

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 State of California
By: Johanna Y. Hsu, SBN 164247
3 28 Civic Center Plaza, Suite 561
Santa Ana, California 92701
4 (714) 558-4914

5 Attorney for the State Labor Commissioner
6
7

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

10
11 NATURAL TALENT, INC., a California
Corporation,

12 Petitioner,

13 v.

14 GAVIN DELL, an Individual; and RONNI
15 DELL, an Individual,

16 Respondents.

17
18 GAVIN DELL, an Individual; and RONNI
DELL, an Individual,

19 Cross-Petitioners,

20 v.

21 NATURAL TALENT, INC., a California
22 Corporation,

23 Cross-Respondent.
24
25

26 ///

27 ///

28 ///

Case Nos. TAC 48-02
TAC 8-03

**DETERMINATION OF
CONTROVERSY ON PETITION OF
NATURAL TALENT, INC. AND CROSS-
PETITION OF GAVIN DELL AND
RONNI DELL**

1.

INTRODUCTION

With various petitions and cross-petitions to determine controversy pursuant to *Labor Code* section 1700.44, all parties here seek a determination of their respective rights under contract: Petitioner NATURAL TALENT, INC., a California Corporation ("Natural Talent") alleges Respondents GAVIN DELL and RONNI DELL breached the terms of a contract by failing to pay commissions due to Natural Talent as Respondents' talent agency. Further, Natural Talent seeks an order requiring the Dells pay all commissions owed pursuant to the parties' contract.¹ The Dells filed a cross-petition, asserting, *inter alia*, that Natural Talent committed material breaches of the contract, thereby extinguishing Mr. Dell's obligation to pay commissions.² The Dells also argue Ms. Dell was not bound by any agreement, not having executed any contract with Natural Talent. Mr. and Ms. Dell, alternatively, seek returns of a portion of the commissions paid to Natural Talent.

A hearing was held on March 17, 2004 in Los Angeles, California, before the undersigned counsel, specially designated by the Labor Commissioner to determine this controversy.

Petitioner appeared via its chief executive officer, Donna Felten, and Kelly Calder, agent. Respondent Gavin Dell appeared on his own behalf and for Ronni Dell; however, Ms. Dell was not present. (*See Correspondence to Attorney for the Labor Commissioner from Ronda Dell*, dated March 15, 2004, *Exhibit K*.)

Due consideration having been given to the testimony, documentary evidence and arguments presented, the Labor Commissioner adopts the following determination of controversy.

///

¹ Natural Talent's *Petition to Determine Controversy* was received by the Labor Commissioner on December 17, 2002.

² The Dells' *Response to: Petition to Determine Controversy* was received by the Labor Commissioner on February 11, 2003.

FINDINGS OF FACT

Respondent GAVIN DELL is an animation artist, and one with creative talents as well. In late 2001, Mr. Dell entered into an agreement with a licensed talent agency, Petitioner NATURAL TALENT, INC., a California Corporation, under which he engaged that agency to assist him in procuring employment and in pitching original animated concepts.³ The terms of the agreement provided for a 10% commission of all monies received by Mr. Dell on all contracts and employment procured by Natural Talent on his behalf. (*Contract*, dated September 27, 2001; *Exhibit A*, at ¶ 3.) Additionally, the commission payment(s) to Natural Talent could potentially survive the parties' contract "for so long as NTI remains licensed" and "perform[s] obligations with respect to said employment contracts or to extensions or renewals of said contracts . . ." (*Id.*) The parties' contract extended over two years, with the following exception:

In the event that NTI does not obtain a bona-fide offer of employment on my behalf from a responsible employer during a period of time in excess of four (4) consecutive months . . . either party hereto shall have the right to terminate this contract by notice in writing to that effect to the other by registered or certified mail.

(*Id.*, at ¶ 5.)

Natural Talent's first procurement came on October 29, 2001 with an acquisition of rights and option agreement negotiated with Walt Disney Television (hereinafter "Disney") for Mr. Dell's original creation, *Ginger Root*. (*Memorandum of Agreement [Option / Acquisition of Rights]*, dated October 29, 2001, *Exhibit C*.) As a part of the Disney agreement, Mr. Dell was to provide artistic services, on a pay or play basis. (*Memorandum of Agreement*, at ¶ 1(a)(I).) During these negotiations, Respondent RONNI DELL was also

³ At all times relevant herein, Natural Talent has been licensed by the State Labor Commissioner to engage in business as a talent agency.

