

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 State of California
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BEFORE THE LABOR COMMISSIONER

8

STATE OF CALIFORNIA

9

10 CLIFTON BRITT; CLIFTON BRITT aka) TAC No. 06-04
LEXINGTON STEELE; and CLIFTON BRITT)
11 dba MERCENARY PICTURES,)
)
12 Petitioner,) DETERMINATION OF
) CONTROVERSY
13 vs.)
)
14 HARRY WEISS; WEISS AND ASSOCIATES,)
)
15 Respondents.)

16 The above-captioned matter, a petition to determine
17 controversy under Labor Code §1700.44, came on regularly for
18 hearing on June 2, 2005 in Los Angeles, California, before the
19 undersigned attorney for the Labor Commissioner, assigned to hear
20 the matter. Petitioner was represented by attorney George E.
21 Akwo. Respondent failed to appear at the hearing. Based on the
22 evidence presented at this hearing and on the other papers on
23 file in this matter, the Labor Commissioner hereby adopts the
24 following decision.

25 FINDINGS OF FACT

26 1. Petitioner CLIFTON BRITT has been a performing artist in
27 the adult film industry for the past seven years, acting under
28 the stage name Lexington Steele. He has appeared in over 500

1 films. He has also directed over 40 adult films. More recently,
2 as the owner of Mercenary Pictures, he is engaged in the
3 production of adult films. For the past two years, he has hosted
4 a Playboy TV variety/talk show, "Lex in the City." As host of
5 the show, he interviews guest musicians, athletes, and other
6 adult film performers.

7 2. Respondent HARRY WEISS, an individual who also does
8 business as WEISS and ASSOCIATES, contacted BRITT in the fall of
9 2002, offering his services as a talent agent. On November 5,
10 2002, BRITT and WEISS executed a "Personal Services Contract,"
11 under which WEISS agreed that his "primary work involves the
12 pursuit of a career in adult entertainment, administration of a
13 publicity contract for access and promotion via all electronic
14 media, along with magazine and web content photo shoots,
15 endorsement deals, and appearances in movies, videos, and
16 personal/dance appearances." Under this contract, WEISS was to
17 serve as BRITT's exclusive representative for a period of two
18 years, for which BRITT agreed to pay WEISS \$500 per month plus
19 10% of all gross revenues earned by Mercenary Pictures and BRITT
20 personally.

21 3. In April 2003, BRITT terminated Respondent's services.

22 4. On August 21, 2003, WEISS filed a lawsuit against BRITT
23 for breach of contract and various other related causes of
24 action. This lawsuit is now pending before the Los Angeles
25 Superior Court (Case No. PC033352). In this lawsuit, WEISS
26 alleges that BRITT terminated the Personal Services Contract with
27 WEISS, and failed to pay WEISS for the services he performed
28 under this contract, "including ... negotiating and securing of

1 two contracts for {BRITT} ... to produce movies and/or perform in
2 movies and/or television shows."

3 5. In responses to special interrogatories served in
4 connection with this lawsuit, WEISS stated that he "negotiated
5 and secured" BRITT's contract with Playboy TV to host the show
6 "Lex in the City."

7 6. At all times relevant herein, WEISS was not licensed as
8 a talent agent by the State Labor Commissioner.

9 7. On May 22, 2004, BRITT filed this petition to determine
10 controversy, seeking a determination that the Personal Services
11 Contract was void *ab initio*, and that WEISS had no enforceable
12 rights thereunder. The petition was served on WEISS on August
13 27, 2004, yet WEISS failed to file any answer. Notices of the
14 hearing before the Labor Commissioner were served on WEISS and on
15 Ronald S. Miller, attorney for WEISS in the pending court action.

16 LEGAL ANALYSIS

17 1. Labor Code §1700.4(b) defines "artists" to include,
18 *inter alia*, "actors and actresses rendering services ... in the
19 production of motion pictures" and "directors ... of motion
20 picture productions" and "persons rendering professional services
21 in ... television and other entertainment enterprises." BRITT is
22 therefore an "artist within the meaning of Labor Code §1700.4(b).

