

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
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4

5 BEFORE THE LABOR COMMISSIONER

6 STATE OF CALIFORNIA
7

8 HEATHER SUTHERLAND WILSON,) CASE NO. TAC 13-96
9 Petitioner,) DETERMINATIONS
10 vs.)
11 ERIK J. RHULEN, and SIRENS MODEL)
MANAGEMENT,)
12 Respondents.)
13

14 LORA-LYN PETERSON,) CASE NO. TAC 14-96
15 Petitioner,)
16 vs.)
17 ERIK J. RHULEN, and SIRENS MODEL)
18 MANAGEMENT,)
19 Respondents.)
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21 The above-entitled controversies came on regularly for a consolidated
22 hearing on September 19, 1996, Thomas S. Kerrigan presiding as Special
23 Hearing Officer for and on behalf of the Labor Commissioner of the State
24 of California. Petitioners appeared in propria persona. Trope and Trope
25 appeared on behalf of respondents.

26 Evidence, both oral and documentary, having been introduced by the
27 respective parties, and the matter having been duly submitted, the Labor
28

1 Commissioner makes the following Determinations.

2 PRELIMINARY MOTIONS

3 Petitioners made motions at the beginning of the hearing to amend
4 their petitions to include Femme Fatal, Inc. as a respondent. Respondents
5 having conceded that this is the correct corporate name of the talent
6 agency and that Sirens Model Management is merely a fictitious name, these
7 motions were granted and the petitions were so amended.

8 In addition, respondents made a motion to strike Erik J. Rhulen from
9 the petitions on the ground that he is not a talent agency within the
10 meaning of section 1700.4 of the Labor Code and that he conducted his
11 affairs through Femme Fatal, Inc., the corporation holding the license
12 under the Talent Agency law. No evidence having been presented by
13 petitioners to show why this respondent should be held personally liable,
14 this motion is granted and Erik J. Rhulen is stricken from the petitions.

15 FINDINGS OF FACT

16 1. Petitioners were and are artists within the meaning of the provisions
17 of Labor Code Section 1700.4 (b)

18 2. Femme Fatal, Inc. was and is a licensee within the meaning of the
19 provisions of Labor Code Section 1700.3 (b).

20 3. Femme Fatal, Inc. and Lora-Lyn Peterson entered into a one-year
21 written contract on March 30, 1995, whereby said respondent was retained
22 and appointed as Peterson's sole and exclusive agent regarding employment
23 opportunities in the entertainment industry. The parties also entered
24 into a letter agreement concerning employment with TV Azteca of Mexico,
25 specifying a 20 percent commission, on October 13, 1995.

26 4. Femme Fatal, Inc. and Heather Sutherland Wilson entered into a
27 similar letter agreement on October 13, 1995.

28 5. Neither of the two written agreements with Peterson nor the letter

1 agreement with Wilson contains endorsements by the Labor Commissioner as
2 specified in Title 8, Section 12003 of the California Code of Regulations
3 and all three of said agreements are devoid of provisions mandated by
4 Subdivisions (a), (b), (c), (d), (e), and (f) of Section 12001 of said
5 Regulations.

6 6. Femme Fatal, Inc. secured employment for petitioners with TV Azteca
7 in Mexico during the latter part of 1995. After traveling to Mexico to
8 undertake that employment, both petitioners repeatedly complained to Femme
9 Fatal, Inc. about the conditions of employment on location. Both
10 petitioners became sick during that employment and Sutherland suffered a
11 miscarriage shortly thereafter.

12 7. Petitioners visited the offices of Femme Fatal on several occasions
13 and observed no posting of the agency's fee schedule as required by
14 Section 1700.24 and no posting of the provisions of the Talent Agency law
15 as required by Section 1700.28.

16 CONCLUSIONS OF LAW

17 1. The written agreements between Femme Fatal, Inc. and petitioners are
18 void and unenforceable because they fail to comply with the mandatory
19 provisions of the Talent Agency law. Buchwald v. Superior Court (1967)
20 254 Cal. App. 3d 347, 351, 62 Cal. Rptr. 364.