1 recognized as a co-creator of *Ginger Root* and signed the *Disney Memorandum of Agreement*
2 *[Option / Acquisition of Rights]* in that capacity. (*Memorandum of Agreement [Option /*
3 *Acquisition of Rights]*, *supra*, at Introduction and ¶7.) It is not disputed Ms. Dell did not sign
4 any agreement with Natural Talent. Notwithstanding this oversight, Natural Talent extended
5 “our efforts on her behalf . . . in good faith and understanding due to our more formal
6 agreements with her spouse, Gavin Dell.” (*Response to Petition from Gavin Dell*, dated
7 February 10, 2003.) All formal notice to Ms. Dell under the *Disney Memorandum of*
8 *Agreement [Option / Acquisition of Rights]* was to be provided to Natural Talent; and
9 following payment by Disney, Ms. Dell remitted a check to Natural Talent, which included
10 commissions to be paid on her own behalf. (*Memorandum of Agreement [Option /*
11 *Acquisition of Rights]*, *supra*, at ¶ 18; *Gavin or Ronda Dell Check* No. 5146, dated December
12 11, 2001.) It is this commission amount, \$250.00, that Ms. Dell seeks to recoup here. (*Case*
13 *Against Natural Talent*, *supra*; *Ronda Dell Correspondence*, *supra*.)

14 Some six months later, on April 22, 2002, Mr. Dell became employed full time as a
15 character designer with Warner Bros. Animation (hereinafter “Warner Bros.”), working on
16 animated shorts, *Looney Tunes Theatrical Shorts*. (*Warner Bros. Animation Employment*
17 *Agreement*, dated April 18, 2002, *Exhibit B*, at ¶ 1.) The parties do not dispute this
18 engagement was procured on behalf of Mr. Dell by Natural Talent.

19 Now, even being fully employed with Warner Bros., Mr. Dell instructed Natural
20 Talent to continue searching for other work on his behalf. Particularly, Mr. Dell believed
21 Natural Talent did not aggressively negotiate a high enough salary with Warner Bros. (*Case*
22 *Against Natural Talent*, dated March 16, 2004, *Exhibit J*, at ¶¶ 2, 3.) And further, Mr. Dell
23 was discontent with the level of service he was receiving from Natural Talent: Mr. Dell
24 testified Natural Talent failed to follow up on pitches and interviews and refused to

25
26 ///

27 ///

28 ///

1 consistently and timely forward his pay checks.⁴ (*Id.*, at ¶¶ 4, 6a - 6c; *but see Documentation*
2 *for Gavin Dell Pitches, Meetings, Exhibit L.*)

3 In early November, 2002 Mr. Dell began to fail in his remittance of commissions to
4 Natural Talent. (*Invoice #2327*, dated November 13, 2002, *Exhibit G*; *see Invoice #2339*,
5 dated December 4, 2002; *Exhibit H*; *Invoice #2327* [with handwritten marginalia], dated
6 November 13, 2002, *Exhibit I.*) On November 14, 2002 Mr. Dell sent a letter to Natural
7 Talent, via private counsel, terminating their services as his talent agency, citing “material
8 breaches” of the agency agreement. (*Correspondence to Natural Talent, Inc. from Stephen*
9 *M. Baron, Esq.*, dated November 14, 2002, *Exhibit D.*) Natural Talent responded to Mr.
10 Dell’s correspondence agreeing to terminate the parties’ agreement, effective November 14,
11 2002; however, Natural Talent also asserted:

12 As we discussed, Natural Talent shall continue to receive
13 commission from you and will continue to service the following
14 two agreements:

- 15 1. Warner Bros. - “Looney Tunes Theatrical Shorts”
- 16 2. Disney Television Animation - “Ginger Root”

17 (*Correspondence to Gavin Dell from Donna Felten*, dated November 25, 2002; *Exhibits E,*
18 *F.*)

