

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
4 William A. Reich, Esq. (SBN 51397)
5 1901 N. Rice Avenue, Suite 200
6 Oxnard, California 93030
7 Telephone No. (805) 973-1244
8 Facsimile No. (805) 973-1251

9 Special Hearing Officer for the Labor Commissioner

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

EXPECTING MODELS, INC.,
Petitioner,
vs.
STACIE SCHIFINO, MIKE CAHOON,
Respondents.

CASE NO.: TAC-31147
DETERMINATION OF
CONTROVERSY

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on January 7, 2015 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner EXPECTING MODELS, INC. (hereinafter "Petitioner") appeared by and through its President and CEO Liza Elliott-Ramirez and its Vice-President Eric Ramirez. Respondents Stacie Schifino and Michael Cahoon appeared personally on their own behalf.

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

FINDINGS OF FACT

1
2
3 1. Petitioner is a talent agency licensed to operate as such under the provisions
4 of the Talent Agencies Act (the “Act” or “TAA”), Labor code sections 1700 – 1700.47.

5
6 2. Petitioner represents artists in obtaining work in the fields of modeling,
7 film, television, and commercials.

8
9 3. Maria Pallas and her husband, Jeff Dyll, are artists who were represented by
10 petitioner, as their agent, during the February through March, 2013 time period pertinent
11 to this claim.

12
13 4. In late February, 2013, a casting call was placed in connection with a
14 television (internet) commercial project being undertaken by Mass Mutual Financing
15 Group. The casting call sought pregnant couples and solo pregnant women, with a
16 preliminary preference for the former.

17
18 5. At that time, an employee of petitioner contacted the head of casting on the
19 project to pitch artists represented by petitioner for roles in the planned commercial.
20 These efforts succeeded in securing an audition for Maria Pallas and Jeff Dyll.

21
22 6. In the course of securing the audition for Maria Pallas and Jeff Dyll, the
23 employee of the petitioner was advised that the project was also interested in casting
24 actual friends of the pregnant couple that might ultimately be selected and wanted friends,
25 if available, to accompany the couple that was being sent to the audition by petitioner. As
26 a result, petitioner’s employee asked Maria Pallas and Jeff Dyll to invite friends to come
27 with them and audition for roles as their friends in the commercial.

1 7. Thereafter, Maria Pallas asked respondents Stacie Schifino (“Schifino”) and
2 Michael Cahoon (“Cahoon”) to accompany her and audition for a role in the commercial.
3 They agreed and went with her and Jeff Dyll to the audition. After being asked to return
4 for a call back, all four individuals eventually were booked by the project for roles in the
5 commercial.

6
7 8. At the time that Schifino and Cahoon attended the audition with Maria
8 Pallas and Jeff Dyll, they had never had any contact or dealings of any kind with
9 petitioner. They went to the audition only because Maria Pallas had asked them to come
10 and act as her friends.

11
12 9. At the time that the four individuals were asked to return for the call back,
13 petitioner—speaking through the employee that had arranged for the audition—had some
14 e-mail exchanges with Maria Pallas in which it expressed the view that it should be
15 considered the booking agent not only for Maria Pallas and her husband but also for
16 Schifino and Cahoon. All of these exchanges, and additional exchanges which occurred
17 prior to the time the four individuals were booked for the commercial, were between
18 petitioner and Maria Pallas; to that point, there has been no contact between petitioner
19 and Schifino or Cahoon.

20
21 10. The booking of the four individuals for the commercial was confirmed in
22 the afternoon of March 4, 2013. Early that evening, Schifino—who was represented by
23 another talent agency—sent an e-mail to the employee of petitioner who had secured the
24 audition for Maria Pallas and Jeff Dyll. The e-mail informed petitioner’s employee that
25 Schifino had contacted her own agent and that Schifino’s agent would be handling the
26 booking of the commercial and the paperwork for her and for Cahoon.

1 11. Late that evening, petitioner's CEO, Liza Elliott-Ramirez, sent Schifino an
2 e-mail stating that since Schifino and Cahoon had auditioned for the project through her
3 company it was improper for them to pull out and have the representation handled by a
4 different talent agency. Ms. Elliott-Ramirez threatened to take steps to effect a
5 cancellation of the booking of all four individuals, including those of petitioner's own
6 clients. The indication was that this is what would happen if the matter was not resolved.

