

1 **STATE OF CALIFORNIA**
Department of Industrial Relations
2 Division of Labor Standards Enforcement
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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
10

11 MICHAEL RAYMOND JAMES, an
12 individual,

13 Petitioner,

14 vs.

16 THOMPSON MANAGEMENT, an
17 unincorporated association,

18 Respondent.

) CASE NO. TAC 17-03

) **DETERMINATION OF
CONTROVERSY; ORDER
DISMISSING PETITION**

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20 The above-captioned matter, a petition to determine controversy under Labor Code
21 §1700.44, came on regularly for hearing on February 17, 2006 in Los Angeles, California,
22 before the undersigned attorney for the Labor Commissioner assigned to hear this case.

23 Petitioner MICHAEL RAYMOND JAMES, An Individual appeared represented by Kristen
24 A. Savelle, Esq. of Quinn Emanuel Urquhart Oliver & Hedges, LLP. Respondent
25 THOMPSON MANAGEMENT, an unincorporated association, who was properly served
26

FINDINGS OF FACT

1
2 1. Petitioner MICHAEL RAYMOND JAMES, (hereinafter, referred to as
3 “petitioner”), is an actor.

4 2. Respondent THOMPSON MANAGEMENT, an unincorporated association,
5 (hereinafter, referred to as “respondent”), having its principal place of business in Yardley,
6 Pennsylvania, is not licensed as a talent agent in the State of California.

7 3. On or about August 4, 2002, petitioner and respondent entered into a written
8 contract wherein respondent agreed to render services as a personal manager to petitioner in
9 exchange for which petitioner promised to pay respondent a 15% commission on all gross
10 earnings and receipts for a three year period commencing from the date of execution of the
11 Agreement.

12 4. During the 2002-2003 television season, Respondent submitted petitioner to
13 various New York television shows, including, but not limited to: “Law & Order,” “Law &
14 Order SVU,” “Law & Order Criminal Intent,” “ED,” “Queens Supreme” “Third Watch” and
15 “Hack.”

16 5. As a direct result of respondent submitting petitioner to the aforementioned
17 shows, on September 24, 2002, petitioner was cast in the role of “Greg” on the television
18 show “Hack.”

19 6. Petitioner moved to California in January, 2003.

20 7. In early 2003, petitioner contacted Respondent and informed it that he
21 wanted to end their relationship. In response, Respondent informed petitioner that it needed
22 two days to think it over. Respondent subsequently contacted petitioner and informed him
23 that he could: (1) “suck it up” for the term of the contract; (2) ignore respondent but continue
24 to pay it 15% commissions on all earnings petitioner received; or (3) contact an attorney.

25 8. On or about March 26, 2003, respondent left a voicemail message with
26 petitioner, informing him of an upcoming casting call in California that respondent wanted
27 petitioner to attend.

28 9. The following day, March 27, 2003, respondent left another voicemail

1 message with petitioner, reprimanding him for not attending the casting call and possibly
2 harming its networking relationship with casting directors.

3 10. On April 22, 2003, petitioner filed the instant petition.

4 LEGAL ANALYSIS

5 1. Petitioner, an actor, is an "artist" within the meaning of Labor Code
6 §1700.4(b).

7 2. Labor Code §1700.4(a) defines "talent agency" as "a person or corporation
8 who engages in the occupation of procuring, offering, promising, or attempting to procure
9 employment or engagements for an artist or artists."

10 3. Labor Code §1700.5 provides that no person shall engage in or carry on the
11 occupation of a talent agency without first procuring a license therefor from the Labor
12 Commissioner. Any agreement between an artist and an unlicensed talent agency is
13 unlawful and void *ab initio* and the licensed talent agency has no right to retain commissions
14 arising under such an agreement. *Waisbren v. Peppercorn Productions, Inc.* (1995) 41
15 Cal.App.4th 246, *Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347.

16 4. The issue in this case is whether the Labor Commissioner has jurisdiction over
17 respondent, an out of state management company.

18 5. Respondent's principal place of business is in Pennsylvania. No evidence was
19 provided at the hearing that respondent has any business interests or relations with California
20 or that it conducts business in California on a regular and continuous basis. Nor was there
21 evidence presented at the hearing that respondent came out to California for the purpose of
22 submitting petitioner to casting calls or other employment or engagements. Rather,
23 petitioner argues that California has jurisdiction over this respondent because on one
24 occasion, respondent attempted to procure employment for Petitioner in the State of
25 California.¹

26
27 ¹It is unclear whether respondent attempted to procure such employment for petitioner by phone
28 or facsimile.

1 6. California's power to compel a nonresident defendant to answer in its courts of
2 law is limited by principles of due process. In essence, due process prohibits a state's
3 assertion of jurisdiction where it would be unreasonable in light of the defendant's limited
4 relation to the forum state. See *International Shoe Co. v. Washington* (1946) 326 U.S. 310.

