

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
2 State of California  
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6  
7 BEFORE THE LABOR COMMISSIONER  
8 OF THE STATE OF CALIFORNIA  
9

10 TOM CHASIN, an individual, ) Case No. TAC 25-98  
11 )  
Petitioner, )  
12 vs. ) DETERMINATION OF  
13 ) CONTROVERSY  
CHRIS BEARD, an individual, )  
14 )  
Respondent. )  
15 )  
16 \_\_\_\_\_)

17 INTRODUCTION

18 The above-captioned petition was filed on August 31, 1998  
19 by TOM CHASIN dba THE CHASIN AGENCY (hereinafter "Petitioner"),  
20 alleging that CHRIS BEARD (hereinafter "Respondent"), breached  
21 their agency contract by failing to remit commissions owed to the  
22 petitioner, stemming from petitioner's efforts to secure employment  
23 engagements in the entertainment industry on respondent's behalf.  
24 The petition seeks \$47,500.00 in commissions, reflecting 10% of  
25 respondent's earnings for the engagement in issue. Respondent was  
26 personally served with the petition on January 18, 1999.

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1 Respondent filed his answer on April 27, 1999, asserting seven  
2 affirmative defenses, most notably, petitioner should be barred  
3 from relief pursuant to the one-year statute of limitations found  
4 at Labor Code §1700.44(c).

5 A hearing was scheduled for and held on December 3, 1999,  
6 in Los Angeles, California, before the undersigned attorney  
7 specially designated to hear this matter. Petitioner appeared  
8 through his attorney, Allison S. Hart, of Barab, Kline & Coate,  
9 LLP; Respondent appeared through his attorney, Eric S. Jacobson.

10 Based on the testimony, evidence, and briefs submitted,  
11 the Labor Commissioner adopts the following determination of  
12 controversy.

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14 FINDINGS OF FACT

15 1. On May 1, 1993, the parties signed an exclusive one-  
16 year personal services contract whereby petitioner would act as  
17 respondent's exclusive talent agent in the entertainment industry.  
18 Respondent is a writer/producer, who pursuant to the terms of the  
19 contract was obligated to pay 10% of all his earnings in connection  
20 with the entertainment industry to petitioner. In return,  
21 petitioner was to use best efforts to secure respondent employment.

22 2. In or around January of 1994, petitioner began  
23 negotiating a deal with Vin DiBona Productions for respondent's  
24 services as writer/producer/creator for a weekly series named  
25 "SHERMAN OAKS". Testimony reflected petitioner was instrumental in  
26 creating and negotiating the deal points for the April 1994  
27 contract eventually signed between respondent and Vin DiBona.

1                   3.    On June 13, 1994, respondent terminated the contract  
2 between the parties but assured petitioner that, "your company will  
3 be entitled to any commission from the 'SHERMAN OAKS' project..."  
4 On June 1, 1995, respondent signed another two-year deal between  
5 himself and Vin DiBona, creating an overall production deal for  
6 "Sherman Oaks" and various other projects. Respondent worked on  
7 "Sherman Oaks" throughout 1995 and the show aired during the 1995  
8 and 1996 television seasons. Despite respondent's assurances to  
9 pay petitioner commissions for the "Sherman Oaks" project,  
10 respondent failed to remit commissions to the petitioner for monies  
11 earned in connection with the show.

12                   4.    On February 10, 1997, petitioner hired counsel to  
13 collect on the debt. After two letters from petitioner's counsel  
14 directly to respondent, Beard obtained counsel on March 12, 1997.  
15 On March 13, 1997, petitioner through his attorney, threatened  
16 litigation if the respondent did not "change [his] attitude".  
17 Again, on March 31, 1997, petitioner threatened litigation and  
18 stated, "[i]n not responding to our letter, ..., we will proceed  
19 forward with the understanding that you are not [authorized to  
20 accept service on your client's behalf] and will serve your client  
21 directly." Respondent's following correspondence authorized  
22 discussions to be commenced regarding commissions for "Sherman  
23 Oaks", "so we can resolve this matter and [have] a settlement and  
24 release prepared." Throughout the correspondence, both parties  
25 expressly retained all rights in law and equity via standard non-  
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1 waiver language<sup>1</sup>.

