

1 **STATE OF CALIFORNIA**
Department of Industrial Relations
2 Division of Labor Standards Enforcement
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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
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11
12 GOLDEN BROOKS, an individual,
13 Petitioner,

14 vs.

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16 RICK AX, an individual and dba RICK
17 AX MANAGEMENT, a sole
18 proprietorship; LORI COATS, an
individual,

19 Respondents.
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) CASE NO. TAC 43-04

) **DETERMINATION OF
CONTROVERSY**

21 The above-captioned matter, a petition to determine controversy under Labor Code
22 §1700.44, came on regularly for hearing on June 19, 2006 in Los Angeles, California, before
23 the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner
24 GOLDEN BROOKS, an individual, (hereinafter, referred to as "BROOKS"), appeared and
25 was represented by Andrew D. Stein of Blanchard Stein & Stein. Respondent RICK AX, an
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1 individual and dba RICK AX MANAGEMENT, a sole proprietorship, not having been
2 served with this Petition, is hereby dismissed as a party to this action. Respondent LORI
3 COATS, an individual, (hereinafter, referred to as "COATS"), appeared telephonically from
4 New York. Appearing telephonically from New York as a witness for COATS was
5 Shalimar Roedica.

6 Based on the evidence presented at this hearing and on the other papers on file in this
7 matter, the Labor Commissioner hereby adopts the following decision.

8 **FINDINGS OF FACT**

9 1. BROOKS is an actress who currently appears on the television sitcom
10 "*Girlfriends*." At all times mentioned herein, BROOKS was a resident of the County of Los
11 Angeles, State of California.

12 2. At all times mentioned herein, COATS was employed in the County of Los
13 Angeles, State of California. COATS currently resides in New York City, New York.
14 COATS was personally served with the Petition to Determine Controversy and Notice to
15 Answer on September 27, 2005 at her residence in New York City. At no time, has COATS
16 been licensed as a talent agent in the State of California.

17 3. BROOKS first met COATS in late 1998 or early 1999 when COATS worked
18 as an assistant manager for a talent management company called Mindel Donegan. COATS
19 eventually left Mindel Donegan and began working as a manager with Rick Ax's company,
20 which at the time was called "Goldcoast" and is now called Rick Ax Management. COATS
21 asked BROOKS, who at the time, was not represented by a manager and who had just ended
22 her relationship with her former agent, Writers and Artists, to join her at Rick Ax
23 Management. BROOKS testified that COATS promised her that if she hired Rick Ax
24 Management, COATS could do a better job for her. BROOKS eventually hired Rick Ax
25 Management to represent her as her management company.

26 4. As her manager, Rick Ax, with the assistance of COATS, set up
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1 interviews for BROOKS with talent agents and attorneys that Rick Ax personally knew. In
2 March 2000, BROOKS testified that Rick Ax introduced her to her current talent agent,
3 Abrams Talent Agency, (hereinafter, referred to as "Abrams"). It was also around this time
4 that BROOKS successfully auditioned for a role on the pilot for "*Girlfriends*." On July 14,
5 2000, after the "*Girlfriends*" pilot was picked up, BROOKS signed a one page contract with
6 Rick Ax Management and COATS which was referred to as the "*Girlfriends*" Commission
7 *Payment Agreement*. This agreement provided as follows:

8 "In consideration of personal management services rendered
9 on my behalf by Rick Ax Management, including, without
10 limitation, Lori Coats (the receipt of which I acknowledge), I
11 Golden Brooks, agree to pay to Rick Ax Management a
12 commission equal to 10% of my total gross earnings on the
13 television series currently entitled "*Girlfriends*: for the duration
14 of the contract (but excluding any increased compensation received
15 as a result of any renegotiations unless I am still represented by Rick
16 Ax Management)."

17 5. BROOKS argued that this contract was proof that COATS along with
18 Rick Ax, procured the "*Girlfriends*" employment. However, when pressed by COATS on
19 cross examination, BROOKS admitted that she has always paid Abrams a 10% commission
20 because they, along with Rick Ax Management, submitted her for "*Girlfriends*."
21 Furthermore, when asked if she had any proof that COATS had personally submitted her or
22 attempted to submit her for the role on "*Girlfriends*," BROOKS admitted that she was
23 informed by the Executive Producer of "*Girlfriends*" that Rick Ax's company had contacted
24 them. BROOKS also testified that because COATS worked for Rick Ax's company, she
25 helped Rick Ax obtain auditions and jobs which he was not supposed to obtain for her
26 without a talent agency license.

