

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
 2 Department of Industrial Relations
 3 State of California
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9
 10 BEFORE THE LABOR COMMISSIONER
 11 OF THE STATE OF CALIFORNIA
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13	LENHOFF & LENHOFF, a California)	TAC 06-01
14	Corporation,)	
15)	
16	Petitioners,)	
17)	
18	vs.)	DETERMINATION OF
19)	CONTROVERSY
20	GEORGE GRIEVE, an individual,)	
21)	
22	Respondent.)	
23)	
24)	

25 INTRODUCTION

26 The above-captioned petition was filed on February 27,
 27 2001 by LENHOFF & LENHOFF, a California Corporation (hereinafter
 28 "Petitioner" or "LENHOFF") alleging that GEORGE GRIEVE (hereinafter
 "Respondent" or "GRIEVE") failed to remit commissions to the
 petitioner, stemming from work performed by the respondent as a
 unit production manager during the term of the parties exclusive
 talent agency representation agreement. Petitioner seeks 10%
 commission and interest for two entertainment projects performed by
 Grieve.

Respondent filed his answer on April 20, 2001, alleging
 the parties never had a "meeting of the minds" and consequently no

1 industry. Paragraph (1) of the contract provided:
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3 "I hereby employ you as my sole and exclusive Agency for
4 a period of two years from date hereof to assist in
5 obtaining offers of employment and to negotiate contracts
6 for the rendition of my professional services in the
7 fields of Motion Picture, Television and other fields of
8 entertainment."

9 3. In exchange for Lenhoff's representation, Grieve
10 agreed to pay Lenhoff 10% of all monies earned in connection with
11 his professional services rendered in the entertainment industry
12 during the term of the contract.

13 4. Soon thereafter, petitioner undertook efforts to
14 secure line producer employment for Grieve. Lenhoff would examine
15 the daily breakdowns and then send out one-line form letters,
16 requesting each production company to consider his client for
17 employment. Lenhoff submitted evidence that he sent out form
18 letters directed at virtually every production in Vancouver. The
19 letter would generally read, "please find several clients we think
20 would be right for your show (as a line producer)," followed by a
21 list of several of Lenhoff's clients.

22 5. In March 2000, unbeknownst to petitioner, Grieve
23 accepted employment as a UPM in Vancouver for a project titled
24 *Freedom*. Lenhoff did not participate in securing this employment
25 opportunity for Grieve. Grieve worked on the project until it
26 wrapped in early May 2000. While Grieve worked on *Freedom*, Lenhoff
27 continued to send out his one-line form letters to production
28 companies, ostensibly hoping someone would be interested in hiring
his client as a line producer. As *Freedom* wrapped, Lenhoff

1 discovered Grieve's employment on *Freedom* and requested 10%
2 commission for that project.

3 6. On April 28, 2000, Lenhoff sent out several letters
4 seeking work as a line producer for Grieve for a Vancouver-based
5 production titled *L.A. Snowday*. On June 12, 2000, Grieve accepted
6 employment as a UPM for *L.A. Snowday*. Credible evidence
7 established that Lenhoff's one-line letter seeking line producer
8 work for Grieve did not assist Grieve in obtaining the UPM job.

9 7. On June 22, 2000, Grieve dissatisfied with Lenhoff's
10 inability to secure him a position as a line producer, terminated
11 the relationship. Grieve indicated the termination date was
12 retroactive and thus effective 10 days earlier on June 12, 2000,
13 ironically the same day Grieve accepted employment on *L.A. Snowday*.
14 Accompanied with the termination letter was a 10% commission check
15 to Lenhoff for Grieve's work on *Freedom*. The termination letter
16 stated, "the commissions are a courtesy, as we had discussed in the
17 beginning I engaged your services to get me work as a [Line]
18 Producer not a production manger [UPM] unless it was a feature. I
19 have never needed representation as Production Manager." Therein
20 lies the rub. Grieve was paying 10% of his salary to his agent for
21 his UPM work, clearly something he had never done in 16 years,
22 without obtaining the benefit of line producer employment.

