

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
By: FRANK C. S. PEDERSEN,
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8 BEFORE THE LABOR COMMISSIONER
9 STATE OF CALIFORNIA

10	BO DEREK,)	
)	NO. 08116
11	Petitioner,)	TAC 18-80
)	SF MP 82-80
12	vs.)	
)	
13	KAREN CALLAN,)	<u>DETERMINATION</u>
)	
14	Respondent.)	
)	

15
16 The above-entitled controversy came on regularly for
17 hearing in Los Angeles, California, on June 29, 1981 and July
18 9, 1981, before the Labor Commissioner of the State of Cali-
19 fornia by Frank C. S. Pedersen, Counsel for the Division of
20 Labor Standards Enforcement, serving as Special Hearing Officer
21 under the provisions of Section 1700.44 of the Labor Code
22 of the State of California; petitioner Bo Derek appearing
23 by the law office of Lavelly & Singer by John H. Lavelly, Jr.,
24 and respondent Karen Callan appearing by the law office of
25 Belli & Choulos by Melvin Belli, Federico Castelan Sayre and
26 Barbara J. Westrem.

27 Evidence, both oral and documentary having been intro-

1 duced, and the matter having been briefed and submitted for
2 decision, the following determination is made:

3 It is the determination of the Labor Commissioner:

4 1. That the Labor Commissioner has exclusive jurisdiction
5 over the controversy set forth in the Petition to Determine
6 Controversy.

7 2. That any agreements that respondent alleges were
8 entered into are void as constituting agreements in violation
9 of Section 1700.5 of the Labor Code.

10 3. That respondent is not entitled to any commission
11 or compensation whatsoever as arising out of her purported
12 services to petitioner.

13 I

14 INTRODUCTION

15 On July 30, 1980 Bo Derek filed a Petition to Determine
16 Controversy pursuant to Labor Code Section 1700.24.

17 The petition alleged that respondent Karen Callan had
18 filed an action in Superior Court, Los Angeles County, against
19 Bo Derek and others for damages arising out of purported agree-
20 ments that the said Karen Callan had with Bo Derek.

21 The petition further alleged that the Labor Commissioner
22 had exclusive jurisdiction under the provisions of Labor Code
23 Section 1700.44 in that respondent had acted as an Artist's
24 Manager although not licensed as such, and requested the Labor
25 Commissioner to determine that it did have exclusive jurisdic-
26 tion, that respondent was not entitled to any compensation
27 or commission arising out of any agreements between petitioner

1 and respondent, and for a determination that any purported
2 agreements between the parties were invalid and unenforceable.

3 Respondent filed a response to the petition denying the
4 allegations of the petition and alleging that respondent
5 entered into an agreement with petitioner as a personal manager
6 for a percentage of petitioner's gross bookings for a period
7 of one year and into a further oral agreement for the purpose
8 of selling posters, T-shirts and other promotional products.

9 Respondent sought a determination that the Labor Commis-
10 sioner lacked jurisdiction, or, in the alternative, that if
11 the Labor Commissioner decided he had jurisdiction, that it
12 should be determined that the oral agreements referred to were
13 valid and that respondent was entitled to commissions and
14 compensation arising thereunder.

15 II

16 ISSUES

17 Inasmuch as respondent was admittedly not licensed as
18 an Artist's Manager, the issues are:

19 1. Does the Labor Commissioner have jurisdiction?

20 2. Did respondent procure, offer, promise or attempt
21 to procure employment or engagements for Bo Derek within the
22 meaning of Section 1700.4 of the Labor Code?

23 3. Are the purported agreements between petitioner and
24 respondent valid and enforceable, and if so, is respondent
25 entitled to recover any commission or compensation thereunder?

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1 III

2 DISCUSSION

3 Bo Derek is and was an artist as that term is defined in
4 Labor Code Section 1700.4.

5 In September of 1978 respondent Karen Callan and some
6 friends were discussing a proposed movie "10", and respondent
7 mentioned that she knew the perfect "10", and later that evening
8 at the party Blake Edwards was informed that Bo Derek, in respon-
9 dent's opinion, was a perfect "10".