21 2. Femme Fatal, Inc. violated Labor Code Section 1700.24 by failing and
22 refusing to post its fee schedule in its offices.

23 3. Femme Fatal, Inc. violated Labor Code Section 1700.28 by failing and
24 refusing to post the provisions of the Talent Agency law in its offices.

25 OTHER ISSUES

26 Much of the evidence adduced at the hearing concerned the allegations
27 of the petitioners that Femme Fatal, Inc. violated Labor Code Section
28 1700.33 by sending them to Mexico to work under conditions of exceedingly

1 long work days, missed meals, bad food and other adversities. The record
2 reflects a certain amount of callousness on the part of the employees of
3 Femme Fatal, Inc., and especially on the part of Mr. Rhulen. Mr. Rhulen
4 testified at one point that, even though he vacationed in Mexico near the
5 location of the work, he made no effort to ascertain whether there was any
6 merit to petitioners' complaints, taking the position "that as long as
7 they were not in the hospital, it was not a major concern." His
8 omissions, however, though egregious in themselves, do not, standing
9 alone, constitute a violation of Section 1700.33. Mr. Rhulen testified as
10 well and without contradiction that he made early inquiries to certain
11 agencies concerning the general reputability and safety of TV Azteca prior
12 to sending these petitioners to Mexico. There is, more importantly, no
13 evidence in the record that Mr. Rhulen or any of the other employees of
14 Femme Fatal, Inc. had or could have had foreknowledge of the conditions
15 that developed on location in that country. Accordingly, no violation of
16 Section 1700.33 is found.

17 Petitioners also complain that they were assured they would be paid
18 overtime on this job. The record is in conflict on this point. Moreover,
19 Mr. Rhulen testified that he tried to negotiate overtime for petitioners
20 and failed. As a talent agent, Femme Fatal, Inc. was not an insurer of
21 the wages of petitioners under the circumstances revealed in the record
22 and cannot be held accountable for TV Azteca's failure to pay this
23 additional compensation.

24 After the matter was submitted, Petitioner Sutherland moved to reopen
25 the hearing with respect to allegedly newly discovered charges that Femme
26 Fatal, Inc. had withheld additional monies from her, representing earnings
27 from an advertisement campaign for Wanker Beer. In view of the ultimate
28 decision reached in this case, however, it is unnecessary to consider that

1 evidence.

2 DETERMINATIONS

3 1. All written or other agreements entered into between Femme Fatal,
4 Inc. and petitioners are hereby declared null and void and unenforceable
5 for all purposes.

6 2. Femme Fatal, Inc. is hereby ordered to render an accounting to
7 Petitioner Peterson forthwith for all monies received which are directly
8 or indirectly attributable to the sale or marketing of her artistic
9 endeavors since May 30, 1995, and to pay all such sums to Petitioner
10 Peterson by November 15, 1996.

11 3. Femme Fatal, Inc. is hereby ordered to render an accounting to
12 Petitioner Wilson forthwith for all monies received which are directly or
13 indirectly attributable to the sale or marketing of her artistic endeavors
14 since October 13, 1995, and to pay all such sums to Petitioner Wilson by
15 December 15, 1996.

16 4. Femme Fatal, Inc. is hereby ordered to post forthwith:

- 17 a. its schedule of fees; and
18 b. a printed copy of the Talent Agency law.

19 Such postings shall be in a conspicuous place at each of its business
20 premises.

21 6. Femme Fatal, Inc. shall submit a verified report of compliance with
22 these Determinations no later than December 20, 1996.

23 DATED: November 13, 1996

Thomas S. Kerrigan
THOMAS S. KERRIGAN
Special Hearing Officer

25 The above Determinations are adopted by the Labor Commissioner in
26 their entirety.

27 DATED:

Roberta E. Mendonca
ROBERTA MENDONCA
State Labor Commissioner