

1 **STATE OF CALIFORNIA**
2 Department of Industrial Relations
3 Division of Labor Standards Enforcement
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9 Attorney for the Labor Commissioner

10 **BEFORE THE LABOR COMMISSIONER**
11 **OF THE STATE OF CALIFORNIA**

12
13
14 WORLD CLASS SPORTS,

15 Petitioner,

16
17 v.

18 MAIYA TANAKA,

19 Respondent
20
21

Case No. TAC-46082

**DETERMINATION OF
CONTROVERSY**

22
23 This proceeding arose under the provisions of the Talent Agencies Act (the “Act”), Labor
24 Code §§1700-1700.47. On December 22, 2016, World Class Sports (hereinafter “World Class
25 Sports” or “Petitioner”) filed a petition with the Labor Commissioner pursuant to §1700.44 seeking a
26 determination for an alleged controversy with Maiya Tanaka (hereinafter “Tanaka” or
27 “Respondent”). Petitioner seeks an order requiring Respondent pay 10% commission owed pursuant
28

1 to the parties' oral contract. Ms. Tanaka did not file a response to World Class Sports' December 22,
2 2016 petition but argues that she did not execute any contract, written or oral, for the relevant
3 booking.

4 A full evidentiary hearing was held on March 11, 2018 in Los Angeles, California before
5 Jessenya Y. Hernandez, attorney for the Labor Commissioner assigned as hearing officer. Petitioner
6 appeared via its vice president, Andrew Woolf. Maiya Tanaka, Respondent, appeared in pro per.
7 Based on evidence presented at this hearing and other papers on file in this matter, the Labor
8 Commissioner hereby adopts the following decision.
9

10 **FINDINGS OF FACT**

- 11 1. Administrative notice is taken of the fact that World Class Sports is a fictitious business
12 name, and the entity using that name is a partnership consisting of Donald Lyle Franken
13 and Andrew Lawrence Woolf. Said partnership is licensed as a talent agency, holding
14 license number TA-000221687.
15
- 16 2. Respondent is a professional golfer who occasionally appeared in commercials. Petitioner
17 procured at least two prior commercials for Respondent without a commission dispute.
18
- 19 3. On or about February 2016, Petitioner informed Respondent of a casting for female
20 golfers for a television commercial for United Airlines.
21
- 22 4. Respondent attended the casting in Los Angeles, California. On the date of the casting,
23 Respondent signed in and wrote "World Class Sports" next to her name on the sign-in
24 sheet.
25
- 26 5. Subsequently, the United Airlines casting agency issued a call-back for Respondent.
27 Respondent was unable to attend call-backs. Respondent submitted golfing videos to
28 Petitioner who then forwarded the golfing videos to the casting director for United

1 Airlines. United Airlines casting agency booked Respondent as a principal performer for
2 the United Airlines television commercial.

- 3 6. United Airlines paid Respondent as follows: (1) a holding fee¹ in the gross amount of
4 \$627.75, (2) a Theatrical/Industrial usage fee in the gross amount of \$628.00, (3) a session
5 fee in the net amount of \$1,722.25 and (4) residuals in the net amount of approximately
6 \$13,585.66.
7
8 7. Respondent has not made any payments to Petitioner in relation to the compensation she
9 received from United Airlines.

10 LEGAL ANALYSIS

11 **A. The Labor Commissioner May Properly Determine This Controversy Under the** 12 **Talent Agencies Act**

- 13 1. There is no dispute that Petitioner is a “talent agency” within the meaning of Labor Code
14 §1700.4(a) and Respondent is an “artist” under Labor Code § 1700.4(b).
15
16 2. Labor Code § 1700.23 grants the Labor Commissioner jurisdiction over “any controversy
17 between the artist and talent agency relating to the terms of the contract. The Labor
18 Commissioner’s jurisdiction has been held to include the resolution of the contract claims
19 brought by artists or agents seeking damages for breach of a talent agency contract. *Garson v.*
20 *Div. of Labor Law Enforcement* (1949) 33 Cal.2d 861, 865 [206 P.2d 368]; *Robinson v.*
21 *Superior Court* (1950) 35 Cal.2d 379, 387-388 [218 P.2d 10]. The Labor Commissioner has
22 jurisdiction to hear and determine this controversy pursuant to §1700.44 (a).
23

24 **B. Ms. Tanaka Was Subject to the Terms of an Implied Contract with World Class** 25 **Sports**

- 26 3. The essential elements of contract formation were present here: Parties capable of contracting
27

28 ¹ A fee paid to a performer every 13 weeks from the session date, if the producer wishes to retain the rights to air the commercial and wants to hold a performer exclusive to the product.