10 Subsequent thereto some purported oral agreements were
11 entered into compensating respondent on a percentage basis of
12 the monies received by petitioner arising out of the meeting
13 respondent arranged for her with Blake Edwards.

14 Later in September of 1978 a meeting was held in Blake
15 Edwards' office. Present were Bo Derek, Karen Callan, Blake
16 Edwards, Bob Weber, Tony Adams and Martin Baum, who was repre-
17 senting Blake Edwards.

18 Bob Weber left immediately and shortly thereafter Bo Derek
19 left, and the meeting continued without her.

20 Discussed were details such as the amount to be paid Bo
21 Derek, options, etc.

22 Respondent denies that she negotiated for Bo Derek at this
23 meeting or ever acted other than as a personal manager.

24 The overwhelming evidence, both oral and documentary, woul
25 seem to indicate otherwise.

26 Respondent's own testimony indicated that she expected a
27 commission for introducing Bo Derek to Blake Edwards. In her

1 own words "The fact was that we agreed upon the 15 percent for
2 whatever evolved out of the meeting with Blake Edwards." (Trans-
3 cript, Page 40, Lines 19-21)

4 Respondent also stated: "If I am putting together a business
5 deal and I am bringing two parties together, I am certainly not
6 going to tell one what the other is doing." (Transcript, Page
7 45, Lines 24-26)

8 Respondent's Second Amended Complaint filed in Superior
9 Court, states in Paragraph 35 thereof, (set forth at Line 25 of
10 the transcript commencing at Page 120):

11 "That in furtherance of the partnership business,
12 plaintiff was to and did promote defendant BO DEREK's public
13 image and popularity and negotiate with persons and compan-
14 ies desiring to employ defendant BO DEREK and to reserve
15 any and all rights to sell, distribute, manufacture, design
16 and license defendant BO DEREK's name or likeness on
17 posters, t-shirts, and other ancillary promotional products
18 as will be shown at the time of Trial."

19 With reference to the same, respondent admitted reading
20 the above allegation when she reviewed and signed the Second
21 Amended Complaint.

22 Martin Baum, who was representing Blake Edwards at the
23 September meeting, testified that Karen Callan was negotiating
24 on behalf of Bo Derek at the meeting.

25 The fact that one of the purported agreements was for
26 respondent to negotiate for Bo Derek in regards to posters,
27 T-shirts, etc., does not exempt it from the purview of Section

1 1700.4 of the Labor Code.

2 Bo Derek denied that she ever entered into any agreement
3 with Karen Callan pursuant to which Karen Callan would act as
4 her personal manager, and in fact there is no evidence on respon-
5 dent's part to indicate that she ever performed any services
6 of the nature generally performed by personal managers.

7 Under the authority of Buchwald vs. Superior Court, 254
8 Cal. App. 2d 347, 62 Cal. Rptr. 364 (1967), the Labor Commis-
9 sioner has jurisdiction to determine whether or not respondent
10 acted as a personal manager or as an Artist's Manager. The
11 Buchwald case further affirmed the broad powers of the Labor
12 Commissioner and stated that since the clear object of the talent
13 Agency Act "is to prevent improper persons from becoming artists'
14 managers (talent agencies) and to regulate such activity for
15 the protection of the public, a contract between an unlicensed
16 artists' manager and an artist is void."

17 Respondent states in her Memorandum of Points and Authori-
18 ties that the Legislature meant to regulate only those whose
19 primary purpose was the securing of employment for artists and
20 not personal managers who might be involved in "incidental" pro-
21 curement of employment, and in this regard cites 52 So. Cal.
22 L.R. 375, 388.

23 That is like saying you can sell one house without a real
24 estate license or one bottle of liquor without an off-sale
25 license.

