

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 State of California
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8

BEFORE THE LABOR COMMISSIONER

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OF THE STATE OF CALIFORNIA

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ELI AZIZI, as guardian ad litem
for RAHI AZIZI, a minor,

) No. TAC 11-96

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Petitioner,

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vs.

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T.J. STEIN, an individual
dba ACADEMY KIDS MANAGEMENT,

) DETERMINATION OF CONTROVERSY

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Respondent.

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INTRODUCTION

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On April 30, 1996, Petitioner ELI AZIZI, as guardian ad litem for RAHI AZIZI, a minor, filed a petition to determine controversy pursuant to Labor Code section 1700.44, alleging that Respondent T.J. STEIN, an individual dba ACADEMY KIDS MANAGEMENT, acted as a talent agent without having been licensed by the State Labor Commissioner, that Respondent filed a small claims action against Petitioner for the payment of commissions purportedly due under the provisions of the agreement under which Respondent provided services to Petitioner as a talent agent, and that this small claims action resulted in a judgment against Petitioner in the

1 amount of \$2,245. By this petition, AZIZI seeks a determination
2 that Respondent acted as an unlicensed talent agent in violation
3 of Labor Code section 1700.5, and that therefore the parties'
4 agreement is void and unenforceable, that the small claims
5 judgment for unpaid commissions purportedly due under this
6 agreement be declared invalid, that Respondent reimburse
7 Petitioner for all commissions that were paid or collected from
8 April 1, 1995, and for an award of attorney's fees.

9 Respondent filed an answer asserting that he acted as a
10 "talent manager" and not an agent, that the amounts awarded by the
11 small claims court were owed to Respondent as commissions for
12 services that he performed, that Petitioner filed an appeal of the
13 small claims judgment with the superior court, and that this
14 matter was fully resolved by the superior court which entered a
15 judgment upholding the decision of the small claims court.

16 Pursuant to notices of hearing that had been served on the
17 parties, this controversy was heard on April 17, 1997, in
18 Los Angeles, California, before the undersigned attorney for the
19 Labor Commissioner, specially designated to hear this matter.
20 Petitioner appeared through counsel Robert Rosene. Respondent
21 appeared in propria persona. Based upon the testimony and
22 evidence received at this hearing, the Labor Commissioner adopts
23 the following determination of controversy.

24 FINDINGS OF FACT

25 1. On August 4, 1993, ELI AZIZI, the mother of RAHI AZIZI, a
26 minor, signed an "Interim Letter of Agreement" confirming that
27 T.J. STEIN, an individual doing business as ACADEMY KIDS
28 MANAGEMENT, had been engaged to perform services as Azizi's

1 "personal manager" in the entertainment industry, and that as
2 compensation for these services, Academy Kids Management was to
3 receive commissions of 15% on all gross monies or other
4 compensations received by Azizi "as a result of employment
5 performed and deriving from the efforts of . . . T.J. STEIN . . .
6 under this agreement." The Agreement did not specify the nature
7 of services that Stein was expected to perform as a "personal
8 manager". The Agreement provided that it could be "discontinued"
9 by written notice of either party to the other, but that "all
10 commissions due under this agreement for work performed up to the
11 time of discontinuance, including all residual royalties and pick-
12 ups which may subsequently be paid after the discontinuance of
13 this agreement, remain due and payable." Although the Interim
14 Agreement provided that it was only to remain in effect until a
15 "formal Personal Management Agreement" was signed, no such "formal
16 Personal Management Agreement" was ever subsequently executed.

17 2. This Interim Agreement remained in effect until August
18 16, 1995, when it was terminated by written notice from Azizi to
19 Academy Kids Management.

