

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

10	JOHN CLIFF BOYDSTON,)	No. TAC 45-95
)	
11	Petitioner,)	
)	
12	vs.)	DETERMINATION OF
)	CONTROVERSY
13	GARY STORM, an individual)	
	dba BLACK LOTUS TALENT AGENCY,)	
14)	
	Respondent.)	
15	_____)	

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INTRODUCTION

On September 29, 1995, petitioner JOHN CLIFF BOYDSTON filed a petition to determine controversy pursuant to Labor Code §1700.44, alleging that respondent GARY STORM, an individual dba BLACK LOTUS TALENT AGENCY, failed to remit certain funds owed to petitioner in connection with an artistic engagement that had been procured by the respondent. A hearing was held on July 30, 1996 before the undersigned attorney for the Labor Commissioner specially designated to hear this matter. Both petitioner and respondent appeared in propria persona. Based on the evidence presented at this hearing, the Labor Commissioner adopts the following determination of controversy.

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1 admitted that the purchaser of the artists' services had agreed to
2 pay a total of \$2,000 for this engagement, from which respondent
3 was to retain \$300 (that is, a 15% commissions for serving as
4 Boydston's talent agent) and Boydston was to receive \$1,700.
5 However, according to Storm, the customer only paid a total of
6 \$1,700 (\$1,000 was paid directly to Boydston and on May 24, 1995,
7 \$700 was paid to Storm). No evidence was presented to contradict
8 Storm's testimony as to the total amount received from the
9 customer. Storm testified that even though Boydston and his band
10 performed as contracted for at the engagement on May 20, 1995,
11 Storm kept the \$700 he received from the customer because Boydston
12 "forfeited this money" by speaking to the customer about the
13 band's actual compensation, conduct that Storm asserts is
14 prohibited under the terms of his contract with Boydston. But
15 whether or not the contract prohibits such conduct (and it does
16 not appear that any provision of the contract can be construed in
17 such a manner), as a matter of law, because of respondent's
18 failure to comply with the licensing requirement of Labor Code
19 §1700.5, this contract is void ab initio, and any rights
20 purportedly arising to respondent under the contract are
21 unenforceable. Waisbren v. Peppercorn Productions, supra;
22 Buchwald v. Superior Court, supra. We therefore find that
23 Boydston is entitled to payment of the \$700 that was unlawfully
24 retained by respondent.

25 6. Under Labor Code §1700.25, a talent agent is required to
26 disburse all funds that the agent has received on behalf of an
27 artist to the artist within thirty days of the receipt of said
28 funds, less any lawful commissions. An agent who fails to

1 disburse such funds in a timely manner is liable for interest on
2 the withheld funds at the rate of 10% per year. Here, Boydston is
3 entitled to payment of interest in the amount of \$76.77. Also, as
4 the prevailing party, Boydston is entitled to reimbursement of
5 \$55, his costs for having a process server serve the petition to
6 determine controversy.

7 ORDER

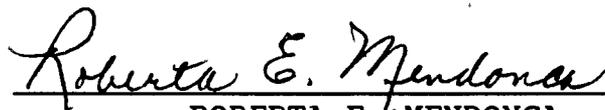
8 For the reasons set forth above IT IS HEREBY ORDERED that
9 respondent GARY STORM, an individual dba BLACK LOTUS TALENT
10 AGENCY, pay petitioner JOHN CLIFF BOYDSTON a total of \$831.77.

11 DATED: 8/16/96

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13 _____
14 MILES E. LOCKER
15 Attorney for the Labor Commissioner

16 The above Determination is adopted by the Labor Commissioner
17 in its entirety.

18 DATED: 8/23/96

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20 _____
21 ROBERTA E. MENDONCA
22 STATE LABOR COMMISSIONER
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