainment engagement.

4. On April 11, 2007, the day of the photo shoot, the Petitioner was provided a "Model Release" (hereinafter Release) which contained the following language:

> "The SESSION and initial agreed usage is for collateral material in North America and includes but is not limited to packaging and product material, electronics/web … and may be reproduced as either color or black and white illustrations for $3,000 + 20% agency fee

[1] The Hearing Officer takes administrative notice of the contract and schedule of fees filed and approved with the with the Labor Commissioner's office on 12-9-99.

5. The meaning of the language contained in the Release is the primary subject of this dispute. The Petitioner believed he was entitled to the full payment of $3,000.00 and that according to the express language of the Release, the Respondent would be compensated solely by the 20% agency fee, thus satisfying any commission payment required of the Petitioner. The Petitioner believing he would receive $3,000.00 for the job, signed the release and completed the work.

6. On April 12, 2007, the Respondent invoiced Design Continuum Inc., the subcontractor contracted by Spring Nextel to conduct the photo shoot. The invoice sought $3,000.00 + 20% for a total of $3,600.00. On May 21, 2007, Design Continuum Inc., requested a $3,600.00 payment from the accounting department through a purchase order which was issued on June 1, 2008.

7. On June 1, 2007, Design Continuum, Inc., issued a check to the Respondent made payable to Baron Entertainment for $3,600.00. On June 8, 2007, Respondent issued Petitioner a check in the amount of $2,400.00 for the photo shoot, ostensibly keeping 20% off the top or $600.00 of the $3,600.00 total payment as an "Agency Fee". Respondent argues the 20% "Agency Fee" referenced in the Release is a separately negotiated fee which is separate and apart from the promised earnings of the model. Moreover, the Respondent argues this is a standard and customary practice in the industry. According to the Respondent, he then deducted his agreed upon commission rate of 20% from the $3,000.00 earnings of the Petitioner. To summarize, Respondent argues he is entitled to the separately negotiated 20% Agency Fee and 20% of the $3,000.00 earnings promised to the Petitioner, leaving a final payment to the Petitioner in the amount of $2,400.00.

8. On May 13, 2008, Petitioner filed this Petition to Determine Controversy arguing that Respondent was only entitled to $600.00. Petitioner argues that Respondent unlawfully kept an additional 20% of Petitioner's $3,000.00 earnings to which he is not entitled. As such, Petitioner seeks $600.00 from Respondent.[2]

[2] The petitioner spent a considerable amount of time and provided a significant number of documents in an effort to argue the respondent engaged in activities which breached Respondent's fiduciary duty toward the petitioner and engaged in outside business ventures that created a conflict of interest. Those allegations will not be discussed as

LEGAL ANALYSIS

The issues presented include:

1) Is the Respondent entitled to the 20% Agency Fee?

2) Can the Respondent collect 20% commission on the artist's earnings, notwithstanding the fact that a maximum 10% commission rate was approved by the Labor Commissioner?

1. Petitioner, an actor and model is an "artist" within the meaning Labor Code §1700.4(b).

2. At all times relevant, Respondent was a licensed talent agency.

3. Labor Code §1700.44(a) provides in relevant part: "In cases of controversy arising under this chapter, the parties involved shall refer the matters in dispute to the Labor Commissioner...." Consequently, the Labor Commissioner has jurisdiction to hear this case.

Agency Fee

4. The DLSE historical application of this issue and the evidence in this case established that Agency Fees, such as the one paid to Respondent, are commonly provided to talent agents by production companies and are typically contained in contracts between agents and production companies for print work. The Labor Commissioner has previously held, "[s]o long as said fees are not 'registration fees' or fees charged for services expressly listed in Labor Code §1700.40(b) (or similar services), and are not intended to be part of the artist's compensation (even though they may be based on a percentage of the artist's total earnings), those fees are between the talent agency and the third party companies and the Labor Commissioner has no jurisdiction over such fee arrangements. The evidence, however, must clearly establish that the Agency Fee is separate and apart from the fees the production company pays to the artist. There must be no question that the fees are intended for the agency and are not meant for the artist." (*Harriell v. Chase* TAC

---

the evidence established that those alleged conflicts occurred subsequent to the termination of the relationship and are thus deemed irrelevant for purposes of this Determination of Controversy.

10296 pgs. 4-5)

5. Here, the term "Agency Fee" was expressly stated on the Release and all other evidence taken in totality pointed to the conclusion that only $3,000.00 was intended as earnings for the artist. There is no dispute that Respondent did not explain this practice to Petitioner or explain the Release and Agency Fee to him. Notwithstanding, the evidence supports a finding that the Agency Fee is in addition to the artist's compensation and was not intended for the Petitioner.

Schedule of Fees

6. Labor Code §1700.24 states,

> Every talent agency shall file with the Labor Commissioner a schedule of fees to be charged (to the artist) and collected in the conduct of that occupation, and shall keep a copy of the schedule posted in a conspicuous place in the office of the talent agency..."

The Respondent filed his schedule of fees with the Labor Commission on December 9, 1999. Respondent's schedule of fees contained the following provision.

> "The maximum rate of fees due this talent agency for services rendered to the artist is ten percent (10%) of the total earnings paid to the artist managed by the talent ageney. NO FEES COLLECTED SHALL BE IN EXCESS OF THE FEE SCHEDULE HEREON."

7. As discussed, Respondent charged 20% which is double their posted schedule of fees. This is a violation of the Talent Agencies Act which prohibits an agency from charging their clients more than the pre-approved percentage filed with the Labor Commissioner and established a breach of respondent's fiduciary duty toward his client. The California Code of Regulation Title 8 §12003.2 provides that,

> "No form of contract which incorporates substantial changes in the form of the contract previously approved shall be produced again unless the same shall be submitted to the Labor Commissioner for approval...."

8. The Respondent charged their client double the amount of commission which had been previously approved by the Labor Commissioner. They did not seek approval to double their commissions and as a result will be liable for any excess benefits received through the employment of Petitioner for this engagement. This unapproved change operated to the detriment of the artist.

9. Based on the foregoing, we conclude that Respondent was entitled to only $300.00 commissions from Petitioner's $3,000.00 earnings for this engagement. This amount reflects a 10% commission on Petitioner's earnings of $3,000.00 per the schedule of fees filed with the Labor Commissioner's office. Additionally, the Respondent is entitled to the Agency Fee of $600.00, per Respondent and Continuum's agreement. Since Respondent retained $1200.00 from the total amount paid by Design Continuum, Inc., Respondent owes Petitioner $300.00 in earnings.

10. Pursuant to Labor Code §1700.25(e)(2), Petitioner is entitled to 10% interest on the unpaid earnings, calculated from June 8, 2008, the date Petitioner's earnings were paid, through today's date, for a total of $64.02 in interest (10% on $300 for 779 days).

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that Petitioner ENRIQUE RENALDO is entitled to collect $364.02 from Respondent BARON ENTERTAINMENT, INC a California Corporation. The award is broken down as follows:

1. Unpaid Earnings in the total sum of $300.00;

2. Interest on the unpaid earnings pursuant to Labor Code §1700.25(e), calculated at 10% per annum from the date the earnings were paid to Petitioner under Labor Code §1700.25(a) until today's date, July 27, 2010, for a total of $64.02;

3. Petitioner is entitled to recover from the $50,000.00 bond posted by Respondent with the Labor Commissioner as a condition of being licensed as a talent agent.