19 By November 15, 2002 Mr. Dell had negotiated extended option periods with Disney
20 for *Ginger Root*, utilizing his own private counsel and without Natural Talent.
21 (*Correspondence to Gavin Dell and Ronni Dell from Mark Kenchelian, Sr. VP of Business*
22 *Affairs*, dated November 15, 2002, *Exhibit J Attachment*; *Statement for Professional Services*
23 *Rendered Through November, 2002*, dated December 17, 2002, *Exhibit J Attachment.*)
24 Natural Talent seeks remittance of those commissions earned during Mr. Dell’s employment

25
26 ⁴ Originally, Warner Bros. sent payment to Mr. Dell via Natural Talent. Prior to
27 forwarding the remaining amounts, Natural Talent would deduct its 10% commission. In
28 response to Mr. Dell’s complaints relative to the timing of receipt, Warner Bros. delivered
paychecks to Mr. Dell directly, who then wrote commission checks to Natural Talent. (*Warner*
Bros. Animation Check Nos. 001190, 193946 and 194814; *Gavin and Ronda Dell Check No.*
5589; *Correspondence to Business Affairs from Gavin Dell*, received October 16, 2002.)

1 with Warner Bros. Animation and for the exercised Disney option on *Ginger Root*. (*Petition*
2 *to Determine Controversy*, at ¶V.)

3
4 3.

5 CONCLUSIONS OF LAW

6
7 A.

8 **The Labor Commissioner May Properly Determine This Controversy**
9 **Under the *Talent Agencies Act***

10 There is no dispute here that Petitioner is a “talent agency” within the meaning of
11 *Labor Code* section 1700.4(a) and Respondents are “artists” under *Labor Code* section
12 1700.4(b).

13 Further, *Labor Code* section 1700.23 grants the Labor Commissioner jurisdiction over
14 “any controversy between the artist and talent agency relating to the terms of the contract,”
15 thereby extending his inquiry to include the resolution of contract claims brought by artists
16 or agents seeking damages for the breach of a talent agency contract. (*Garson v. Div. of*
17 *Labor Law Enforcement* (1949) 33 Cal.2d 861, 865 [206 P.2d 368]; *Robinson v. Superior*
18 *Court* (1950) 35 Cal.2d 379, 387-388 [218 P.2d 10].) The Labor Commissioner, thus, enjoys
19 the jurisdiction to hear and determine this controversy pursuant to *Labor Code* sections
20 1700.23 and 1700.44(a).

21
22 B.

23 **Natural Talent Should Be Properly Compensated for All Services Rendered**

24 Both parties agree Natural Talent negotiated and procured both the Disney option and
25 Warner Bros. employment relationship on behalf of Mr. Dell. And under the terms of the
26 parties’ own contract, this would entitle Natural Talent to ten percent “of all monies or
27 things of value . . . under contracts, or any extensions, renewals, modifications, or
28 substitutions thereof . . .” (*Contract, supra*, at ¶ 3.) The key legal issue, therefore, is

1 whether Natural Talent's alleged failures to fully perform its contractual obligations excuse
2 Mr. Dell from further payment of commissions, both during the agreement's term and
3 following its termination. In support of his contention that no further commissions are owed,
4 Mr. Dell presumably argues Natural Talent's "inadequate" performance constitutes a
5 "material" breach of the contract. (*See Baron Correspondence, supra.*) A material breach,
6 however, is a "substantial" or "total" breach of contract that excuses the other party from
7 further performance under the contract. While every instance of non-compliance with a
8 contract's terms constitutes a breach, not every breach, is "material;" that is, not every breach
9 justifies complete termination of the other party's contractual obligations. (*Superior Motels,*
10 *Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1051 [241 Cal.Rptr. 487].)

11 With the original expiration date of September 27, 2003, Natural Talent had already
12 agreed to the early termination of its contract with Mr. Dell on November 14, 2002. It is of
13 no import that Natural Talent did not secure Mr. Dell a "bona fide offer employment" during
14 the first four months of the parties' contract. At Mr. Dell's written request, Natural Talent
15 conceded to the early end of the parties' agency agreement.

16 However, the premature termination did not lessen Natural Talent's entitlement to
17 those commissions already secured by their past performance. While it may indeed have
18 been frustrating for Mr. Dell to not have received his monies from Warner Bros. as soon as
19 expected, Natural Talent provided a reasonable accommodation in allowing direct payment
20 to Mr. Dell and waiting for their own payment. This allegation, even if true, does not
21 constitute a material breach of contract requiring forfeiture of earned commissions.