2           5.       Throughout April and May of 1997, petitioner  
3 continued to correspond with respondent seeking documents that  
4 could establish respondent's earnings for "Sherman Oaks". On May  
5 6, 1997, petitioner losing patience with respondent's lack of  
6 cooperation, placed a two-week deadline for respondent to produce  
7 documents or face "all remedies available to redress the  
8 situation."

9           6.       On May 8, 1997, respondent provided correspondence  
10 asserting that he had received \$239,800.00 as compensation for his  
11 work on "Sherman Oaks". Petitioner immediately requested  
12 supporting documentation, stating petitioner believed the amount to  
13 be much higher. Testimony and evidence conflicted on the amount  
14 respondent had received for "Sherman Oaks". Evidence was  
15 introduced reflecting various amounts earned for the show and  
16 testimony was equally unavailing. The dispute as to how much of  
17 respondent's per episode salary for "Sherman Oaks" included  
18 advances and development fees from the overall production agreement  
19 was not resolved.

20           7.       Between June and August of 1997, petitioner  
21 continued to seek complete documentation for respondent's earnings  
22 on "Sherman Oaks". Respondent failed to supply the documents that

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24           <sup>1</sup> The last paragraph of Petitioner's correspondence stated, "[t]his letter  
25 is without prejudice to my client's claims and rights and all of which are  
expressly reserved."

26           Respondent's correspondence ended with the phrase, "[u]ntil such time as  
27 the parties reach agreement on the terms of a settlement and release, please be  
assured that nothing contained herein should be deemed a waiver of any of Mr.  
Beard's rights or remedies, at law or in equity, and all such rights are  
expressly reserved.

1 would clear up the compensation discrepancy, and again on August 7,  
2 1997, petitioner threatened to "pursue its legal rights to  
3 ascertain and collect said amount." Petitioner sent a letter on  
4 September 22, 1997, setting another deadline for respondent to  
5 provide the requested documentation. The deadline came and passed.  
6 On October 7, 1997, respondent wrote the following:

7  
8 Chris is prepared to commission the Chasin Agency on  
9 income attributable to his services on Sherman Oaks. His  
10 writing fees, producing fees and royalties total  
11 \$239,800; therefore, \$23,980.00 represents the 10%  
12 commission fee. If this is acceptable to your client I  
13 will prepare an appropriate agreement and arrange  
14 payment.

15 Nothing contained herein shall be deemed a waiver of my  
16 client's rights or remedies, at law or in equity, and all  
17 such rights and remedies are expressly reserved.

18 8. On May 26, 1998, **seven months after the October 7,**  
19 **1997 offer** of \$23,980, petitioner made a demand for \$45,700.00,  
20 subsequently raised to \$47,400.00 on June 1, 1998. Respondent did  
21 not reply. On July 21, 1998, petitioner made one last demand and  
22 set yet another deadline. After no response from respondent was  
23 received, petitioner filed the petition on August 31, 1998, seeking  
24 \$47,450.00 in unpaid commissions.

25 CONCLUSIONS OF LAW

26 1. Petitioner is an "artist" within the meaning of  
27 Labor Code §1700.4(b), defining "artist" to include, "directors and

1 other artists and persons rendering professional services in motion  
2 pictures, ...and other entertainment enterprises."

3           2. It was stipulated respondent is a "talent agency"  
4 within the meaning of Labor Code §1700.4(a), defining "talent  
5 agency" as a person who "engages in the occupation of procuring,  
6 offering, promising, or attempting to procure employment or  
7 engagements for an artist." Therefore, the Labor Commissioner has  
8 jurisdiction to hear this matter pursuant to Labor Code §1700.44.

9           3. The issue is whether Labor Code §1700.44(c) bars  
10 petitioner from bringing this action. §1700.44(c) states, "No  
11 action or proceeding shall be brought pursuant to this chapter with  
12 respect to any violation which is alleged to have occurred more  
13 than one year prior to commencement of the action or proceeding."

