

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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10
11 **BEFORE THE LABOR COMMISSIONER**
12
13 **OF THE STATE OF CALIFORNIA**

14 AKA TALENT AGENCY,)
15) **CASE NO.: TAC-33896**
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17) **DETERMINATION OF CONTROVERSY**
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11 Petitioner,
12 vs.
13 JAMISON REEVES,
14 Respondent.

18 **I. INTRODUCTION**

19 The above-captioned petition was filed on December 9, 2013, by AKA TALENT
20 AGENCY, (hereinafter "Petitioner" or "AKA"), alleging that JAMISON REEVES, (hereinafter
21 "Respondent" or "Reeves"), failed to pay commissions to AKA for work allegedly negotiated by
22 AKA on Reeves' behalf. Petitioner seeks \$2,244.21 in ascertainable unpaid commissions and
23 interest and an accounting on unknown commissions owed.

24 Respondent failed to file an answer. A hearing was scheduled before the undersigned
25 attorney, specially designated by the Labor Commissioner to hear this matter. The hearing
26 commenced May 27, 2015 in Long Beach, California. Both parties appeared in pro se. Due
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1 consideration having been given to the testimony, documentary evidence and arguments
2 presented, the Labor Commissioner adopts the following determination of controversy.

3 **II. STATEMENT OF FACTS**

4 1. On March 7, 2007, the parties hereto entered into a written contract and operated
5 under the terms of the contract up and until April 5, 2013. Under the contract, The Petitioner
6 will represent the Respondent as his talent agent and shall use all reasonable efforts to procure
7 engagements or employment on Respondent's behalf. In return, Respondent is obligated to pay
8 commissions to the Petitioner in a sum equal to ten percent (10%) of all monies received by
9 Respondent, directly or indirectly, under contracts of employment entered into during its term for
10 so long a period thereafter as the Respondent continues to receive monies.

11 2. On February 28, 2013, during the representation period, Petitioner procured and
12 negotiated a national "Johnsonville Sausage" commercial for Respondent (the Johnsonville
13 commercial). Although Respondent paid a 10% commission on a portion of his earnings for the
14 Johnsonville commercial, he ceased paying commissions on or around April 5, 2013. The
15 amount of unpaid commissions for the Johnsonville commercial totals \$2,244.41.

16 3. On April 4, 2013, Respondent submitted Petitioner for a second national
17 commercial for "Prestone Tires" (the Prestone commercial). The Petitioner was chosen for the
18 Prestone commercial. The Petitioner failed to remit any commission to AKA for the Prestone
19 commercial.
20 commercial.

21 4. On April 5, 2013 Reeves terminated his relationship with Respondent in an e-mail
22 to Pamela Porter, Mike Abrams and Doug Ely of AKA stating, "Hey Guys this is my letter of
23 termination with AKA. Thanks for everything but I am leaving the agency."

24 5. A dispute arose as to the unpaid commissions for both the Johnsonville and
25 Prestone commercials. On July 12, 2013, Respondent acknowledged the unpaid commissions in
26 an e-mail to Jeremy Jones of AKA and stated, "I will follow up with Johnsonville and Prestone
27 at talent partners I'll cut you a check". That e-mail was followed up by another e-mail on July
28 15, 2013 whereby Respondent again acknowledged owed commissions and stated "If you

1 haven't mailed the Samsung [check] take the commission for Prestone and Johnsonville [sic] it
2 probably will make it easier..."

3 6. The Petitioner acknowledged it was AKA who submitted him for both of these
4 commercials. And it was undisputed that Reeves had not paid any other agency any commission
5 on these earnings.

6 7. The parties' contract as to how commissions are to be handled after termination
7 stated the following:

8 I agree to pay you 10 (ten) percent of the gross compensation earned and
9 received by me for , or in connection with, (i) any contracts for, or
10 engagements of, my services ... entered into or negotiated for during the
11 term ... If within four months after the end of the term hereof, I accept any
12 offer on terms similar or reasonably comparable to any offer made to me
13 during the term hereof ... from or through the same offeror ... the contract
14 resulting therefrom shall be subject to all of the terms including the
15 payment provision ... If I enter into any agreement which would have been
16 otherwise covered by this General Services Agreement within four months
17 after the termination hereof, with any person or business entity as to whom
18 a submission has been made and/or negotiations on my behalf during the
19 term of this Agreement then in said event any such employment contract
20 entered into shall be deemed to have been entered during the term hereof."

21 8. The Petitioner argued that he stopped paying commissions because he was not
22 satisfied with the services provided by AKA. Specifically, Respondent was disappointed that
23 AKA refused to represent him theatrically and moreover, failed to capitalize on a Saturday Night
24 Live parody by Keenen Thompson referencing the Respondent as "the one black guy in every
25 commercial."

26 III. ARGUMENT

27 1. Labor Code §1700.4(b) includes "artists rendering professional services in
28 television" in the definition of "artist" and petitioner is therefore an "artist" within the meaning
of Labor Code §1700.4(b).

2. It was stipulated that AKA Talent Agency, is a California licensed talent agency.

3. 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

1 of the contract,” and the Labor Commissioner’s jurisdiction has been held to include the
2 resolution of contract claims brought by artists or agents seeking damages for breach of a talent
3 agency contract. (1949) 33 Cal.2d 861, Robinson v. Superior Court (1950) 35 Cal.2d 379.
4 Garson v. Div. Of Labor Law Enforcement Therefore the Labor Commissioner has jurisdiction
5 to determine this matter.