7
8 12. In an e-mail sent to petitioner the next evening, Schifino stated that
9 regardless of who handled the booking and paperwork on the commercial she and Cahoon
10 both wanted petitioner to receive a commission.

11
12 13. In an April 5, 2013 e-mail sent to petitioner and directed to Ms. Elliott-
13 Alvarez, Schifino complained about being harassed by petitioner and stated that she had
14 determined that she was under no legal obligation to pay petitioner a commission fee on
15 her earnings from the completed commercial. On April 8, 2013, Schifino's agent sent
16 Ms. Elliott-Alvarez an e-mail to the same effect, indicating that neither Schifino nor
17 Cahoon was obligated to pay any commission of any kind to petitioner.

18
19 14. Nevertheless, despite their legal position, both Schifino and Cahoon did
20 subsequently regularly pay a 10% commission fee to petitioner on all the earnings that
21 they received as payment for their roles in the Mass Mutual commercial.

22
23 **LEGAL ANALYSIS**

- 24
25 1. Petitioner operated as a duly licensed talent agency.
26
27 2. Respondents Schifino and Cahoon were artists for purposes of their
28

1 employment in connection with the Mass Mutual project.

2
3 3. This case is within the jurisdiction of the Labor Commissioner under Labor
4 Code section 1700.44, subdivision (a).

5
6 4. The petition filed in this case seeks two types of relief. First, the petition
7 seeks a determination that the talent agency that Schifino identified as her agent, namely
8 The House of Representatives, was not in fact contractually the agent of either Schifino or
9 Cahoon during the period that encompassed the auditioning and booking of Schifino and
10 Cahoon for the Mass Mutual project. This particular request for relief can be readily
11 disposed of since it does not set forth a cognizable claim for relief affecting the rights of
12 petitioner.

13
14 5. Insofar as petitioner is concerned, whether the House of Representatives
15 was the agent of Schifino and Cahoon at the time the Mass Mutual engagement was
16 entered into is immaterial. If, on the one hand, we were to assume that an agency
17 relationship did exist, this would not operate to preclude petitioner from seeking to
18 establish that Schifino and Cahoon simultaneously engaged petitioner to be their agent in
19 connection with the Mass Mutual project. On the other hand, if we were to assume that
20 an agency relationship did not exist, this would not mean that petitioner would
21 automatically be constituted as the talent agent for Schifino and Cahoon in relation to the
22 Mass Mutual project. Put another way, the rights of petitioner viz a viz respondents
23 Schifino and Cahoon must be premised on the relationship that petitioner had with
24 respondents, and cannot be based on the entirely irrelevant relationship that respondents
25 had with a distinct third party.

1 6. It follows that petitioner is not legally entitled to seek a determination of
2 whether Schifino and Cahoon had a contractual talent agency relationship with The
3 House of Representatives at the time the Mass Mutual engagement was finalized.
4 Accordingly, that request for relief must be denied.
5

6 7. The second type of relief that the petition seeks is a determination that
7 petitioner is the talent agent for Schifino and Cahoon in connection with the Mass Mutual
8 project and that therefore it is legally entitled to a 10% commission fee on all the amounts
9 paid to Schifino and Cahoon for their work on that project.
10

11 8. It is axiomatic that the *sine qua non* of any claim by a talent agency for fees
12 due from an artist is the existence of a contract that entitles the agency to receive such
13 fees for representing the artist. Absent the existence of such a contract, a talent agency
14 has no legal basis for asserting a right to receive a commission fee from the earnings
15 generated by an artist—or to receive any other compensation from an artist.
16

17 9. A contract is an agreement by the parties to do or not do something. (Civ.
18 Code §1549; 1 Witkin, Cal. Procedure (10th ed. 2005) Contracts, §1, pp. 58 – 59.) An
19 essential element of a contract is the parties' mutual consent. (*Id.*, at §3, p. 61.)
20 Contractual consent is manifested through the mechanism of an offer and acceptance, i.e.,
21 one party offers to do something in exchange for something from the other party, and the
22 other party accepts the offer. (*Id.*, at §117, pp. 155 – 157.) If, however, the parties have
23 not consented to contract with one another, then their actions, or failures to act, are
24 without contractual significance and do not give rise to any legal obligation.
25

26 10. In this case, at the time that petitioner's employee arranged for Maria Pallas
27 and Jeff Dyll to be auditioned for the Mass Mutual project, there was no agreement of any
28