14           4. Initially, we must establish a definitive date for  
15 respondent's most recent and final alleged violation. This will  
16 provide a specific date for purposes of calculating the statute of  
17 limitations. Petitioner alleges breach of contract for failing to  
18 pay commissions when due. In looking to the contract provisions,  
19 section seven communicates the parties' intention when commissions  
20 are due and payable. Section seven of the contract<sup>2</sup> mandates that  
21 petitioner is entitled to receive commissions promptly after  
22 respondent is compensated. The evidence, which was not disputed,

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24           <sup>2</sup> Section (7) of the contracts states in pertinent part: "Your commission  
25 under this Agreement shall be payable as an when gross compensation is received  
26 by you or me, my firm, or any other person or entity on my behalf...With respect  
27 to gross compensation subject to this Agreement which is paid directly to me, my  
firm, or any other person or entity on my behalf, an amount equal to said  
commission shall be deemed to received an held by me or them in trust for you and  
**your commission thereon shall be paid to you promptly after receipt by me or them  
of such gross compensation."**

1 established that respondent's final payment for his work performed  
2 in connection with "Sherman Oaks" was received in June of 1997.  
3 Petitioner did not receive commissions promptly after this date or  
4 any other. Respondent failing to remit commissions upon this last  
5 payment, allegedly breached his duty to petitioner and committed  
6 his last violation. We will use this date to calculate when the  
7 action should have been brought for purposes of addressing the  
8 statute of limitations defense. Consequently, petitioner should  
9 have filed the petition by June of 1998. The petition was filed on  
10 8-31-98 and as a result the petition is time barred.

11           5. Petitioner makes various arguments in support of his  
12 contention that §1700.44(c) is inapplicable. First, petitioner  
13 argues that respondent's October 7, 1997 letter, acknowledges the  
14 debt and subsequently extends the statutory time period from this  
15 date. Petitioner cites several cases, standing for the proposition  
16 that the acknowledgment of a prior unenforceable obligation gives  
17 rise to new enforceable promise. General Credit Corporation v.  
18 Pichel 44 Cal.App.3d 844, 848. Petitioner is misguided, as the  
19 October 7, 1997 letter from respondent was still an **enforceable**  
20 debt.

21           6. The Supreme Court case of Southern Pacific v.  
22 Prosser 122 Cal. 413, 416 states, "an acknowledgment or promise  
23 made before the statute has run vitalizes the old debt for another  
24 statutory period dating from the time of the acknowledgment or  
25 promise" If the October 7, 1997 letter is categorized as an  
26 acknowledgment and the statutory period is tolled pursuant to  
27 Southern Pacific, then petitioner's claim survives. An

1 acknowledgment is defined in the Supreme Court case of McCormick v.  
2 Brown. There the Court held, "an acknowledgment, within the  
3 statute [of limitations], to support an implied promise, must be a  
4 direct, distinct, unqualified, and unconditional admission of the  
5 debt which the party is liable and willing to pay. Such  
6 acknowledgment cannot be deduced from an offer or promise to pay  
7 part of the debt, or the whole debt in a particular manner, or at  
8 a specified time, or upon specified conditions." McCormick v.  
9 Brown 36 Cal. 180, 185. This rule expressed by the Court is  
10 clearly not applicable to the case at bar. Here, the  
11 correspondence between the parties immediately established an  
12 adversarial relationship, with petitioner threatening litigation  
13 throughout. Further, correspondence and evidence produced at the  
14 hearing, clearly demonstrated many questions of fact in issue,  
15 including: how much respondent was compensated; what percentage of  
16 that compensation related to "Sherman Oaks"; and whether petitioner  
17 was entitled to compensation derived from the 1995 modified  
18 contract. Cases relied on by petitioner present the defendant in  
19 a far more unqualified demeanor. In General Credit v. Pichel, the  
20 defendant writes, "I, Jack Pichel, hereby acknowledgment [sic] my  
21 debt to...Hecht... in the sum of \$19,157.065 and I promised [sic]  
22 to pay this amount to them." General Credit, supra at 847. This  
23 presents dramatically different facts. Here, a close analysis of  
24 respondent's correspondence demonstrates an aggressive posture by  
25 petitioner followed by respondent's vague and uncertain answers to  
26 petitioner's questions. This behavior by both parties certainly  
27 does not reflect a "direct, distinct, unqualified, and



1 unconditional admission of the debt which the party is liable and  
2 willing to pay."