23 8. The respondent argues paragraph (1) of the agreement
24 does not reflect the true intent of the parties. Respondent seeks
25 to include evidence of an antecedent oral agreement, whereby the
26 parties agreed to exclude from the contract any work performed by
27 the respondent as a Unit Production Manger (UPM). Accordingly,
28 respondent argues that Lenhoff is not entitled to commission UPM

1 projects, including *L.A. Snowday*. In response, Lenhoff
2 acknowledges the parties discussed elevating Grieve's career to the
3 next level, but denies the agreement excluded UPM representation.

4 9. Complicating matters, is the fact that on September
5 7, 2000, Grieve accepted employment as a UPM on another Vancouver-
6 based production, *Dark Angel*. In May 2000, a Lenhoff one-line
7 letter was sent and received by a *Dark Angel* executive in an
8 attempt by Lenhoff to secure employment for Grieve on that
9 production as a Line Producer. Lenhoff now seeks commissions for
10 *Dark Angel* and cites paragraph (5) of the representation contract,
11 stating in pertinent part:

12
13 "If I enter into any agreement ... within four
14 (4) months after termination hereof, ... with
15 any person or business entity as to whom a
16 submission has been made and/or negotiations
17 commenced on my behalf during the term of the
18 Agreement [emphasis added] then in said event
19 any such employment contract entered into
20 shall be deemed to have been entered into
21 during the term hereof."

22 10. Lenhoff surmises that his one-line letter seeking
23 employment for Grieve as a Line Producer, coupled with Grieve's
24 acceptance as a UPM for that project entitles Lenhoff to those
25 commissions. Lenhoff seeks 10% commission for Grieve's work as a
26 UPM on both *L.A. Snowday* and *Dark Angel*. Lenhoff's submissions,
27 *arguendo*, on Grieve's behalf were for work as a Line Producer, all
28 of which were unsuccessful.

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CONCLUSIONS OF LAW

1. The issues are as follows:

A. Can evidence of an oral agreement be admitted to modify the terms of the parties written agreement?

B. Is the petitioner entitled to commission Grieve's work as UPM on *L.A. Snowday*, notwithstanding Lenhoff's nonparticipation in obtaining UPM work and unsuccessful efforts to procure Line Producer work?

C. Can the petitioner commission *Dark Angel*, if the execution of the employment contract and the start of production began after termination of the parties contract, pursuant to paragraph (5) of the written agreement?

2. Petitioner is a licensed "talent agency" within the meaning of Labor Code §1700.4(a).

3. Respondent's status as an "artist" within the meaning of Labor Code §1700.4(b) was not challenged, and consequently respondent is an "artist" for purposes of this controversy.

4. Labor Code §1700.23 provides that the Labor Commissioner is vested with jurisdiction over "any controversy between the artist and the talent agency relating to the terms of the contract", and the Labor Commissioner's jurisdiction has been held to include the resolution of contract claims brought by artists or agents seeking damages for breach of a talent agency contract. Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861, Robinson v. Superior Court (1950) 35 Cal.2d 379. Thus, the Labor Commissioner has jurisdiction to determine this controversy

1 pursuant to Labor Code §1700.44(a).

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Parole Evidence Rule

4 5. The respondent seeks admission of an oral agreement
5 specifying what "professional services" in paragraph (1) of the
6 written agreement are commissionable. Petitioner argues the
7 contract speaks for itself and "professional services" include all
8 work performed by respondent in the entertainment industry,
9 including UPM work. Respondent argues his performance as a line
10 producer employment is the only commissionable employment.

11 6. The parole evidence rule generally prohibits the
12 introduction of any extrinsic evidence to vary or contradict the
13 terms of an integrated written instrument. (Code Civ. Proc., §
14 1856.) It is based upon the premise that the written instrument is
15 the agreement of the parties. Gerdlund v. Electronic Dispensers 190
16 Cal.App.3d 263, at 270.