23 2. The Labor Commissioner has jurisdiction to hear and
24 determine this controversy pursuant to Labor Code §1700.44(a).
25 *Styne v. Stevens* (2001) 26 Cal.4th 42, 54 {"When the Talent
26 Agencies Act is invoked in the course of a contract dispute, the
27 Commissioner has exclusive jurisdiction to determine ... whether
28 the contract involved the services of a talent agency."}

1 3. Labor Code section 1700.4(a) defines "talent agency" as
2 "a person or corporation who engages in the occupation of
3 procuring, offering, promising, or attempting to procure
4 employment or engagements for an artist or artists." Labor Code
5 §1700.5 provides that "[n]o person shall engage in or carry on
6 the occupation of a talent agency without first procuring a
7 license . . . from the Labor Commissioner." The Talent Agencies
8 Act is a remedial statute; its purpose is to protect artists
9 seeking professional employment from the abuses of talent
10 agencies. For that reason, the overwhelming judicial authority
11 supports the Labor Commissioner's historic enforcement policy,
12 and holds that "[E]ven the incidental or occasional provision of
13 such [procurement] services requires licensure." *Styne v.*
14 *Stevens, supra*, 26 Cal.4th at 51. The evidence presented here
15 leaves no doubt that Respondent HARRY WEISS, an individual dba
16 WEISS AND ASSOCIATES, acted as a "talent agency" within the
17 meaning of Labor Code §1700.4(a), and that by doing so, violated
18 Labor Code §1700.5. WEISS acted as a talent agency by promising
19 and offering to procure employment for BRITT as an "artist" in
20 the adult entertainment industry, by attempting to procure such
21 employment, and by actually procuring such employment for BRITT
22 as a host on the television show "Lex in the City."

23 4. An agreement that violates the licensing requirement of
24 the Talent Agencies Act is illegal and unenforceable. "Since the
25 clear object of the Act is to prevent improper persons from
26 becoming [talent agents] and to regulate such activity for the
27 protection of the public, a contract between an unlicensed
28 [agent] and an artist is void." *Buchwald v. Superior Court*

1 (1967) 254 Cal.App.2d 347, 351. Having determined that a person
2 or business entity procured, promised or attempted to procure
3 employment for an artist without the requisite talent agency
4 license, "the [Labor] Commissioner may declare the contract
5 [between the unlicensed agent and the artist] void and
6 unenforceable as involving the services of an unlicensed person
7 in violation of the Act." *Styne v. Stevens, supra*, 26 Cal.4th at
8 55. "[A]n agreement that violates the licensing requirement is
9 illegal and unenforceable" *Waisbren v. Peppercorn*
10 *Productions, Inc.* (1995) 41 Cal.App.4th 246, 262. Moreover, the
11 artist that is party to such an agreement may seek disgorgement
12 of amounts paid pursuant to the agreement, and "may . . . [be]
13 entitle[d] . . . to restitution of all fees paid the agent."
14 *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. This remedy of
15 restitution is, of course, subject to the one year limitations
16 period set out at Labor Code §1700.44(c). Here, petitioner does
17 not seek any restitution as presumably no payments were made to
18 the respondent from one year prior to the date of the filing of
19 the petition to determine controversy to the present, so that
20 recovery of payments that were made is barred by the statute of
21 limitations.

22 5. The very purpose of Personal Services Contract between
23 WEISS and BRITT was to enable WEISS to procure artistic
24 employment for BRITT, for which WEISS now seeks compensation
25 through his superior court lawsuit. Under controlling case law,
26 discussed above, there can be no question that because WEISS
27 engaged in procurement activities without the requisite talent
28 agency license, this Personal Services Contract is void *ab*

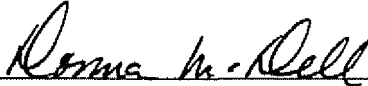
1 *initio*, and that WEISS has no enforceable rights thereunder.

2 ORDER

3 For the reasons set forth above, IT IS HEREBY ORDERED that
4 the Personal Services Contract between WEISS and BRITT is void *ab*
5 *initio*, that WEISS has no enforceable rights thereunder, and that
6 BRITT owes nothing to WEISS for any services that were provided
7 pursuant to that Contract.

8
9 Dated: 10/12/05 
10 _____
MILES E. LOCKER
Attorney for the Labor Commissioner

11
12 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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14 Dated: 11/16/05 
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DONNA M. DELL
State Labor Commissioner

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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. §1013a)

(Clifton Britt, et al v. Harry Weiss, et al)
(TAC 6-04)

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102.

On November 23, 2005, I served the following document:

DETERMINATION OF CONTROVERSY

by placing a true copy thereof in envelope(s) addressed as follows:

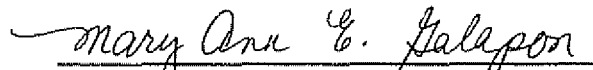
GEORGE AKWO, ESQ.
21018 Osborne Street, Unit #2
Canoga Park, CA 91304

RONALD S. MILLER, ESQ.
Law Offices of Ronald S. Miller
24827 San Fernando Road, Suite 213
Santa Clarita, CA 91321

HARRY WEISS
Century Club
10131 Constellation Way
Century City, CA 90067

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on November 23, 2005, at San Francisco, California.


MARY ANN E. GALAPON