3           7. In respondent's May 8, 1997 letter he states he  
4 received \$239,800 in compensation for "Sherman Oaks" and is willing  
5 to settle. On June 27, 1997, he forwards a portion of the "Sherman  
6 Oaks" contract between respondent and the production company,  
7 reflecting potentially \$457,000.00 in compensation. Finally, on  
8 October 7, 1997, respondent is "prepared to commission the Chasin  
9 Agency on ...\$239,800; therefore, \$23,980 represents the 10%  
10 commission fee. If this is acceptable to your client, I will  
11 prepare an appropriate agreement." This language established a  
12 conditional payment to an amount obviously in controversy. The  
13 letter is consistent with settlement language and will not be  
14 considered an acknowledgment for purposes of tolling the statute.

15           8. The only acknowledgment is the April 1994 severance  
16 letter, inapplicable to toll the statute because of its remoteness  
17 in time. Importantly, both parties expressly reserved their rights  
18 in law and equity. Many of the cases tolling the statute involve  
19 express waivers. That simply is not the case here. The evidence  
20 taken as a whole leaves no doubt the respondent was not motivated  
21 by moral obligation and did not acknowledge his debt as reflected  
22 in case law. As such, the acknowledgment cases have no bearing.

23           9. Secondly, petitioner argues the doctrine of estoppel  
24 should prohibit respondent from asserting the statute. In applying  
25 estoppel, Estate of Pieper 224Cal.App2d 670, states: "A person, by  
26 his conduct, may be estopped to rely on the statute; where the delay  
27 in commencing and action is induced by the conduct of the defendant,

1 it cannot be availed by him as a defense; one cannot justly or  
2 equitably lull his adversary into a false sense of security and  
3 thereby cause him to subject his claim to the bar of the statute of  
4 limitations, and then be permitted to plead the very delay caused  
5 by his conduct." Pieper, supra. at 690

6           10. Here, there was evidence of settlement discussions.  
7 There was no evidence of fraud or any attempt by the respondent to  
8 "lull his adversary into a false sense of security." While we agree  
9 respondent did not cooperate with petitioner at every turn,  
10 petitioner's conduct did not rise to the level of deceit or even bad  
11 faith. Notably, petitioner failed to act on its promise of filing  
12 suit time and time again. In fact, petitioner threatened to file  
13 suit at every corner and inevitably and no doubt regrettably, chose  
14 not to exercise that option.

15           11. Finally, we reject petitioner's argument that  
16 petitioner's cause of action accrued on October 7, 1997. Petitioner  
17 contends the statute of limitations does not begin until all  
18 elements of petitioners cause of action are met. Petitioner  
19 maintains that respondent first breached the contract when  
20 respondent offered \$23,980.00 pursuant to the October 7, 1997  
21 letter. Petitioner asserts this is "when Beard first refused to pay  
22 Chasin his rightful commission" which evokes accrual of the statute.  
23 As discussed, the breach occurred when respondent did not promptly  
24 pay commissions after receipt of compensation. Breach began when  
25 respondent first received compensation and ended shortly after  
26 respondent received his final compensation in June 1997. "A  
27 plaintiff must bring a cause of action within the limitations

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period, ... after accrual of the cause of action. Under the general rule, a cause of action accrues when, ..., the wrongful act is done, or the wrongful result occurs, and the consequent liability arises. In other words, it accrues when the cause of action is complete with all its elements." Norgart v. Upjohn Co. (1999) 21 Cal.4th 383, 397. The evidence reflected that as early as February 10, 1997, petitioner was aware respondent received compensation and was seeking commissions based on this belief. As 1997 progressed, it was abundantly clear petitioner felt respondent was not fully cooperating and believed that respondent was in breach. Petitioner may not lie in wait almost 18 months after requesting payment to file this action.

12. We therefor conclude, the petitioner is barred from bringing the action pursuant to Labor Code §1700.44(c).

ORDER

For the above-state reasons, IT IS HEREBY ORDERED that this petition is dismissed.

Dated: 4/19/00

David L. Gurley  
DAVID L. GURLEY  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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Dated: 4/20/2000

*Thomas E. Grogan*  
THOMAS E. GROGAN  
Assistant Chief