6 4. The sole issue is whether the alleged acts and omissions by AKA as argued
7 by Reeves, constitute a material breach of the implied covenant of good faith and fair
8 dealing in the agency relationship thereby rendering any commissions owed to AKA on
9 the Prestone and Johnsonville commercials null and void. We conclude the actions of
10 AKA do not constitute a material breach.

11 5. In general, the *wrongful* act, the unjustified or unexcused, failure to perform
12 on a contract, is the *breach*. (See Rest.2d Contracts §235(2).) Ordinarily, a breach is the
13 result of an intentional act, but negligent performance may also constitute a breach,
14 giving rise to alternative contract and tort actions. (See Witkin 10th Ed. Contracts §847
15 citing Cal.Proc.4th, Actions §§ 158, 159). Any breach, total or partial, that causes a
16 measurable injury, gives the injured party a right to damages as compensation thereof.
17 (See *Borgonovo v. Henderson* (1960) 182 C.A.2d 220, 231, quoting Rest.2d Contracts
18 §236; Corbin §948). The important question, however is whether a particular breach will
19 also give the injured party the right to refuse further performance on his or her own part,
20 i.e., to terminate the contract. The test is whether the breach is material; and a total or
21 complete breach is, of course, material and grounds for termination by the injured party.
22 (See Witkin 10th ed. Contracts § 852.)

23 6. When determining whether a breach is material we must look closely at the
24 facts as presented. Here, utilizing this standard it is clear AKA provided considerable
25 performance which did not breach or affect the root of the contract and thus does not
26 justify termination. The law is well settled in this state that a person is not entitled to
27 rescind or abandon a contract for an alleged breach of that contract when the breach does
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1 not go to the root of the consideration (*See Karz v. Department of Professional*
2 *Vocational Standards* (1936) 11 C.A.2d 554,557, quoting *Walker v. Harbor Business*
3 *Blocks Co.*, 181 Cal. 773, 186 P. 356; 13 C.J. 614, § 664.) Here, the decision of AKA not
4 to represent Reeves theatrically nor capitalize on a Saturday Night Live parody about
5 Reeves do not rise to the level of a material breach excusing performance by Reeves.

6 7. Moreover, Mr. Reeves acknowledged his responsibility to pay commissions and
7 expressly conceded he owed commission in the two e-mails sent to AKA on July 12 and Jul 15,
8 2013.

9 8. In short, Reeves reaped the benefits for the work performed by AKA, but
10 unilaterally determined he didn't want to pay commissions anymore because he was unsatisfied
11 with AKA's performance. Courts have long held, "he who shakes the tree is the one to gather
12 the fruit." *Willison v. Turner* 89 Cal.App.2d 589 (1949). Certainly, Reeves may terminate a
13 personal services agreement if he feels that his agent is not providing the services contracted for.
14 But he may not unilaterally determine that he has no further obligation to pay for work already
15 performed.

16 9. Further, California Code of Regulations Title 8 § 12001 (b) states, "[t]o be
17 entitled to the payment of compensation after termination of the contract between the artist and
18 the talent agency, the talent agency shall be obligated to serve the artist and perform obligations
19 with respect to any employment contract or to extensions or renewals of said employment
20 contract or to any employment requiring the services of the artist on which such compensation is
21 based." It was clear through testimony and documentary evidence that AKA was willing and
22 able to conduct services on behalf of Reeves.

23 10. In conclusion, AKA did not act with disloyalty or bad faith; did not breach the
24 contract and consequently, Petitioner's request is granted. The Petitioner is entitled to their
25 commissions earned for the Johnsonville and Prestone commercials.
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**)
3 **COUNTY OF LOS ANGELES**)

4 I, Tina Provencio, declare and state as follows:

5 I am employed in the State of California, County of Los Angeles. I am over the age of
6 eighteen years and not a party to the within action; my business address is: 300 Oceangate, Suite
850, Long Beach, CA 90802.

7 On October 1, 2015, I served the foregoing document described as: **DETERMINATION**
8 **OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof
enclosed in a sealed envelope addressed as follows:

9 Jerome Jones
10 Director of Business Affairs
11 c/o AKA Talent Agency
6310 San Vicente Boulevard, Suite 200
Los Angeles, CA 90048

Jamison Reeves
840 S. Fairfax Avenue
Los Angeles, CA 90036


12 **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection
13 and processing of correspondence for mailing with the United States Postal Service. This
14 correspondence shall be deposited with the United States Postal Service this same day in
the ordinary course of business at our office address in Long Beach, California. Service
15 made pursuant to this paragraph, upon motion of a party served, shall be presumed
invalid if the postal cancellation date of postage meter date on the envelope is more than
one day after the date of deposit for mailing contained in this affidavit.

16 **(BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically via e-
17 mail to the e-mail address of the addressee(s) set forth in the attached service list.

18 **(BY OVERNIGHT DELIVERY)** I served the foregoing document(s) by FedEx, an
19 express service carrier which provides overnight delivery, as follows: I placed true copies
of the foregoing document in sealed envelopes or packages designated by the express
20 service carrier, addressed to each interested party as set forth above, with fees for
overnight delivery paid or provided for.

21 **(STATE)** I declare under penalty of perjury, under the laws of the State of
22 California that the above is true and correct.

23 Executed this 1st day of October, 2015, at Long Beach, California.

24 
25 Tina Provencio
26 Declarant