1 who consented with a lawful object and sufficient consideration. (*Civ. Code § 1550.*) Whereas
2 the parties dispute whether an express oral contract was formed, the facts show that an
3 implied contract was formed. An implied contract is formed when “the existence and
4 terms...are manifested by conduct”. (*Civ. Code § 1621.*)

- 5
- 6 4. First, the parties manifested mutual consent when Petitioner informed Respondent of the
7 United Airlines casting call and Respondent appeared at the casting call and signed in as
8 talent from World Class Sports. Respondent argued that other sources had forwarded to her
9 information about the same casting call as well. However, Respondent’s conduct in signing-
10 in as talent from World Class Sports and then utilizing Petitioner’s services to forward golfing
11 videos to the casting agency undermines her claim that she did not form a contract with
12 Petitioner for its services.
- 13
- 14 5. Second, the agreement for a talent agency to procure a booking for a commercial was for a
15 lawful purpose.
- 16
- 17 6. Finally, sufficient consideration existed where Respondent received casting information for
18 the United Airlines commercial from Petitioner, received assistance from Petitioner in
19 forwarding golfing videos to the United Airlines casting agency in lieu of her inability to
20 appear in person for call-backs, and where Respondent subsequently was booked and
21 compensated as a principal performer in the United Airlines commercial.
- 22
- 23 7. As such, Respondent was subject to the terms of an implied Contract with World Class Sports.

24 **C. World Class Sports Should Be Properly Compensated for All Services Rendered**

- 25 8. The parties dispute the terms of compensation for World Class Sports were discussed prior to
26 the United Airlines booking. Respondent acknowledges Petitioner is entitled to some
27 compensation but argues the compensation terms were never defined. Petitioner submitted
28

1 into evidence a written contract that provides World Class Sports is entitled to commissions
2 of ten percent (10%) of all money or other consideration paid to Respondent for the United
3 Airlines commercial. However, the written contract is not signed by Respondent.

4 9. Civil Code § 1649 provides if the terms of a promise are in any respect ambiguous or uncertain,
5 it must be interpreted in the sense in which the promisor believed, at the time of making it, that
6 the promise understood it. Further, if a contract is ambiguous, construction given to it by acts
7 and conduct of parties with knowledge of its terms and before any controversy has arisen as to
8 its meaning is entitled to great weight, and will, when reasonable, be adopted and enforced by
9 court. *Rose v. Chrysler Motors Corp.* (1963) 28 Cal.Rptr. 185, 212 Cal.App.2d 755.

10 10. On May 18, 2016, Petitioner emailed Respondent to notify her World Class Sports had not
11 received its ten percent (10%) commission. On June 4, 2016, Respondent emailed Petitioner
12 stating: “Last I heard since nothing was specified nothing was owed, but of course I will
13 check back with [my lawyer]. How much do you think I owed? I have my personal checkbook
14 and could cut a one time check based off that....Let me know so I can just be done with it.
15 Thanks!” On June 6, 2016, Petitioner emailed Respondent stating, in part, “Commission at
16 10% (ten percent) of the gross for each check received. June 1, holding fee gross of
17 \$627.75@ 10% = 62.78. March 25, check Theatrical/Industrial usage, gross of \$628.00 @
18 10% = \$62.80...Gross total is on the bottom left of the Talent Partners statement. Issue check
19 payable to WORLD CLASS SPORTS and copies of each statement...” On June 6, 2016,
20 Respondent emailed Petitioner stating, in part, “I got \$1722.25, so I could send a check for
21 \$172.22 + your calculations of 62.78 & 62.80 = \$297.80 in the mail...I know our obligations
22 weren’t necessarily discussed but I do appreciate your efforts...” On a June 7, 2016 email,
23 Petitioner asks Respondent, “Is the \$1,722.25 from the session fee the net or gross amount.
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1 Please send a copy of the statements in the mail or e-mail...Next, e-mail later today will be a
2 one page authorization form for your signature to have the check sent in your name c/o World
3 Class Sports...” Respondent replied to Petitioner on the same day, “It is the amount I was
4 paid. Now that you mention it, I don’t think I will be signing anything. I will get in contact
5 with my lawyer again to follow up before I send anything out...”
6

7 11. In whole, the emails exchanged show Respondent understood some compensation was owed
8 to Petitioner even while she maintained the terms of compensation were never discussed.

