

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

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11 J.K.A. Talent and Literary Agency, Inc.,) CASE NO. TAC 27-05
12)
13 Petitioner,)
14 vs.) **DETERMINATION OF**
15) **CONTROVERSY**
16 Sheila Rivera (A.K.A. Shayla Rivera),)
17 Respondent.)

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19 The above-captioned matter, a petition to determine controversy under Labor Code
20 §1700.44, came on regularly for hearing on November 14, 2005 in Los Angeles, California,
21 before the undersigned attorney for the Labor Commissioner assigned to hear this case.
22 Petitioner J.K.A. Talent and Literary Agency, Inc.,(hereinafter, referred to as "Petitioner")
23 appeared through its President, James Kellum. Respondent Sheila Rivera, (hereinafter,
24 referred to as "Respondent"), appeared in pro per. Douglas Warner appeared as a witness
25 for Respondent.

26 Based on the evidence presented at this hearing and on the other papers on file in this

1 matter, the Labor Commissioner hereby adopts the following decision.

2 **FINDINGS OF FACT**

3 1. Petitioner is a licensed talent agency.

4 2. Respondent is a comedian and works as a hostess / panelist on various reality
5 television shows.

6 3. On or about 2002, petitioner and respondent entered into an oral
7 contract wherein petitioner promised to procure employment for respondent in exchange for
8 10% of any and all earnings received by respondent. Respondent terminated her relationship
9 with petitioner in December of 2004.

10 4. During the period of 2002 through December 2004, petitioner actively
11 solicited showcases, auditions and various hosting jobs for respondent. Additionally,
12 petitioner mailed out invitations to respondent's one woman show for the purpose of
13 securing development jobs for respondent.

14 5. In June/July 2004, petitioner secured employment for petitioner as a hostess on
15 a television reality show called "You're Not the Man I Married."

16 6. Respondent signed a letter agreement with Optomen Productions dated August
17 8, 2004 to perform work as a hostess on "You're Not the Man I Married." Respondent
18 testified that she didn't actually sign the agreement until December 2004 and only signed it
19 in order to get paid for the pilot which she shot in late August, 2004. The agreement
20 provides that respondent will perform services for Optomen Productions, Inc. in connection
21 with the one-half (½) hour television pilot entitled "You're Not the Man I Married." The
22 letter agreement also provides that Optomen Productions shall have six options on
23 respondent's services for production of the series based on the program.

24 7. It is evident from emails submitted by petitioner that it procured and was active
25 in negotiating the terms of the "You're Not the Man I Married" letter agreement dated
26 August 8, 2004 and signed in December of 2004 by respondent.

1 8. Respondent terminated her relationship with petitioner in December 2004 by
2 email. However, in the email respondent wrote that nothing would change regarding her
3 ongoing projects with petitioner, including "You're Not the Man I Married."

4 9. The pilot for "You're Not the Man I Married" was picked up as a series in
5 December of 2004.

6 10. In March of 2005, petitioner contacted respondent to inform her that it
7 expected to be paid its full 10% commission on the series, including annual options. By an
8 email dated March 11, 2005, petitioner informed respondent that she was aware that it was
9 requesting its commissions for "You're Not the Man I Married" and reassured petitioner that
10 she would honor those commissions. However, petitioner then wrote in her email that
11 because she had to have a third party amend the original contract to include additional
12 protection to her as the artist, that she would only be paying petitioner 5% instead of 10% of
13 her services for the first season of episodes based on the rate of \$3,000.00 per episode with a
14 maximum of 22 episodes.

15 11. Evidence was submitted by respondent showing that the original letter
16 agreement was amended at the suggestion of Doug Warner, the agent who replaced
17 petitioner as respondent's talent agent. In describing his role in amending the terms of the
18 letter agreement, Mr. Warner testified as follows: "She had already obliged herself to adhere
19 to the terms of the provisions, whatever those provisions were. And really what I didn't do
20 was I did not renegotiate, which means dramatically increase or change the client's
21 compensation, but really tried to protect her where she wasn't protected in this agreement
22 that she was asked to originally sign." Mr. Warner also testified that he received a 5%
23 commission on the series episodes from respondent.

24 12. Petitioner refused to accept only 5% of the commission respondent earned on
25 each series episode. Petitioner argues that it is entitled to the entire 10% commission
26 because it procured the job and negotiated the letter agreement. Petitioner admits that it
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1 planned on renegotiating the terms of the contract once the pilot was picked up as a series,
2 however, it claims that it was prevented from doing so once respondent terminated its
3 services as a talent agent and hired Doug Warner to represent her as her talent agent.

4 14. Respondent and her witness, Mr. Warner, both testified that only 13 episodes
5 have been shot at \$3,000.00 per episode.

6 LEGAL ANALYSIS

7 1. Respondent is an "artist" within the meaning of Labor Code §1700.4(b).

8 2. Petitioner is a licensed talent agent.

9 3. Labor Code §1700.44(a) provides that in cases of controversy arising under
10 this chapter, the parties involved shall refer the matters in dispute to the Labor
11 Commissioner, who shall hear and determine the same, subject to an appeal within 10 days
12 after determination, to the superior court where the matter shall be heard de novo.

13 4. The evidence presented at the hearing establishes that petitioner procured work
14 for respondent as a hostess on the television reality show "You're Not the Man I Married."
15 Furthermore, the evidence establishes that the letter agreement negotiated by petitioner and
16 signed by respondent covers the pilot and includes six series options. Respondent paid
17 petitioner 10% for the pilot but did not pay petitioner 10% for the series because she asserts
18 that the series contract had to be renegotiated by her new agent. Accordingly, respondent
19 feels that petitioner is only entitled to half (5%) of his commission.

20 5. It is settled law that "he who shakes the tree is the one to gather the fruit."
21 *Willison v. Turner Resilient Floors* (1949) 89 Cal.App.2d 589. The evidence presented
22 establishes that petitioner procured the job and negotiated the letter agreement which
23 respondent signed. While petitioner admits that it planned on renegotiating some of the
24 terms of the contract once the series was picked up, it argues that it was prevented from
25 doing so by respondent once she hired Mr. Warner as her agent. We agree. The evidence
26 presented shows that respondent did not want petitioner involved in renegotiating the terms
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1 of the contract once she replaced petitioner with Mr. Warner.


2 6. Furthermore, respondent's claim that petitioner had nothing to do with
3 negotiating the *series* contract is not supported by the evidence. Specifically, there is no
4 separate series contract. The terms of the series are included in the letter agreement dated
5 August 2004 and signed by respondent in December 2004. Additionally, even respondent's
6 own witness, Mr. Warner testified that he did not renegotiate the contract but instead
7 amended some of the terms to better protect respondent. Thus, the letter agreement
8 negotiated by petitioner, which was subsequently amended by Mr. Warner, is the contract in
9 effect. Accordingly, petitioner is entitled to his full commission on the contract.

10 **ORDER**

11 For the reasons set forth above, IT IS HEREBY ORDERED that:


- 12 1. Respondent pay 10% of her earnings on all episodes which have been shot for
13 the television series "You're Not the Man I Married" to petitioner with interest to date.
14 2. Respondent pay all commissions owed on all compensation received by
15 respondent in the future on the television series "You're Not the Man I Married."

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17 Dated: February 27, 2006

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EDNA GARCIA EARLEY
Special Hearing Officer

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20 **Adopted:**

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23 Dated: Feb. 28, 2006

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ROBERT JONES
Acting State Labor Commissioner