22 Mr. Dell's further argument that Natural Talent's apparent refusal to render continued
23 services required his engagement of an attorney is similarly unpersuasive. At the earliest, the
24 parties testified to an agreement termination date on the day Mr. Dell requested direct
25 payment of his checks by Warner Bros., October 16, 2002. (*Gavin Dell Correspondence,*
26 *supra.*) However, Mr. Dell's own documentation reflects he was still searching for a reason
27 to terminate his agreement with Natural Talent in November, 2002; and that by November
28 15, 2002, the immediate day after his termination letter was sent to Natural Talent, Mr. Dell

1 had managed to negotiate an exercised option on the Disney deal. (*Statement for*
2 *Professional Services Rendered Through November, 2002* [“Telcons w/ Gavin Dell re . . .
3 desire of Gavin to terminate agreement with Natural Talent, Inc., agency”], *supra*;
4 *Kenchelian Correspondence, supra; Baron Correspondence, supra.*) Mr. Dell’s preemptive
5 actions foreclosed any action Natural Talent could have taken on his behalf relative to the
6 *Ginger Root* options negotiations: Within this one day time frame, it would have been
7 impossible for Natural Talent to respond.

8 Natural Talent is entitled to both its earned commissions under the continuing Warner
9 Bros. employment term and the subsequently exercised Disney *Ginger Root* option.

10
11 C.

12 **Ronni Dell Was Subject to the Terms of an Oral Contract with Natural Talent**

13 The essential elements of contract formation were present here: Parties capable of
14 contracting who consented with a lawful object and sufficient consideration. (*Civ. Code* §
15 1550.)

16 Ms. Dell and Natural Talent’s agreement for the presentation of original animated
17 concepts within the entertainment industry was for a lawful purpose, and the oral agreement
18 for Natural Talent to negotiate such presentations on behalf of Ms. Dell for a ten percent
19 commission established sufficient consideration for both parties. Ms. Dell’s acceptance and
20 the requisite “meeting of the minds” were established through her conduct. Ms. Dell
21 permitted Natural Talent to negotiate on her behalf, permitted their representation for
22 contractual notice and provided full payment of her own accord. Consequently, an implied
23 oral contract, “one the existence and terms of which are manifested by conduct,” was formed.
24 (*Civ. Code* § 1621.)

25 Natural Talent will not be required to disgorge the commission sums already tendered
26 by Ms. Dell.

27 ///

28 ///

ORDER

Accordingly, it is hereby determined and declared under the provisions of the *Talent Agencies Act* that:

1. Petitioner / Cross-Respondent NATURAL TALENT, INC., a California Corporation is entitled to ten percent commission for all earnings by Respondent / Cross-Petitioner GAVIN DELL connected with the April 18, 2002 *Warner Bros. Animation Employment Agreement*. Mr. Dell shall provide an accounting to Natural Talent for all earnings, including benefits and bonuses, within 30 days of receipt of this determination. Further, Mr. Dell shall provide payment of those commissions within 20 days after that accounting has been provided.

2. Petitioner / Cross-Respondent NATURAL TALENT, INC., a California Corporation is entitled to ten percent commission for all earnings by Respondents / Cross-Petitioners GAVIN DELL and RONNI DELL connected with the October 29, 2001 *Walt Disney Television Memorandum(s) of Agreement (Ginger Root)* and all negotiated extended options arising therefrom. Mr. and Ms. Dell shall provide an accounting to Natural Talent for all earnings, including benefits and bonuses, within 30 days of receipt of this

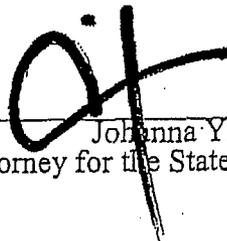
///
///
///

1 determination. Further, Mr. and Ms. Dell shall provide payment of those commissions within
2 20 days after that accounting has been provided.

3 3. Respondents / Cross-Petitioners GAVIN DELL and RONNI DELLS' claims
4 are dismissed.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: July 27, 2004



Johanna Y. Hsu
Attorney for the State Labor Commissioner

***THE ABOVE DETERMINATION IS ADOPTED IN ITS ENTIRETY
BY THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA***

Dated: August 18, 2004



Greg Rupp
Acting Chief Deputy Labor Commissioner