27 6. BROOKS also testified that she had numerous faxes showing that COATS
28 sent her out on auditions for various pilots during Pilot Season 2000 as well as independent
29 movies. However, when asked on cross examination to produce such faxes, she stated they
30 were at home but that she could get them later.

1 7. COATS testified that, as BROOKS' manager, her job was to make sure
2 BROOKS went to the auditions that Abrams procured for BROOKS. Additionally, she
3 made sure that BROOKS had all the information for the auditions, including the directions
4 and copies of the scripts. After the auditions, COATS testified that she would seek feedback
5 on how BROOKS performed. With regard to "*Girlfriends*," COATS testified that after
6 Abrams obtained the employment for BROOKS, COATS accompanied BROOKS to
7 meetings with publicists, photo shoots and helped BROOKS with whatever else she needed
8 to be done. COATS testified that she earned her commission by performing these tasks for
9 BROOKS, as her manager. Moreover, COATS argues that it was never her role nor did she
10 have the capacity to acquire or solicit work for BROOKS. In response, BROOKS testified
11 that she didn't hire COATS to get her coffee, babysit her or do miscellaneous things that she
12 could do herself. Rather, she hired COATS because COATS promised her that she could do
13 a much better job for BROOKS once she became a manager at Rick Ax Management.

14 8. BROOKS fired Rick Ax Management during season two of "*Girlfriends*." In
15 an effort to get out of her contract with Rick Ax Management, in early April 2002, the
16 parties¹ entered into a settlement agreement without filing a civil action, wherein they
17 modified the terms of the original July 14, 2000 "*Girlfriends*" *Commission Payment*
18 *Agreement*. In this settlement agreement, referred to as "*Agreement for Compromise,*
19 *Settlement and Release of Disputed Claims*," BROOKS agreed to pay the parties \$47,025
20 for the second season of "*Girlfriends*," 7.5% of her gross earnings for the third season, and
21 7% of her gross earnings for the fourth, fifth and sixth seasons. BROOKS testified that she
22 paid Rick Ax up until the point she was advised that she didn't have to pay due to Rick Ax,
23 Rick Ax Management and COATS having violated the Talent Agencies Act. COATS,
24 however, never received any of her portion of the settlement proceeds from Rick Ax and in
25 turn, sued him, his company and GOLDEN BROOKS for breach of the "*Agreement for*

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27 ¹The parties include BROOKS, COATS, Rick Ax and Rick Ax Management.

1 *Compromise, Settlement, and Release of Disputed Claims.*” In settlement of that case,
2 COATS testified that Rick Ax and Rick Ax Management paid her a sum of money and
3 agreed to assign their rights to commissions earned during season six, to COATS.

4 BROOKS testified that she was dismissed from the suit filed against her by COATS. At
5 some point after season five, BROOKS stopped payment altogether. BROOKS stopped
6 making payments on the “*Agreement for Compromise, Settlement and Release of Disputed*
7 *Claims,*” after season five on the basis that the settlement agreement and the original
8 management agreement (dated July 14, 2000), were all void due to violations of the Talent
9 Agencies Act.

10 9. In this action, BROOKS seeks a determination that the July 14, 2000
11 “*Girlfriends*” *Commission Payment Agreement* and the April 9, 2002 “*Agreement for*
12 *Compromise, Settlement and Release of Disputed Claims*” are illegal and void *ab initio*
13 because COATS violated the Talent Agencies Act.

14 CONCLUSIONS OF LAW

15 1. Labor Code §1700.4(b) includes “actors” in the definition of “artist” and
16 BROOKS is therefore an “artist” within the meaning of §1700.4(b). The Labor
17 Commissioner has jurisdiction to determine this controversy pursuant to Labor Code
18 §1700.44(a).

19 2. The contested issues here are whether COATS functioned as a “talent agency”
20 within the meaning of Labor Code §1700.4(a), and if so, what consequences should flow
21 from the fact that COATS was not licensed by the Labor Commissioner as a talent agency.

22 3. Labor Code §1700.4(a) defines “talent agency” in pertinent part, as “a person
23 or corporation who engages in the occupation of procuring, offering, promising, or
24 attempting to procure employment or engagements for an artist or artists...” Labor Code
25 §1700.5 provides that “[n]o person shall engage in or carry on the occupation of a talent
26 agency without first procuring a license...from the Labor Commissioner.”

1 4. The term "procure," as used in Labor Code §1700.4(a) means "to get
2 possession of: obtain, acquire, to cause to happen or be done: bring about." *Wachs v. Curry*
3 (1993) 13 Cal.App.4th 616, 628.

