

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 BY: THOMAS S. KERRIGAN, State Bar No. 36003
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7 Attorney for the Labor Commissioner

8 BEFORE THE STATE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10
11 GEORGE DUKE,) CASE NO. TAC 8-94
12)
13 Petitioner,) DETERMINATION ON PETITION OF GEORGE
14) DUKE
15 vs.)
16 WILLIAM MORRIS AGENCY, Inc., a)
17 New York corporation,)
18 Respondents.)

19 In this proceeding, which arose under the provisions of the Talent
20 Agencies Act (the "Act"), Labor Code §§1700-1700.47¹, the petitioner George
21 Duke ("Duke") has asked the Labor Commissioner to determine, as a
22 threshold matter, whether she has jurisdiction to proceed with the
23 adjudication of the substantive claims asserted in the Petition to
24 Determine Controversy filed by Duke on December 16, 1993. After duly
25 considering the issue of jurisdiction, the Labor Commissioner now renders
26 the following decision.

27 ¹ All further statutory references are to the Labor Code unless otherwise
28 specified.

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PROCEDURAL BACKGROUND

The Petition to Determine Controversy alleges two theories of action, i.e., negligence and breach of fiduciary duty. More specifically, the Petitioner alleges that William Morris evinced a lack of care in failing to obtain a guarantee on behalf of Duke. In its response to Petition to Determine Controversy, William Morris denies certain of the operative allegations and denies that it had a duty to secure the guarantee on Duke's behalf.

A hearing was held in this matter on January 10, 1996. Each of the parties appeared through respective counsel and submitted evidence to the Special Hearing Officer, who then took the matter under submission.

DECISION

The jurisdiction of the Labor Commissioner to determine contractual disputes arising out of written talent agency agreements entered into on a contract form approved by the Labor Commissioner is not open to question; the provisions of the Act specifically and explicitly confer that adjudicatory authority on the Commissioner.

§§1700.44, subd. (A) provides in relevant part as follows:

"In cases of controversy arising under this chapter, the parties involved shall refer matters in dispute to the Labor Commissioner, shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo. To stay any award for money, the party aggrieved shall execute a bond approved by the superior court in sum not exceeding twice the amount of the judgment. In all other cases the bond shall be in a sum of not less than one thousand dollars (\$1,000.00) and approved by the superior court."

§1700.23 makes it clear that the words "controversy arising under this chapter" in §1700.44 have particular reference to the contracts entered into between artists and talent agencies pursuant to the provisions of the Act and under the administrative supervision of the

1 Labor Commissioner.

2 "Every talent agency shall submit to the Labor Commissioner a
3 form or forms of contract to be utilized by such talent agency
4 in entering into written-contracts with artists for the
5 employment of the services of such talent agency by such
6 artists, and secure the approval of the Labor Commissioner
7 thereof. Such approval shall not be withheld as to any
8 proposed form of contract unless such proposed form of contract
9 is unfair, unjust and oppressive to the artist. Each such
10 form of contract, except under the conditions specified in
11 Section 1700.45, shall contain an agreement by the talent
12 agency to refer any controversy between the artist and the
13 talent agency relating to the terms of the contract to the
14 Labor Commissioner for adjustment."

15 - This express contractual focus is reiterated in §1700.45 which allows
16 the parties to agree to submit their disputes to arbitration and to
17 thereby confer on the arbitrator the authority otherwise vested in the
18 Labor Commissioner to resolve "any controversy under the contract or as to
19 its existence, validity, construction, performance, nonperformance,
20 breach, operation, continuance, or termination".

21 From the foregoing statutory language, it is apparent that the Labor
22 Commissioner has jurisdiction to hear, determine, and if appropriate,
23 redress through an award of damages, or otherwise, a claim by Duke that
24 William Morris breached the terms of the approved talent agency contract
25 entered into by the parties. In fact, it is difficult to imagine language
26 which would more clearly confer such jurisdiction on the Commissioner.
27 Here, however, Duke is not making a claim for breach of contract. In
28 fact, the contract between the parties has not even been submitted to the
Special Hearing Officer.

In recent pronouncements, the California Supreme Court has delivered
a clear message that it should not lightly be inferred that because an
administrative agency is possessed of certain judicial-like powers the
agency has also been vested with the jurisdiction to adjudicate and

1 redress traditional tort claims.

2 In Yous v. Longo (1987) 43 Cal.3d 64, the Court rejected the argument
3 that the California Horse Racing Board had jurisdiction to adjudicate a
4 tort claim for interference with prospective advantage arising out of an
5 alleged attempt to influence the outcome of a horse race. The Court
6 stated:

7 ". . . [T]he power to award compensatory and punitive tort
8 damages to an injured party is a judicial function. Although
9 the Board has very broad power to regulate and discipline
10 wrongful conduct which involves horse racing in California, the
relevant statutes do not authorize awarding affirmative
compensatory relief such as tort damages." Id., at 80)
(emphasis in original).

11 The Court went on to state that the central function of the Board was
12 regulatory and disciplinary, and that there was nothing in the statutory
13 provisions establishing the Board's authority to indicate an intent to
14 propel the Board into the realm of tort law traditionally occupied by the
15 judiciary.

