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**BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA**

ARTIMUS LAMONT BENTLEY, An
Individual, and UPRISE INCORPORATED,
A California Corporation,

Petitioners,

vs.

CHRIS SPENCER, Individually, and doing
business as THE SPENCER COMPANY,
CHRIS SPENCER ENTERPRISES, INC.,
A California Corporation,

Respondents.

CASE NO. TAC 31-99
TAC DETERMINATION

INTRODUCTION

A Petition to Determine Controversy was filed in this case by petitioners on August 27, 1999. Petitioners [hereinafter referred to collectively as "Bentley"] allege, inter alia, that respondent [hereinafter referred to collectively as "Spencer"] violated the Talent Agencies Act by acting in the capacity of a talent agent without being licensed, in violation of the provisions of Labor Code section 1700.5. The Petition recites that respondent earlier filed an action against petitioner in the Municipal Court in Burbank for commissions allegedly owed to respondent by petitioner. Petitioner seeks, inter alia, a determination that the written contract between the parties is void and unenforceable; restitution of all monies paid to respondent; and an accounting of all monies received on behalf of petitioner.

1 Respondent concedes that he is not a licensed talent agent but denies that he has
2 violated the Talent Agencies Act. He argues that any solicitation of employment was done
3 "In conjunction with, and at the request of, a licensed talent agency" within the meaning of
4 Labor Code section 1700.44(d).

5 The matter came on for hearing before Thomas S. Kerrigan, Special Hearing Officer,
6 on March 10, 2000, in Van Nuys, California. Petitioner appeared through his attorney,
7 Stacy N. Schnaid of Schneider & Warren, LLP. Respondent appeared through his attorney,
8 Eugene E. Kinsey. A motion by petitioner to amend the petition to add Chris Spencer
9 Enterprises, Inc., a California corporation, was granted. Following the taking of testimony
10 and receipt of exhibits from both parties, the matter was taken under submission.

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12 **ISSUES**

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14 The questions presented in this matter are as follows:

- 15 1. Did Spencer function as a talent agent as defined in the Labor Code?
16 2. If so, did Spencer act "in conjunction with and at the request of" a licensed
17 talent agent?
18 3. Are the actions of Attorney Thomas Fineman in negotiating a new contract for
19 petitioner attributable to petitioner or respondent?
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21 **DISCUSSIONS AND FINDINGS**

22 The parties do not dispute that Bentley, an actor on the television series Moesha, was
23 at all times material hereto an artist within the meaning of Labor Code section 1700.44(b).
24 Furthermore, as aforementioned, there is no dispute that Spencer was not a licensed talent
25 agent.

26 Bentley entered into a written contract with Spencer in June of 1996 whereby he
27 engaged Spencer as his manager for a period of eighteen months. The agreement provided

1 that Spencer would advise and manage Bentley but that he would not solicit employment
2 for him. Bentley, who was in his first season on the Moesha television series at the time,
3 agreed to pay Spencer fifteen per cent of his gross compensation, with certain exceptions
4 spelled out by the parties.

5 Prior to this time and continuing to sometime in 1996, Bentley was represented by
6 20th Century Artists [hereinafter "20th Century"], which all parties agree was a licensed talent
7 agency. 20th Century secured Bentley his role on Moesha in 1995. Acting on the advise of
8 Spencer, however, Bentley terminated his contract with 20th Century thereafter based on
9 a clause in his contract with 20th Century that authorized him to do so based on the
10 departure of certain principals of that agency earlier on. Following this termination, Bentley
11 dealt with 20th Century solely on a case by case basis.

12 Though he appears to have solicited employment opportunities for Bentley after the
13 parties entered into the management agreement, Spencer testified that all of his efforts were
14 in conjunction with and at the request of 20th Century. Diane Davis of 20th Century testified
15 to the same effect. While Bentley disagreed with this characterization of the relationship
16 between Spencer and 20th Century, he was unable to controvert this evidence, not being a
17 percipient witness to these activities on his behalf.