17 7. Here, the parties executed agreement contained the
18 following integration clause:

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20 "This instrument constitutes the entire agreement between
21 us and no statement, promising or inducement made by any
22 party hereto which is not contained herein shall be
23 binding or valid and this contract may not be enlarged,
24 modified, or altered, except in writing by both parties
hereto; and provided further, that any substantial
changes in this contract must first be approved by the
Labor Commissioner."

25

26 8. Allowing evidence of the oral agreement would have
27 the effect of limiting the commissionable services and thereby
28 varying the terms of the written agreement. The term "professional

1 services" is not so vague as to require interpretation. Grieve
2 only worked as a UPM and sought work only as a line producer. To
3 allow the introduction of evidence that excludes one half of the
4 definition of "professional services" would radically alter the
5 meaning of the written contract. The parole evidence rule
6 prohibits the admission of extrinsic evidence that varies the terms
7 of an integrated contract and as a result, any evidence of an oral
8 agreement used to change the terms of this integrated contract will
9 be excluded.

10 9. Moreover, the respondent paid Lenhoff commissions
11 for *Freedom*. And based on the payment of those commissions for UPM
12 work not secured by Lenhoff, establishes the respondent's implied
13 acceptance of those terms. Grieve's acceptance is further
14 bolstered by Grieve's attempt to back date the termination date 10
15 days earlier than the actual date of the termination letter.
16 Grieve writes Lenhoff on June 22, 2000, and informs him that the
17 relationship is terminated, but indicates in the letter that the
18 termination is effective June 12, 2000, the day he accepted
19 employment for *L.A. Snowday*. Grieve was aware the termination date
20 had legal significance and consequently attempted to back date the
21 termination to avoid the payment of commissions for any employment
22 accepted during the contract's term. Respondent's argument that
23 the commissions paid to Lenhoff for *Freedom* were a "courtesy" is
24 unconvincing. The Labor Commissioner will not rewrite respondent's
25 contract, after he paid commissions for a project he now argues is
26 not commissionable. In short, the terms of the written contract
27 will not be modified by evidence of an antecedent oral
28 communication between the parties.

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L.A. SNOWDAY

10. Is the petitioner entitled to commission Grieve's work as a UPM on *L.A. Snowday*, notwithstanding Lenhoff's nonparticipation in securing Grieve's UPM work and unsuccessful efforts to procure Line Producer work? Paragraph (2) of the contract setting forth the terms and conditions of compensation state,

"[a]s compensation for your said services agreed to be rendered hereunder, I [Grieve] hereby agree to pay you [Lenhoff] a sum equal to ten percent, (10%) of all moneys or things of value as and when received by me, ... as compensation for my **professional services** [emphasis added] rendered or agreed to be rendered during the term hereof ... entered into or negotiated during the term..."

11. Again, the contract is clear on its face. Grieve negotiated and signed the contract purporting to compensate Lenhoff at 10% for all of his "professional services" in the entertainment industry during the term of the contract. Grieve's argument that Grieve didn't accept the *L.A. Snowday* offer until after termination is without merit. Again, the termination letter was written June 22, 2000, and Grieve accepted employment on June 22, 2000. Grieve's attempt to back-date the agreement to ostensibly avoid the payment of commissions will not be countenanced and smacks of bad faith. Lenhoff is entitled to commission *L.A. Snowday*.

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DARK ANGEL

12. Is the petitioner entitled to commission *Dark Angel*, if the execution of the employment contract and the start of production began after termination of the parties contract, pursuant to paragraph (5) of the written agreement?

13. This engagement presents a different issue as Grieve accepted employment on September 7, 2000, some 2½ months after termination of the representation agreement, but within the four-month subsequent period allowing the agent to commission a deal if the agent submitted the artist or negotiated the employment contract during the parties' contractual term.