16 Similarly, in Dyna-Med, Inc. V. Fair Employment & housing Co. (1987)
17 43 Cal.3d 1379, the Court rejected the assertion that the California Fair
18 Employment and Housing Commission was empowered to award punitive damages
19 in favor of claimants alleging employment discrimination. The Court held
20 that neither the language of the statutory scheme nor the purposes
21 underlying its enactment indicated an intent to vest the Commission with
22 the authority to apply the tort remedy of punitive damages; in this
23 regard, the Court found that the delegation to the Commission of power to
24 make whatever remedial orders were deemed appropriate was insufficient to
25 confer such authority. (Id., at 1386-1393)

26 More recently, noting the constitutional problems posed by
27 delegations of judicial-like powers which may invade the separation of
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1 powers and judicial powers clauses of the California Constitution (Art.
2 III, §3 and Act VI, §1), the Supreme Court has emphasized the need to
3 construe any such statutory delegation so as to preserve its
4 constitutionality. (Walnut Creek Manor v. Fair Employment & Housing Com.
5 (1991) 54 Cal. 3d 245, 271-272).

6 Applying the foregoing principles to the present context, it is
7 evident that the Labor Commissioner does not have jurisdiction over the
8 noncontractual claims asserted by petitioner.

9 First of all, an examination of the language of the Act and of the
10 objectives underlying the statutory scheme embodied in the Act fails to
11 disclose any intent to confer on the Labor Commissioner the authority to
12 adjudicate and redress traditional noncontractual claims. The bulk of the
13 Act's provisions are concerned with the licensing and supervision of
14 talent agencies as defined in the Act. Incidental to that core function,
15 ~~the Commissioner is given limited authority to police the content of the~~
16 written contracts entered into between talent agencies and artists, and ,
17 in connection therewith, narrow adjudicatory authority to determine
18 disputes arising out of contracts entered into under or in violation of
19 the provisions of the Act. In other words, the powers granted are
20 essentially regulatory in nature, with a very narrow dispute-resolution
21 appendage directly related to the regulatory role. As Longo makes clear,
22 such an administrative structure belies an intent to confer jurisdiction
23 over tort and other noncontractual actions on the administrative body.
24 Moreover, there is nothing in the language of the Act which would even
25 remotely suggest an intent either to confer on the Commissioner authority
26 over such claims or to divest the courts of their traditional and long
27 standing jurisdiction over such claims. In sum, the Act does not
28 contemplate the availability of relief for noncontractual claims through

1 the Labor Commissioner.

2 Additionally, constitutional considerations reinforce the correctness
3 of this conclusion. In Walnut Creek Manor v. Fair Employment & Housing
4 Co., supra, the Court applied the principles set forth in its earlier
5 decision in McHugh v. Santa Monica Rent Control Bd. (1989) 49 Ca. 3d 348,
6 and held that the authority conferred on the Fair Employment and Housing
7 Commission to award general compensatory tort damages for emotional
8 distress constituted an unconstitutional delegation of adjudicatory
9 authority violative of the "judicial powers" clause of the California
10 Constitution. In particular, applying the "substantive" prong of the
11 McHugh tests, the Walnut Creek Court held that the enforcement of such a
12 tort remedy - which allows the assessment of unquantifiable and
13 unrestricted damages - was not reasonably necessary to the effectuation of
14 the Commission's primary regulatory purpose of swiftly correcting
15 ~~individual acts of discrimination, and hence amounted to a~~
16 ~~constitutionally impermissible transfer of traditional court powers to an~~
17 ~~administrative agency.~~

18 Proper consideration of the foregoing principles overwhelmingly
19 mitigates against any construction of the Action which would clothe the
20 Labor Commissioner with jurisdiction to hear and determine noncontractual
21 claims. Apart from licensing oversight, the Commissioner's chief role is
22 to insure that talent agents enter into contracts which are fair to
23 artists and to provide a forum for the threshold resolution of disputes
24 arising out of contracts governed by the Act. The wide gamut of tort and
25 other noncontractual claims which may arise between talent agents and
26 artists, and the wide range of unquantifiable damages remedies which may
27 be available to redress such claims, are not only incidental to the
28 Commissioner's central function, but they are absolutely foreign to it.

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DECLARATION OF SERVICE BY MAIL

CASE NAME AND NO. Duke v. William Morris Agency, Case No. TAC 8-94

I, the undersigned, declare: my business address is 107 South Broadway, Room 5022, Los Angeles, California 90012.

I am over the age of eighteen years, not a party of the above-entitled action, and at the time of the mailing, was employed or resided in the County where said mailing occurred.

On July 15, 1996, I served the DETERMINATION ON PETITION OF GEORGE DUKE in the above-entitled action by depositing a copy thereof, enclosed in separate, sealed envelope, with the postage thereon fully prepaid, first class mail in the United States mail at Los Angeles, County of Los Angeles, California, each of which envelope was addressed respectively as follows:

Evan S. Cohen,, Esq.
S. Marti Keleti, Esq.
Cohen and Luckenbacher
740 N. La Brea Avenue, 2nd Floor
Los Angeles, CA 90038-3339

William T. Rintala, Esq.
Robert W. Hodges, Esq.
Rintala, Smoot, Jaenicke & Brunswick
10351 Santa Monica Blvd., Suite 400
Los Angeles, CA 90025

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 15, 1996.


ANDY SEVILLA

1 In other words, the Commissioner has no warrant to step into this
2 uncharted terrain in order to fulfill her statutory mandate, and any
3 construction of the Act which would place the Commissioner in this
4 position is constitutionally suspect and to be eschewed.

5 In short, the Commissioner is without jurisdiction to hear and
6 determine the allegations of either of the two claims set forth in the
7 Petition.

8 DISPOSITION

9 ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

10 The Labor Commissioner does not have jurisdiction over the claims
11 alleged in the Petition to Determine Controversy and said Petition is
12 therefore dismissed.

13 Dated: June 25, 1996

Thomas Kerrigan

THOMAS S. KERRIGAN
Attorney and Special Hearing Officer
For the Labor Commissioner

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19 The above Determination is adopted in its entirety by the Labor
20 Commissioner.

21 Dated: *July 6, 1996*

Roberta E. Mendonca
State Labor Commissioner