18 Bentley expressed a desire to renegotiate his contract with the producers of Moesha
19 after entering into the management agreement. Spencer set up a luncheon with Bentley,
20 Attorney Thomas Fineman and himself at La Scala, so that Bentley could meet Fineman.
21 After the meeting it was agreed by Bentley that Fineman could negotiate for a raise on his
22 behalf. He was influenced in this decision by the fact that Spencer agreed to pay Fineman's
23 fees. Fineman was not a licensed talent agent. 20th Century was no longer authorized to
24 represent Bentley with respect to the Moesha show, having been terminated prior to that
25 time. Spencer did not directly participate in these negotiations. Based on Fineman's efforts,
26 a new contract, containing a raise for Bentley, was negotiated in 1997.

27 With respect to the prenegotiation transactions involving Bentley's career, it appears
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1 that Spencer was acting at the request of and in conjunction with 20th Century. To begin
2 with, 20th Century was in the picture as Bentley's talent agent well prior to the execution of
3 the management agreement. Secondly, both Diane Davis of 20th Century and Spencer
4 testified that they acted together in these transactions. Bentley was not competent to
5 dispute this testimony, not having been intimately involved with these transactions. With
6 respect to these transactions, we accordingly find that Spencer did not violate the Talent
7 Agencies Act because, whether or not he was engaged in or carried on the occupation of
8 an otherwise unlicensed talent agent, a disputed factual issue which we do not here resolve.
9 the evidence is to the effect that he acted at the request and in conjunction with 20th
10 Century, a licensed talent agent at all times, and is accordingly shielded by the provisions
11 of Labor Code 1700.44(d). (Cf *Snipes v. Dolores Robinson Entertainment*, TAC 36-96.)

12 The consideration of the allegations concerning the renegotiation of the Moesha
13 contract involves a slightly different analysis. Both parties agreed that Attorney Fineman
14 would attempt to renegotiate the Moesha contract to get Bentley more compensation.
15 Spencer agreed to pay Fineman's fees. The question becomes for whom was Fineman
16 acting as agent? If he was Spencer's agent because Spencer recommended him and paid
17 his fees, Spencer's use of Fineman would constitute a subterfuge to violate the Talent
18 Agencies Act. If, on the other hand, Fineman was Bentley's agent because he consented
19 to his retention on his behalf, there is no violation.

20 An agent, by definition, is one who represents another's interests and thereby has a
21 fiduciary duty to that person. Civil Code section 2295; *Lewis v. Superior Court* (1994) 30
22 Cal. App. 4th 1850, 1868-1869.

23 Here, though Fineman was paid by Spencer, he was clearly representing Bentley's
24 interests in these negotiations and not the interests of Spencer. His fiduciary duty in
25 conducting these negotiations, furthermore, can only have been to Bentley as a matter of
26 law. In addition, Bentley testified that he consented to Fineman's retention for his benefit.
27 We accordingly find that Fineman was the agent of Bentley, not the agent of Spencer in
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1 conducting these negotiations.

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CONCLUSION

4 1. Petitioner is an artist within the meaning of Labor Code section 1700.44(a).
5 The Labor Commissioner has jurisdiction to determine this controversy pursuant to Labor
6 Code section 1700.44(a).

7 2. Respondents acted "in conjunction with, and at the request of, a licensed talent
8 agency" within the meaning of Labor Code section 1700.44(d), and therefore all transactions
9 so conducted were lawful.

10 3. The actions of Attorney Thomas Fineman are not attributable to respondents
11 because Fineman was not their agent.

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DETERMINATION

14 Petitioner having failed to sustain his burden of proving that respondents violated
15 Labor Code section 1700.5, the petition is dismissed with prejudice.

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17 Dated: August 25, 2000

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

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22 The above determination is adopted in its entirety by the Labor Commissioner.

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24 Dated: *11/18/2001*

Thomas E. Grogan
THOMAS E. GROGAN
Deputy Chief Labor Commissioner

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