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BEFORE THE STATE LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

FRANCIE SCHWARTZ,	)	Case No. TAC 71-93
	)	
Petitioner,	)	
	)	DISMISSAL PURSUANT TO
v.	)	LABOR CODE § 1700.44(a)
	)	FOR LACK OF
SHERRY ANN ROBB, dba AFH	)	JURISDICTION
MANAGEMENT,	)	
	)	
Respondent.	)	

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This matter came on regularly for hearing pursuant to the provisions of Labor Code § 1700.44 on August 16, 1994. Petitioner, FRANCIE SCHARTZ appeared in propria persona; there was no appearance by the Respondent, SHERRY ANN ROBB, dba AFH MANAGEMENT. Testimony having been taken the matter was submitted.

The Labor Commissioner concludes that there can be no dispute within the meaning of Labor Code § 1700.44 as to the amount of a fee due inasmuch as the Labor Commissioner lacks jurisdiction over the controversy. Had this fact been clear at the outset, this matter would have been dismissed *sua sponte*.

The Petitioner testified that she entered into a written agreement with the Respondent, whereby Respondent agreed to represent Petitioner "in connection with any and all matters that directly or indirectly relate to" her book "Telling". Petitioner agreed to pay Respondent a commission of 15% of any sums received in connection with the book. There is no evidence that Respondent received any money with respect to the literary property.

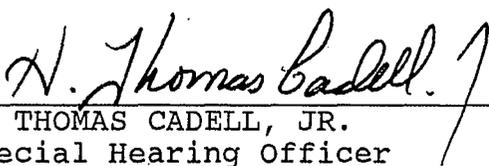
1 Labor Code § 1700.4(a) defines the term "talent agency" to  
2 mean any "person or corporation who engages in the occupation of  
3 procuring, offering, promising, or attempting to procure employment  
4 or engagement for an artist or artists..." The term "artist" is  
5 defined at Labor Code § 1700.44(b) and includes individuals who  
6 "are rendering professional services in motion picture, theatrical,  
7 radio, television and other entertainment enterprises." Obviously,  
8 the activities of procuring or offering to procure employment in  
9 the entertainment industry is what requires a license.

10 A literary agent is a person who represents authors in the  
11 sale of their works to publishers.

12 It is apparent from the evidence in this case that the  
13 relationship between Petitioner and Respondent was one of writer  
14 and literary agent whereby Respondent agreed to represent  
15 Petitioner in the sale of rights to literary property and the  
16 activities of Respondent in this regard falls within the definition  
17 of a literary agent. There was no testimony that the respondent  
18 "engage[d] in the occupation of procuring, offering, promising, or  
19 attempting to procure employment or engagements" for Petitioner.  
20 The respondent simply agreed to sell the Petitioner's book: a  
21 finished product.

22 The Labor Commissioner has no jurisdiction to entertain the  
23 petition filed and the petition is hereby dismissed.

24 Dated: August 29, 1994

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28 H. THOMAS CADELL, JR.  
Special Hearing Officer

1           The decision of the Special Hearing Officer is adopted in its  
2 entirety as the decision of the State Labor Commissioner.

3  
4 Dated: August 29, 1994

5 *Victoria Bradshaw*

6 VICTORIA BRADSHAW  
7 State Labor Commissioner  
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