The contract states,

"If I enter into any agreement ... within four (4) months after termination hereof, ... with any person or business entity as to whom a submission has been made and/or negotiations commenced on my behalf during the term of the Agreement then in said event any such employment contract entered into shall be deemed to have been entered into during the term hereof."

14. Lenhoff seeks 10% commission and argues his submission for Grieve as a Line Producer in May 2000, satisfies the condition precedent of submission, and entitles Lenhoff to commission this deal. The evidence established that Lenhoff submitted Grieve for Line Producer and not for a UPM. Lenhoff did not submit his client for the position he received. Further, *Dark Angel* producer, Steve Sassen testified that Lenhoff had absolutely nothing do to with the hiring of Grieve for *Dark Angel*.

15. Title 8 California Code of Regulations (CCR) §12001(b) maintains that,

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"[a] talent agency may provide for the payment of compensation after the termination thereof with respect to any employment contracts entered into or negotiated for or to any employment accepted by the artist during the term of the talent agency contract... To be entitled to the payment of compensation after termination of the contract between the artist and the talent agency, the talent agency shall be obligated to serve the artist and perform obligations with respect to any employment contract."

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16. The regulation's intent was to compensate an agent for work performed during the relationship, after subsequent termination by the artist. Here, it cannot be said that Lenhoff's efforts accomplished anything for his client. He did not submit Grieve, nor was he a factor for any position Grieve accepted. He did not negotiate any contract on Grieve's behalf and *Dark Angel* employment was accepted long after termination. Lenhoff expects to commission three deals for which he was had no participation in securing. Lenhoff's actions on behalf of his client do not satisfy either the terms of paragraph (5) of the parties' contract, nor do they satisfy the conditions set forth in CCR §12001(b). In short, Lenhoff is not entitled to commission *Dark Angel*.

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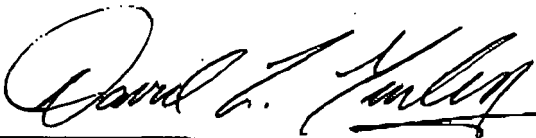
17. An agency relationship is created for the benefit of the principle. Respondent should have been free to concentrate on the creative aspects of the production and not concerned with securing his own employment. The express terms of this contract created a specific duty for the agent to use "reasonable efforts"

1 in creating employment opportunities and negotiating employment
 2 contracts on his client's behalf. Lenhoff did not perform his part
 3 of the bargain.

6 ORDER

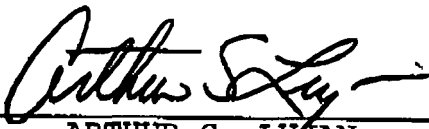
7 For the above-stated reasons, IT IS HEREBY ORDERED that:
 8 respondent, within thirty days, shall provide an accounting of his
 9 earnings for L.A. Snowday, and pay 10% of these earnings, plus
 10 interest at the rate of 10% per year from the dates that the
 11 earnings upon which these commissions are based were received by
 12 respondent. The petitioner is not entitled to commissions earnings
 13 for Dark Angel.

15 Dated: 4/23/02

16 
 17 David L. Gurley
 Attorney for the Labor Commissioner

21 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

25 Dated: 04/23/2002

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 27 ARTHUR S. LUJAN
 State Labor Commissioner

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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. §1013a)

LENHOFF & LENHOFF VS GEORGE GRIEVE
SF 006-01 TAC 6-01

I, Benjamin Chang, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102.

On April 23, 2002, I served the following document:

DETERMINATION OF CONTROVERSY

by facsimile and by placing a true copy thereof in envelope(s) addressed as follows:

CANDICE S. KLEIN, ESQ.
CARPENTER & ZUCKERMAN
9200 SUNSET BLVD., STE 1207
LOS ANGELES, CA 90069

ELI M. KANTOR, ESQ.
ATTORNEY AT LAW
9595 WILSHIRE BLVD., STE 405
BEVERLY HILLS, CA 90212-2512

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first-class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on April 23, 2002, at San Francisco, California.



BENJAMIN CHANG