4 5. The burden of proof in establishing a violation of the Talent Agencies Act,
5 (hereinafter, referred to as "Act"), falls on the petitioner. In this case, BROOKS failed to
6 meet her burden. Specifically, BROOKS failed to prove that COATS violated the Act by
7 procuring, offering, promising or attempting to procure any engagement or employment for
8 BROOKS, including employment on the "Girlfriends" television show.

9 6. The proper burden of proof in actions before the Labor Commissioner is
10 found at Evidence Code §115 which states, "[e]xcept as otherwise provided by law, the
11 burden of proof requires proof by preponderance of the evidence." Further, *McCoy v. Board*
12 *of Retirement of the County of Los Angeles Employees Retirement Association* (1986) 183
13 Cal.App.3d 1044, 1051 states, "the party asserting the affirmative at an administrative
14 hearing has the burden of proof, including both the initial burden of going forward and the
15 burden of persuasion by preponderance of the evidence [cite omitted]. "Preponderance of
16 the evidence standard of proof requires the trier of fact to believe that the existence of a fact
17 is more probable than its nonexistence." *In re Michael G.* 74 Cal.Rptr.2d 642.

18 7. As we stated in *A.C. Watson and Clarang, Inc. v. Richard Glasser, et al.*, TAC
19 24-99 at p. 11-12, "When establishing a preponderance of the evidence, the moving party
20 must supply more than 'he said/she said' when both parties testify credibly. There must be
21 evidence of an offer, a promise, or an attempt by respondents to procure employment.
22 Minimally, an element of negotiation established through documentary evidence or
23 testimony from a witness with personal knowledge of respondents' procurement activity will
24 suffice." As in TAC 24-99, these elements were not present in this case. First, BROOKS
25 testified that she had many faxes that she received from COATS which showed that COATS
26 was sending her out on auditions. Yet, at the hearing she stated that she did not have any
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1 faxes with her. They were left at home. Additionally, when she was asked on cross
2 examination by COATS if she had any witnesses that could confirm that COATS ever called
3 anyone on BROOKS' behalf to get BROOKS an audition, BROOKS replied, "I don't need
4 witnesses" and "I will not present witnesses and my word is fine." Lastly, when asked if she
5 had a copy of her agreement with Abrams, (since presumably it would show if it was signed
6 before or after she obtained "*Girlfriends*"), BROOKS responded, "We don't have it with us
7 today because it is irrelevant." Finding that both BROOKS and COATS were equally
8 credible, such documents and witnesses would have been beneficial to this determination.
9 By not providing them, BROOKS has failed to meet her burden of proof.

10 8. BROOKS argues that Exhibit B, which is the July 14, 2000 "*Girlfriends*"
11 *Commission Payment Agreement*, is proof that COATS was being paid commissions for
12 procuring "*Girlfriends*." We disagree. Exhibit B clearly states that the commissions are
13 being paid in consideration for personal management services rendered by Rick Ax
14 Management, including, without limitation, Lori Coats. COATS testified that she provided
15 management services to BROOKS. Conversely, BROOKS testified that she didn't hire
16 COATS to be a babysitter or an assistant. She hired COATS to work on her behalf by
17 procuring work for her. On this issue, we find COATS' testimony to be more credible,
18 mainly because it doesn't make sense that BROOKS would pay both Abrams Talent Agency
19 and Rick Ax Management to procure work on her behalf.

20 9. It follows that COATS did not violate the Act. Accordingly, the July 14,
21 2000 "*Girlfriends*" *Commission Payment Agreement* and the April 9, 2002 "*Agreement for*
22 *Compromise, Settlement and Release of Disputed Claims*" are not illegal nor void *ab initio*.

23 ORDER

24 For the above-state reasons, IT IS HEREBY ORDERED that the July 14,

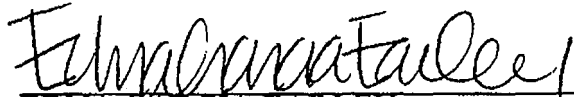
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1 2000 "Girlfriends" Commission Payment Agreement and the April 9, 2002 "Agreement for
2 Compromise, Settlement and Release of Disputed Claims" are not illegal nor void *ab initio*.
3 Therefore, the petition is denied.


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Dated: 11-7-06


EDNA GARCIA EARLEY
Attorney for the Labor Commissioner

Adopted:

Dated: 11-7-06


ROBERT JONES
Acting State Labor Commissioner