20 3. Following the termination of this Agreement, Azizi
21 stopped paying commissions to Academy Kids Management. On
22 September 6, 1995, Academy's attorney, Robert Rosenthal, sent a
23 letter to Eli Azizi asserting that she is still liable to pay
24 commissions due to Academy "for their services . . . in obtaining
25 [Rahi's] role on the upcoming television series *Space Cases*."
26 Azizi ignored this demand, and on February 1, 1996, Stein filed a
27 small claims action against Azizi, alleging that \$2,230 was owed
28 because "defendant has signed a contract to pay commissions on

1 work we have gotten for her son." Stein prevailed in the small
2 claims court and Azizi then filed an appeal with the superior
3 court. Following trial de novo, on May 3, 1996, the Los Angeles
4 County Superior Court entered a judgment in favor of Stein in the
5 amount of \$2,230 plus costs.

6 4. T.J. Stein and Academy Kids Management have never been
7 licensed as a talent agency by the State Labor Commissioner.
8 Stein testified that Academy Kids Management does not provide
9 services as a talent agency, in that Academy "does not procure
10 work for any artists". According to Stein, the personal
11 management services that he provided to Azizi included "coaching",
12 taking Azizi to interviews and auditions, scheduling these
13 interviews and auditions, discussing Azizi's acting career and
14 possible roles with Azizi's licensed talent agents, ensuring that
15 Azizi had proper training, scripts, headshots, and in general,
16 "supervising" his professional career. Stein testified that Azizi
17 was represented by licensed talent agents throughout almost the
18 entire period of time during which he provided personal management
19 services. Stein testified that he informed Eli Azizi, during
20 their first meeting, that Academy Kids did not function as a
21 talent agency, but rather, as a "personal management" agency, that
22 her son needed to be represented by a talent agency in order to
23 obtain work, and that he recommended that Azizi sign with
24 Twentieth Century Artists, a licensed and SAG franchised talent
25 agency. Evidence submitted by Azizi confirms that on August 26,
26 1993, Azizi entered into an agreement with Twentieth Century
27 Artists under which Twentieth Century was engaged as Azizi's
28 talent agency. In November 1994, Azizi signed with another

1 licensed talent agency, Talent Group, Inc., and that agency
2 continued to provide representation to Azizi throughout the
3 remainder of the period that Academy Kids Management served as
4 Azizi's personal manager. Talent Group, Inc. was under contract
5 as Azizi's talent agent when Azizi obtained his acting employment
6 on "Space Cases."

7 5. During the two years that Academy Kids Management served
8 as Azizi's personal manager, Azizi obtained numerous film and
9 television acting roles, starting with a role in the film
10 'Stargate'. Much of the testimony at this hearing focused on the
11 issue of whether this role had been procured by the Respondent
12 during the three week period in August 1993 after Azizi had signed
13 with Academy Kids Management but prior to entering into the
14 agreement to have Twentieth Century Artists provide services as a
15 talent agency. No documentary evidence was submitted in support
16 of petitioner's contention that this employment had been procured
17 prior to August 26, 1993, the date of petitioner's contract with
18 Twentieth Century. On August 27, 1993, Azizi signed an agreement
19 with Academy Kids Management, authorizing Academy to be paid 15%
20 of the gross amounts earned by Azizi "if the client obtains work"
21 on the 'Star Gate' project. But in his testimony, Stein
22 acknowledged that Azizi may not yet have had a talent agent at the
23 time he got the Star Gate job, and that in any event, the job was
24 as an extra, which means that Azizi would have been hired through
25 a casting agency, Charlie Messinger & Associates. According to
26 Stein, after being informed by Charlie or Trish Messinger that
27 they were "seeing people" to select extras for Star Gate, Stein
28 told the Azizis to make an appointment to see Charlie Messinger if

1 Azizi was interested in pursuing this opportunity. Stein
2 testified that he had no other involvement in obtaining this job,
3 and played no role whatsoever in negotiating the terms of
4 employment.

5 6. Eli Azizi acknowledged, in her testimony, that Stein told
6 her that he had learned that a casting agency was looking to hire
7 children as extras for 'Star Gate', and that she then took her son
8 to the casting agency for an audition, after which she was told,
9 by the casting agency, that the casting agency would hire her son
10 as an extra. Petitioner's testimony did not suggest that the
11 respondent negotiated petitioner's compensation for this work, or
12 that the respondent did anything more than recommend that she
13 contact the casting agency.