9 12. To determine the reasonable expectation of the parties to a contract we look at the totality of
10 the circumstances; agreement may be shown by the acts and conduct of the parties, interpreted
11 in the light of the subject matter and of the surrounding circumstances. *Kashmiri v. Regents of*
12 *University of California* (2007) 67 Cal.Rptr.3d 635, 156 Cal.App.4th 809, as modified,
13 rehearing denied, review denied.
14

15 13. Petitioner submitted into evidence documents showing that its standard agency fees for SAG
16 commercials is ten percent (10%) of all gross monies for session fees, residuals, lifts,
17 renewals, and reinstatements. Respondent argued in various previous instances other
18 individuals had informed her of casting calls and even when she booked those calls, the
19 individuals did not claim compensation. Respondent, however, admitted none of those
20 instances involved licensed talent agencies. Although Respondent claims a lack of familiarity
21 with talent agency commission rates, a ten percent (10%) commission is within the industry’s
22 customary standard.
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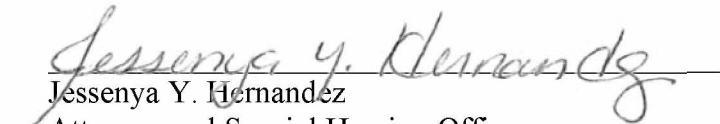
25 14. Despite the lack of express terms, the intent of the parties could be ascertained from the
26 surrounding circumstances, including payment history, testimony... and industry custom.
27 *Kevin Beyeler v. William Morris Agency, Inc.* (TAC No. 32-00 p.8). Here, the totality of
28

1 circumstances leads to a conclusion that Petitioner is entitled to be compensated for the
2 services it rendered to Respondent at the commission of ten percent (10%).

3 **ORDER**


4 For the above-stated reasons, IT IS HEREBY ORDERED that Petitioner World Class Sports
5 is entitled to ten percent (10%) commission for all gross earnings by Respondent Maiya Tanaka
6 connected with the February 2016 United Airlines television commercial, and interest calculated at
7 ten percent (10%) per annum. During the hearing it was determined Ms. Tanaka received \$16,563.66
8 consisting of \$1,255.75 in gross earnings and \$15,307.91 in net earnings. As such, Ms. Tanaka shall
9 pay World Class Sports \$1,656.36 in commissions and \$345.96² in interest for a total award of
10 \$2,002.32. Further, Ms. Tanaka shall provide an accounting to World Class Sports for all gross
11 earnings within 30 days of receipt of this determination and shall remit payment of the remainder
12 amount that accounts for the total gross earnings and the interest on those gross earnings within 20
13 days after the accounting has been provided.
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17
18 Dated: 09/27/2018


19 Jessenya Y. Hernandez
20 Attorney and Special Hearing Officer
for the Labor Commissioner

21 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

22
23 Dated: 09/27/2018


24 Julie A. Su
25 Labor Commissioner
26
27
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² Interest was calculated separately for each item based on the approximate date the commission became due.

PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is Division of Labor Standards Enforcement, Department of Industrial Relations, 320 W. 4th Street, Room 600, Los Angeles, California 90013.

On October 3, 2018, I served the following documents described as:

DETERMINATION OF CONTROVERSY

on the persons below as follows:

WORLD CLASS SPORTS
[Redacted]
[Redacted]

MAIYA TANAKA
[Redacted]
[Redacted]

MAIYA TANAKA
[Redacted]

- (BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
- (BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically via e-mail to the e-mail address of the addressee(s) listed above.
- (STATE)** I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed on October 3, 2018 at Los Angeles, California.

Marco Gomez

Marco A. Gomez