

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
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4 San Diego, CA 92123
5 619/237-7017

6
7 BEFORE THE LABOR COMMISSIONER
8 OF THE STATE OF CALIFORNIA
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| 10 In the Matter of: |) | Case No. TAC 14-90 |
| 11 ROSEANNE BARR, BARR SPECIALTIES, |) | DETERMINATION |
| 12 COMPANY, INC., a Corporation, |) | |
| 13 and FULL MOON & HIGH TIDE, INC., |) | |
| 14 a Corporation, |) | |
| 15 Petitioner, |) | |
| 16 ARLYNE ROTHBERG, an individual |) | |
| 17 and ROTHBERG GERBER ENTERPRISES, |) | |
| 18 INC., a California Corporation, |) | |
| 19 Respondents. |) | |

20 The above entitled controversy came on regularly for
21 hearing in Los Angeles, California, on March 4, 1991, continuing
22 first through March 7, 1991, then through the periods of April
23 16, 1991 through April 19, 1991, June 10, 1991 through June 14,
24 1991 and February 10, 1992 through February 11, 1992, before the
25 Labor Commissioner, Division of Labor Standards Enforcement,
26 Department of Industrial Relations, State of California, by
27 Stuart M. Kaye, Attorney for the Labor Commissioner, serving as a
Special Hearing Officer under the provisions of Section 1700.44

1 of the California Labor Code 1; Petitioners ROSEANNE BARR, BARR
2 SPECIALTIES COMPANY, INC., and FULL MOON & HIGH TIDE, INC.,
3 (hereinafter "Barr"), appearing through their attorney of record,
4 Martin D. Singer, of the firm of Lavelly & Singer; Michael L.
5 Robins appearing as general counsel for the petitioners;
6 Respondents ARLYNE ROTHBERG and ROTHBERG GERBER ENTERPRISES,
7 (hereinafter "Rothberg"), appearing through their attorneys of
8 record, Daniel C. Rosenberg of the firm of Stein & Kahan and
9 Lawrence Y. Iser and Christina E. Metcalf of the firm of
10 Greenberg, Glusker, Fields, Clamen & Machtinger. Evidence, both
11 oral and documentary having been introduced and the matter having
12 been briefed and submitted for decision, Petitioner and
13 Respondent having filed their final briefs on April 14, 1992 and
14 April 15, 1992 respectively, the following decision is made:

15 It is the determination of the Labor Commissioner:

- 16 1. That the Labor Commissioner has no jurisdiction over
17 any controversy between petitioners and respondents regarding
18 activities of the parties that occurred prior to July 6, 1989.
19 2. That petitioner was and is an artist as that term is
20 defined in Section 1700.4.
21 3. That Barr was represented by a talent agency during
22 period of July 6, 1989 through July 6, 1990.
23 4. That Rothberg did not act as a talent agency, on
24 Barr's behalf, during the period of July 6, 1989 to July 6, 1990.

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27 1. Unless otherwise specified, all statutory references will be
to the California Labor Code.

1 petitioner:

2 4. A determination that Rothberg is the alter ego of
3 Rothberg Gerber Enterprises;

4 5. An order requiring respondents to return to
5 petitioners that received by respondents pertaining to the
6 personal services of petitioners, as an artist, in an amount not
7 less than \$265,000.00;

8 6. A determination denying respondents any claim of
9 offset; and

10 7. Such other relief as the Labor Commissioner may deem
11 just and proper.

12 Respondents filed an answer to the petition essentially
13 denying the allegations, while raising affirmative defenses and
14 subsequently filed an amended answer seeking affirmative relief.

15 DISCUSSION

16 The Talent Agency Act, sections 1700 et seq.,
17 establishes a comprehensive statutory scheme governing the
18 conduct of talent agencies. Section 1700.44 of that statutory
19 scheme sets forth the substantive and procedural requirements as
20 to the hearing of disputes between talent agencies and artists.

21 Section 1700.44 provides in part:

22 "(a) In cases of controversy arising under this
23 chapter, the parties involved shall refer the matters
24 in dispute to the Labor Commissioner, who shall hear
25 and determine the same

26 (c) No action or proceeding shall be brought pursuant
27 to this chapter with respect to any violation which is

1 alleged to have occurred more than one year prior to
2 commencement of the action or proceeding."

3 It is clear that the California Legislature has
4 established jurisdiction in the Labor commissioner for the
5 hearing of controversies arising between talent agencies and
6 artists. It is equally as clear that the Legislature has
7 mandated a one year limitations period in the hearing of such
8 controversies by the Labor Commissioner, said limitations period
9 being "not more than one year prior to the commencement of the
10 action."

11 The record establishes that Barr filed a Petition to
12 Determine Controversy on July 6, 1990. Thus, the action was
13 commenced on that date. Upon application of the established
14 limitation period, clearly the jurisdiction of the Labor
15 Commissioner is limited to the activities and events of Barr and
16 Rothberg during the period of July 6, 1989 through July 6, 1990,
17 the one year period "prior to commencement of the action."

18 Having resolved the only procedural issue in this matter
19 we turn to the substantive issues and the most critical issue,
20 that of the relationship between Rothberg and Barr.

21 Section 1700.4 defines Talent Agency and Artist. Artist
22 is defined as follows:

23 "(b) 'Artists' means actors and actresses rendering
24 services on the legitimate stage and in the production
25 of motion pictures and radio productions, musical
26 directors, writers, cinematographers, composers,
27 lyricists, arrangers, models and other artists and

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persons rendering professional services in motion pictures, theatrical, radio, television and other entertainment enterprises."