1 kind between petitioners, on the one hand, and Schifino and Cahoon, on the other.
2 Indeed, at that point in time the parties had not even communicated with one another, and
3 thus could not possibly have consented to contract with one another. In other words,
4 there had been no offer from petitioner to represent Schifino and Cahoon in seeking to
5 obtain a role for the two of them on the Mass Mutual commercial in exchange for the
6 payment of a commission, and there had been no acceptance by Schifino and Cahoon of
7 any such offer.
8

9 11. Thus, when petitioner's employee urged Maria Pallas to bring her friends
10 with her to the Mass Mutual audition, petitioner was not acting pursuant to any contract
11 which authorized it to attempt to obtain an audition for Schifino and Cahoon or which
12 obligated Schifino and Cahoon to pay petitioner a commission if the audition resulted in
13 the two of them being booked for the commercial. Petitioner in fact acted in furtherance
14 of its own interests and those of its clients Maria Pallas and Jeff Dyll, seeking to leverage
15 the producer's interest in casting friends of the pregnant couple to bolster the chances of
16 its clients being selected as the main pregnant couple for the commercial. While
17 petitioner's actions played an indirect role in Schifino and Cahoon ending up at the
18 audition with an opportunity to be cast in the commercial, that was a purely fortuitous
19 circumstance having absolutely nothing to do with any contract between petitioner and
20 Schifino and Cahoon—such a contract simply did not exist.
21

22 12. In sum, petitioner did not contractually represent Schifino and Cahoon in
23 connection with the audition that landed Schifino and Cahoon their roles in the Mass
24 Mutual commercial. Consequently, petitioner had and has no legal basis for claiming a
25 10% commission fee on the amounts due and payable to Schifino and Cahoon for their
26 work on the commercial. Since petitioner was not their agent in connection with the
27 procurement of the Mass Mutual engagement, Schifino and Cahoon did not and do not
28

1 owe petitioner any commission fees.

2
3 13. Ultimately, Schifino and Cahoon elected to pay petitioner a 10%
4 commission fee on the amounts they received from the Mass Mutual commercial. This
5 decision, however, was not made based on any valid agreement that obligated Schifino
6 and Cahoon to pay such a commission fee; rather, it was made in direct consequence of
7 the threats from petitioner's CEO that if they did not accede to her demands she would
8 completely extinguish the Mass Mutual commercial booking. These threats from
9 petitioner's CEO were a form of illegal economic compulsion that vitiated any promises
10 that might have been made in submission to the threats (see 1 Witkin, Cal. Procedure,
11 *supra*, §314, pp. 339 – 341); in addition, the threats constituted illegal consideration that
12 could not serve to support promises made in exchange for the CEO refraining from
13 carrying out her threats (see 1 Witkin, *supra*, §419, pp. 460 – 461). Thus, even if the
14 decision to pay the commissions—made in response to the CEO's threats—were to be
15 considered a contractual promise to pay, that illegally exacted contractual promise could
16 not be enforced under California law.

17
18 14. Accordingly, with respect to the second type of relief it seeks, petitioner is
19 not entitled to a determination that requires Schifino and Cahoon to pay petitioner a 10%
20 commission fee on any amounts they receive for their work on the Mass Mutual
21 commercial. It is determined that Schifino and Cahoon are not required or obligated to
22 pay petitioner any such fees.

1 DISPOSITION


2
3 Accordingly, for the reasons set forth above, **IT IS HEREBY ORDERED** as
4 follows:

5
6 1. Petitioner was not the talent agent for respondents Stacie Schifino and Mike
7 Cahoon in connection with the procurement of their roles in the Mass Mutual
8 commercial, and petitioner has never had and does not now have any contractual or other
9 right to claim a commission fee on the amounts due and payable to respondents for their
10 work on the Mass Mutual commercial. Respondents do not have, and have never had, an
11 obligation to pay petitioner any such fee.

12
13 2. Petitioner is not entitled to a determination that House of Representatives
14 was not respondents' talent agent in connection with the Mass Mutual project.

15
16 3. All of the relief requested by petitioner in this proceeding is denied.
17

18
19 Dated: *JULY 1, 2015*



William A. Retch
Special Hearing Officer

20
21
22 Adopted:

23
24
25 Dated: *7/1/2015*



Julie Su
State Labor Commissioner