5 If a nonresident defendant's activities may be described as "extensive or wide-
6 ranging" (*Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, 898-900) or
7 "substantial...continuous and systematic" (*Perkins v. Benguet Mining Co.* (1952) 342 U.S.
8 437), there is a constitutionally sufficient relationship to warrant jurisdiction for all causes of
9 action asserted against him. In such circumstances, it is not necessary that the specific cause
10 of action alleged be connected with the defendant's business relationship to the forum.
11 *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147.

12 If, however, the defendant's activities in the forum are not so pervasive as to justify
13 the exercises of general jurisdiction over him, then jurisdiction depends upon the quality and
14 nature of his activity in the forum in relation to the particular cause of action. In such a
15 situation, the cause of action must arise out of an act done or transaction consummated in the
16 forum, or defendant must perform some other act by which he purposefully avails himself of
17 the privilege of conducting activities in the forum, thereby invoking the benefits and
18 protections of its laws. Thus, as the relationship of the defendant with the state seeking to
19 exercise jurisdiction over him grows more tenuous, the scope of jurisdiction also retracts,
20 and fairness is assured by limiting the circumstances under which the plaintiff can compel
21 him to appear and defend. The crucial inquiry concerns the character of defendant's activity
22 in the forum, whether the cause of action arises out of or has a substantial connection with
23 that activity, and upon the balancing of the convenience of the parties and the interests of the
24 state in assuming jurisdiction. (*Hanson v. Denckla* (1958) 357 U.S. 235; *McGee v.*
25 *International Life Ins. Co.*, (1957) 355 U.S. 220.) *Cornelison v. Chaney*, *supra* 16 Cal.3d
26 143 at p.147-148.

27 Applying these rules to the instant case, we find that respondent's activities in
28 California are not so substantial or wide-ranging as to justify general jurisdiction over him to

1 adjudicate all matters regardless of their relevance to the cause of action by petitioner.
2 Respondent allegedly attempted to procure employment for Petitioner in the State of
3 California on one occasion. Moreover, the attempt was made by telephone or facsimile. No
4 evidence was presented that respondent traveled to the State of California in an effort to
5 procure work for petitioner, who is now domiciled in California.

6 We turn then, to an assessment of the relation between petitioner's activities in
7 California and the cause of action alleged by petitioner. Respondent purposefully availed
8 itself of the privilege of conducting activities within California by attempting to secure an
9 audition for petitioner in California, thus invoking the benefits and protections of its laws.
10 See *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 446-447. Moreover, petitioner's claim
11 under the Talent Agencies Act is unquestionably connected with and arises out of
12 respondents' forum-related activities of attempting to procure employment for petitioner
13 without the requisite talent agency license. However, the exercise of jurisdiction would not
14 be fair nor reasonable in this case. Respondent allegedly made one contact by phone or
15 facsimile in an attempt to procure employment for petitioner. To require petitioner to travel
16 to California to defend in this action based on one phone call or fax would not be fair nor
17 reasonable.

18 Petitioner relies on our decision in *Breuer v. Top Draw Entertainment, Inc.*, (1996)
19 TAC 18-95 for the proposition that we have jurisdiction over respondent, herein. *Breuer* is
20 distinguishable from this case in that the respondents in *Bruer*, both New York residents,
21 traveled to California with the petitioner for a one week period in order to promote the
22 petitioner's talents to potential employers at an industry "showcase" in Los Angeles.
23 Moreover, the respondents charged the petitioner for their expenses in connection with the
24 business trip to California, obtained auditions for the petitioner at various comedy clubs in
25 Los Angeles, and sent written materials to Disney Studios and other promoters/employers in
26 an effort to procure employment for the petitioner. We found that all these activities taken
27 together, constituted sufficient contacts with California for us to assert jurisdiction over the
28 respondents.

1 In contrast, this case involves only one alleged contact which was made by phone or
2 facsimile. Assertion of jurisdiction over respondent in this case, based on that one phone call
3 or facsimile transmission, in our opinion, would offend "traditional notions of fair play and
4 substantial justice." See *International Shoe Co. Washington, supra*. As such, we find that
5 we do not have jurisdiction over this respondent.

6 7. Because we find that we don't have jurisdiction over the respondent, this
7 petition must be dismissed.

8
9 **ORDER**

10 For the reasons set forth above, IT IS HEREBY ORDERED that this petition be
11 dismissed.

12
13 Dated: April 21, 2006

Edna Garcia Earley
EDNA GARCIA EARLEY
Special Hearing Officer

14
15
16 **Adopted:**

17 Dated: *April 25, 2006*

Robert A. Jones
ROBERT A. JONES
Acting State Labor Commissioner