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1 Furthermore, the Legislature specifically rejected a propos-
2 al introduced by Senator Zenovich on March 16, 1978, that would
3 have permitted personal managers to procure employment as long
4 as it was only "incidental to the obligations contracted for".
5 (Walter L. M. Lorimer in a speech to the Entertainment Law Com-
6 mittee of the Beverly Hills Bar Association, as reported in the
7 Los Angeles Daily Journal Special Report of April 6, 1979, en-
8 titled "The New Statute Regulating Artists Managers and Personal
9 Managers".)

10 The Hearing Officer now makes the following Findings of
11 Fact and Conclusions of Law:

12 FINDINGS OF FACT

13 1. Respondent Karen Callan never applied for or obtained
14 a license to act as an Artist's Manager and in September 1978
15 respondent Karen Callan did not have a license to act as an Art-
16 ist's Manager.

17 2. Petitioner Bo Derek is, and in September 1978 and there
18 after was, an "artist" as defined in Section 1700.4 of the Labor
19 Code.

20 3. Respondent Karen Callan was the person who recommended
21 or suggested to producer Blake Edwards that he hire Bo Derek
22 for a role in the motion picture "10".

23 4. Respondent Karen Callan contacted petitioner Bo Derek
24 and urged her to consider employment as an actress in connection
25 with the motion picture "10".

26 5. Respondent Karen Callan attempted to procture employer
27 within the meaning of Labor Code Section 1700.4 for petitioner

1 Bo Derek in connection with the motion picture "10".

2 6. Respondent Karen Callan negotiated and discussed mater-
3 ial terms of Bo Derek's employment with representatives of pro-
4 ducer Blake Edwards.

5 7. The agreement which respondent Karen Callan claimed
6 to have entered into with petitioner Bo Derek pursuant to which
7 respondent would be entitled to 15 percent of the gross compensa-
8 tion received by petitioner on any motion picture employment
9 which evolved or eventuated as a result of the meeting between
10 petitioner and Blake Edwards, which meeting was arranged by re-
11 spondent, constituted an agreement in violation of the Labor
12 Code since the acts which respondent agreed to perform in arrang-
13 ing the meeting constituted those of an unlicensed agent or
14 unlicensed Artist's Manager.

15 8. The agreement which respondent Karen Callan claims to
16 have entered into with petitioner Bo Derek pursuant to which
17 they would exploit and merchandise Bo Derek's name and likeness
18 on T-shirts, posters and promotional items and would split all
19 income equally, was interrelated with, made concurrently with
20 and in conjunction with the unlawful agency agreement and re-
21 lationship between respondent and petitioner and was part of
22 the consideration for said unlawful relationship.

23 9. Respondent Karen Callan promised to perform, and did
24 perform, on petitioner Bo Derek's behalf, acts of an Artist's
25 Manager, rather than acts of a personal manager.

26 CONCLUSIONS OF LAW

27 1. The Labor Commissioner has jurisdiction to determine

1 the controversy presented by the Petition pursuant to Section
2 1700.44 of the Labor Code.

3 2. Petitioner is, and as of September 1978 was, an "artist
4 as defined in Section 1700.4 of the California Labor Code.

5 3. In September 1978 respondent Karen Callan acted and
6 promised to act as an Artist's Manager although she did not have
7 a license to act as an Artist's Manager and had not applied for
8 any such license.

9 4. Respondent Karen Callan solicited employment for peti-
10 tioner Bo Derek in the motion picture "10".

11 5. The agreement which respondent Karen Callan claims to
12 have entered into with petitioner Bo Derek pursuant to which
13 respondent acted on petitioner's behalf in connection with ob-
14 taining a role in the motion picture "10" and pursuant to which
15 respondent promised to exploit and merchandise petitioner's name
16 and likeness and to divide all proceeds of that endeavor equally
17 between petitioner and respondent, constituted agreements in
18 violation of Section 1700.5 of the Labor Code.

19
20 DATED: January 8, 1982. Frank C. S. Pedersen
21 Frank C. S. Pedersen
Special Hearing Officer

22 ADOPTED:
23 January 14, 1982 Patrick W. Henning
24 Patrick W. Henning
25 Labor Commissioner
26 State of California
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