14 7. Respondent provided letters, signed by various licensed
15 talent agents, including Mimi Mayer of Angel City Talent, Larry
16 Corsa of Epstein-Wyckoff & Associates, Barbara Bucky of Herb
17 Tannen & Associates, Vivian Hollander of Hollander Talent Group,
18 Inc., Meredith Fine of Coast to Coast Talent Group, Inc., and
19 Bonnie Ventis and Jody Alexander of Kazarian Spencer & Associates,
20 Inc., indicating that the respondent provides "personal
21 management" services to various artists who are represented by
22 these talent agencies, and that the services provided by the
23 respondent do not include negotiating contracts or otherwise
24 acting as a talent agency.

25 8. At all times relevant herein, Respondent has never been
26 licensed by the State Labor Commissioner as a talent agency.

27 CONCLUSIONS OF LAW

28 1. Labor Code section 1700.4(a) defines "talent agency"

1 as a "person or corporation who engages in the occupation of
2 procuring, offering, promising, or attempting to procure
3 employment for an artist or artists. . . ."

4 2. Labor Code section 1700.4(b) includes "actors" within its
5 definition of "artists". Petitioner is an "artist" within the
6 meaning of Labor Code section 1700.4(b).

7 3. The Labor Commissioner has jurisdiction to hear and
8 determine this controversy pursuant to Labor Code section
9 1700.44(a). Indeed, the Labor Commissioner has primary and
10 exclusive jurisdiction to hear matters arising under the Talent
11 Agencies Act. Buchwald v. Superior Court (1967) [the Labor
12 Commissioner has "original jurisdiction, to the exclusion of the
13 superior court, over controversies" arising under the Act.]

14 4. Labor Code section 1700.5 provides that "no person shall
15 engage in or carry on the occupation of a talent agency without
16 first procuring a license therefor from the Labor Commissioner."
17 In Waisbren v. Peppercorn Productions, Inc. (1995) 41 Cal.App.4th
18 246, the court held that any single act of procuring employment
19 subjects the agent to the Talent Agency Act's licensing
20 requirement, thereby upholding the Labor Commissioner's long-
21 standing interpretation that a license is required for any
22 procurement activities, no matter how incidental such activities
23 are to the agent's business as a whole. Of course, a "personal
24 manager" who does not engage in "procuring, offering, promising,
25 or attempting to procure employment for artists", and who confines
26 his or her activities to the artist's career development in
27 cooperation with the licensed talent agency that was selected by
28 the artist to obtain and negotiate employment for the artist, need

1 not be licensed as a talent agency.

2 5. Petitioner presented no evidence that the respondent
3 procured, offered, promised, or attempted to procure any
4 employment for the petitioner at any time subsequent to August 26,
5 1993, the date that petitioner engaged the services of a licensed
6 talent agency. The resolution of this controversy turns on
7 whether the respondent "procured" petitioner's employment as an
8 extra on 'Star Gate', as it is apparent that this employment was
9 procured prior to August 26, 1993 and that no licensed talent
10 agency was involved in procuring this employment. And the answer
11 to this question turns on the exact meaning of the term "procure",
12 as used in Labor Code section 1700.4(a). The term "procure", as
13 used in this statute, means "to get possession of: obtain,
14 acquire, to cause to happen or be done: bring about." Wachs v.
15 Curry (1993) 13 Cal.App.4th 616, 628, disapproved on other grounds
16 in Waisbren v. Peppercorn Productions, supra. Thus, under Labor
17 Code section 1700.4(a), "procuring employment" is not limited to
18 soliciting employment or initiating communications with producers
19 leading to employment. Rather, under the statute, "procuring
20 employment" includes negotiating for employment, and entering into
21 discussions with a producer concerning potential employment,
22 notwithstanding the fact that the producer may have been the
23 person who initiated the discussions or negotiations. See Hall v.
24 X Management, Inc. (1992) TAC No. 19-90, pp. 29-31. But
25 "procuring employment" means something more than referring
26 information about potential employment to an artist, and advising
27 the artist to the contact, and negotiate with, the employer
28 directly. Here, in telling the petitioner to contact the casting

1 company that was hiring extras for 'Star Gate', and leaving it to
2 the petitioner to reach whatever agreement the petitioner wished
3 with this casting company, the respondent did not engage in the
4 act of "procuring employment" within the meaning of section
5 1700.04(a).