A history of Barr's work establishes that she is a world renown comedienne, actress and entertainer. There can be no dispute. Barr's work during the relevant period in this matter clearly falls within that defined above. Barr is an artist as that term is defined herein.

Talent agency is defined as follows:

"(a) 'Talent agency' means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists Talent agencies may, in addition, counsel or direct artists in the development of their professional careers."

To conclude that Rothberg acted as a talent agent during the relevant period requires a finding from all the evidence presented that Rothberg, either individually, or through Rothberg Gerber Enterprises, engaged in the procuring, offering, promising or attempting to procure employment or engagements for Barr during the period of July 6, 1989 through July 6, 1990.

The parties' relationship began in April of 1988. While that date is beyond the period at issue, it is important to this discussion to understand what the parties intended that relationship to be, and what it was. We note as well, that Barr was represented by a licensed talent agency in April of 1988, the Triad Agency.

1 It was clear from their first meeting, that Rothberg
2 liked Barr, "was crazy about her", saw her as a movie star and
3 wanted to see Barr achieve her desire to be a "female Woody
4 Allen". Their testimony revealed that much of their discussions
5 revolved around Barr's career goals, as well as Barr's work and
6 and personal problems.

7 Shortly after her relationship with Rothberg began, Barr
8 terminated the Triad Agency as her talent agent. Barr
9 subsequently, but prior to the period at issue here, hired the
10 William Morris Agency as her talent agent. The William Morris
11 Agency continued to represent Barr through the period at issue
12 here.

13 The William Morris Agency received a commission on
14 Barr's work, with one exception, that of the "Roseanne"
15 television show. 2/ We come now to the crux of this entire
16 matter, the "Roseanne" show, the renegotiation of the contract on
17 that show and Rothberg's role in the renegotiation of that
18 contract.

19 A number of meetings were held regarding the
20 renegotiation of the "Roseanne" television show. Those who
21 attended the meetings included representatives of the William
22

23 2. It was the Triad Agency that "procured" the "Roseanne"
24 television show for Barr. Barr was involved in the show at the
25 time she hired the William Morris Agency and the William Morris
26 Agency elected not to receive commissions on the "Roseanne"
27 television show.

28 Mr. John Burnham, a senior vice president of the William
29 Morris Agency testified that "it would have been accepting a free
30 ride . . . She had already gotten the show with no help from us,
31 with no solicitation of the employment"

1 Morris Agency, the Carsey-Werner Company as the producer of the
2 series, Arlyne Rothberg and Barry Hirsch who is an attorney with
3 the firm of Armstrong & Hirsch, specializing in entertainment
4 law, particularly motion pictures and television.

5 Although representatives of the William Morris Agency
6 were present at the meetings, Mr. Hirsch acted as the lead
7 negotiator at these meetings. That someone other than the talent
8 agency would take the lead in the negotiations, is not unusual.
9 It is an accepted practice in the industry when considering the
10 various relationships, that of the client, the lawyer and the
11 production company. 3/

12 That Rothberg participated at the meetings is clear.
13 That her efforts on Barr's behalf were goal oriented is also
14 clear. Rothberg concentrated on the "creative" issues, the
15 writers, the producers, the "created by" credit and Barr being
16 afforded her due as a result of the success of the show.

17 What emerges from all of this is the conclusion that the
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19 3. Direct Examination of John Burnham

20 Q. During the meetings concerning the
21 renegotiation, was there any one individual who you would
22 characterize as the lead negotiator?

23 A. Yes, I would say Barry was the lead negotiator.
24 Hirsch.

25 Q. Right. Is it unusual for the William Morris
26 Agency to attend negotiations where somebody other than the
27 William Morris agent is the lead negotiator?

28 A. No. It depends on the relationship.

29 Q. What relationship?

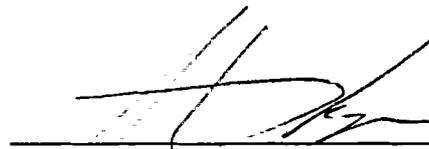
30 A. The relationship with the client, the
31 relationship with the lawyer. Some clients feel they want their
32 lawyer to take the helm. You may work out a strategy that it's
33 better to have the lawyer. The lawyer may have a better
34 relationship with Carsey-Werner.

1 renegotiation meetings were a joint effort on the part of
2 Rothberg, Hirsch and the William Morris Agency, collectively
3 working on Barr's behalf, not for the purpose of "procuring"
4 employment, but rather, to aid Barr in the achievement of the
5 goals she desired.

6 Therefore, it is this hearing officer's conclusion that
7 the relationship that began in April of 1988 was one of artist
8 and personal manager and that was in fact what Rothberg and Barr
9 intended that relationship to be. Rothberg acted as a personal
10 manager and not as a talent agent during the period of July 6,
11 1989 through July 6, 1990.

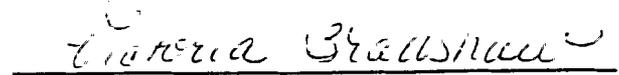
12 In light of the resolution of this issue, any further
13 discussion relating to the parties relationship is unnecessary.
14 All other issues are moot. Accordingly, The petition is
15 dismissed. The relief requested by the parties is denied.

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17 DATED 4-30-92


STUART M. KAYE
Attorney for Labor Commissioner
and Special Hearing Officer

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22 ADOPTED:

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26 DATED 5-7-92


VICTORIA BRADSHAW
State Labor Commissioner