6 6. The other issue presented here is whether statements
7 contained in the documentary evidence that is before the Labor
8 Commissioner - - the Interim Letter of Agreement between the
9 petitioner and the respondent, the September 6, 1995 letter from
10 respondent's attorney to the petitioner, and the small claims case
11 complaint filed by the respondent against the petitioner - -
12 constitute admissions of procurement activities, and if so,
13 whether any such admissions should be treated as irrebuttable and
14 conclusive evidence. The language in the Interim Letter of
15 Agreement, that commissions will be due on compensation "received
16 as a result of employment performed and deriving from the efforts
17 of . . . TJ STEIN", is ambiguous at best. Employment may "derive
18 from" a personal manager's efforts while having been "procured" by
19 someone else. There is nothing in the express language of the
20 Interim Agreement that can be construed as a promise or offer to
21 procure employment. Likewise, the language in attorney
22 Rosenthal's September 6, 1995 demand letter, that the petitioner
23 is responsible for paying "the management commissions due to
24 Academy for their services . . . in obtaining [Rahi's] roll on the
25 upcoming television series *Space Cases*," does not clearly state
26 what services were performed by the respondent, that is, there is
27 no admission that it was the respondent who actually procured this
28 employment for the petitioner. On the other hand, the language in

1 the small claims complaint, alleging that the claim is based on a
2 "contract to pay commissions on work we have gotten for . . .Rahi
3 [Azizi]", unquestionably constitutes a judicial admission. Under
4 the doctrine of "conclusiveness of pleadings," a pleader is bound
5 by the material allegations in a complaint, and generally, is
6 precluded from proving any facts to the contrary, as one would be
7 permitted to do with respect to ordinary or 'evidentiary'
8 admissions. Brown v. Aguilar (1927) 202 Cal. 143, 149; Witkin,
9 4 California Procedure, 4th ed., 'Pleading', § 413, pp. 510-511.
10 But a judicial admission is conclusive only in the particular case
11 in which the admission was made. An admission in the pleadings in
12 one case is merely an evidentiary admission in another case; and
13 hence it is rebuttable by other evidence. See, Dolinar v. Pedone
14 (1944) 63 Cal.App.2d 169, 176; Jones v. Tierney-Sinclair (1945)
15 71 Cal.App.2d 366, 373; Witkin, 4 Cal. Procedure 4th, supra,
16 § 414, p.511. Here, the judicial admission that respondent "got
17 employment" for the petitioner was made in the small claims
18 action, which is separate and distinct from this proceeding before
19 the Labor Commissioner. Consequently, for the purpose of this
20 proceeding, the admission contained in the small claims complaint
21 is rebuttable; and, we conclude that this admission was rebutted
22 by the evidence presented in this hearing.

23 7. Under Buchwald v. Superior Court (1967) 254
24 Cal.App.2d 347, and Waisbren v. Peppercorn Productions, supra, any
25 agreement between an artist and a person who acts a talent agent
26 without being licensed is unlawful, void from its inception, and
27 hence, unenforceable, and the artist is entitled to reimbursement
28 of commissions paid to the agent pursuant to such an agreement.

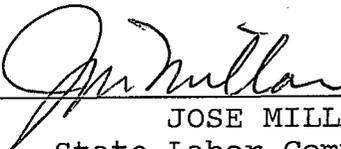
1 But having found that respondent did not act as a "talent agent"
2 within the meaning of Labor Code section 1700.04(a), we conclude
3 that petitioner is not entitled to the relief that she seeks.

4 ORDER

5 For the above-stated reasons, IT IS HEREBY ORDERED that this
6 petition be denied.

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8 Dated: 9/15/97 
9 MILES E. LOCKER
10 Attorney for the Labor Commissioner

11 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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13 Dated: 9/15/97 
14 JOSE MILLAN
15 State Labor Commissioner
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