

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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9 Special Hearing Officer for the Labor Commissioner

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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

STEPHANIE DENISE ABRAMS,

Petitioner,

vs.

LYNN VENTURELLA, THE PINKERTON
MODEL AND TALENT COMPANY, LLC
aka PINKERTON MODEL AND TALENT
CO., LLC,

Respondents.

CASE NO.: TAC-36931

DETERMINATION OF
CONTROVERSY

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on January 7, 2015 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner STEPHANIE DENISE ABRAMS (“Abrams”) appeared personally. Respondent LYNN VENTURELLA (“Venturella”) appeared personally.

Based on the evidence presented at the hearing and on the other papers on file in this matter, the Labor Commissioner hereby adopts the following decision.

1 **PRELIMINARY MATTER**
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3 Venturella is the owner of the licensed talent agency THE PINKERTON MODEL
4 AND TALENT COMPANY, LLC aka PINKERTON MODEL AND TALENT CO.,
5 LLC ("Pinkerton"). In this case, issues have arisen regarding whether Pinkerton is the
6 alter ego of Venturella and whether Pinkerton should be added and treated as a proper
7 respondent in this proceeding. These issues will be addressed in the course of this
8 determination.

9 **FINDINGS OF FACT**
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11 1. Pinkerton is a limited liability company licensed as a talent agency under
12 the provisions of the Talent Agencies Act, Labor Code section 1700 et seq. (TAA).

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14 2. Venturella is the owner and operator of Pinkerton, as well as its president
15 and managing member.

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17 3. Abrams is a model and actress.

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19 4. In the summer of 2011, Abrams met with Venturella, and pursuant to that
20 meeting proceeded to engage Pinkerton to represent her in securing work in modeling and
21 in films, television, and commercials. Pinkerton was to receive an agency fee of 20% of
22 the amounts paid to Abrams for work performed as an artist during the period of
23 Pinkerton's representation.

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25 5. The representation relationship between Abrams and Pinkerton lasted from
26 2011 until August 1, 2014. During that period, Pinkerton obtained a total of only two
27 engagements for Abrams.

1
2 6. The first engagement was a project arranged in the summer of 2013. The
3 payment for Abram's services was to be \$1,500.00 with Pinkerton entitled to an agency
4 fee of \$400.00. The payment was made to Pinkerton, which deposited the money, took
5 out its \$400.00 agency share, and then sent Abrams a check for \$1,100.00. On two
6 separate occasions, Abrams presented the check for payment and it was rejected for lack
7 of sufficient funds. The check was finally honored when presented for payment for the
8 third time.

9
10 7. The second engagement was arranged around April 28, 2014, and consisted
11 of a commercial that Community Films was producing for Texas Health Resources. The
12 payment due Abrams was comprised of two components: a \$500.00 session fee and
13 \$1,000.00 buy out. Abrams had asked the producer to send the payments directly to her.

14
15 8. The producer did send the \$500.00 payment directly to Abrams. She
16 promptly cashed it, and sent Pinkerton \$100.00 representing Pinkerton's 20% share of the
17 payment.

18
19 9. The producer, however, did not send the \$1,000.00 payment directly to
20 Abrams. Instead, it sent the payment to Pinkerton.

21
22 10. After receiving and depositing the \$1,000.00 check on May 12, 2014,
23 Pinkerton sent Abrams a check for \$800.00, which it identified as the amount due Abrams
24 after the deduction of its agency fee of \$200.00.

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26 11. When Abrams presented the check for payment, however, it was rejected
27 for lack of sufficient funds. Despite several attempts, Abrams was unable to cash the
28

1 check.

2
3 12. When Abrams confronted Venturella regarding the dishonored check,
4 Venturella conceded that Pinkerton did not have the money to pay Abrams, and that the
5 \$1,000.00 it had received from the producer Community Films on the Texas Health
6 Resources commercial had not been kept to pay Abrams but instead, due to Pinkerton's
7 financial difficulties, had been diverted to other uses.

8
9 13. Venturella assured Abrams that she would be paid. Abrams was told that
10 Pinkerton would issue four weekly checks of \$200.00 each over a four week period, and
11 that Abrams would thereby be paid the \$800.00 owed to her.

12
13 14. Abrams was then given the first weekly installment check of \$200.00, but
14 when she presented it for payment it was rejected for lack of sufficient funds. Again,
15 Abrams was unable to cash the check.

16
17 15. When Abrams contacted Venturella regarding what had happened, she was
18 given assurances that the matter would be corrected. However, nothing was done.

19
20 16. On August 1, 2014, Abrams terminated her talent agency relationship with
21 Pinkerton and Venturella.

22
23 17. Venturella concedes and acknowledges that Abrams has never been paid the
24 \$800.00 due to her for the Texas Health Resources commercial.

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26 **LEGAL ANALYSIS**

1 1. Claims arising under the provisions of the TAA are within the jurisdiction
2 of the Labor Commissioner.

3
4 2. In this case, it is undisputed that Abrams was an artist who was represented
5 by Pinkerton and that Pinkerton violated the TAA and its obligations to Abrams
6 thereunder. Specifically, it is conceded and acknowledged that Pinkerton received a
7 \$1,000.00 payment on behalf of Abrams in connection with the Texas Health Resources
8 commercial, that it failed to deposit this payment in a trust account in contravention of
9 Labor Code section 1700.25, that it failed to pay Abrams her \$800.00 share of this
10 payment within 30 days of receiving it as required by Labor Code section 1700.25, that it
11 diverted the money belonging to and being held in trust for Abrams to other purposes and
12 objectives, and that it did not pay and has never paid the \$800.00 due and owing to
13 Abrams.

14
15 3. Abrams seeks to hold Venturella liable for Pinkerton's violations of the
16 TAA based on the doctrine of alter ego. Under this doctrine, the corporate entity may be
17 disregarded, and the acts of the corporation ascribed to the individual and vice versa,
18 where the individual dominates and controls the corporation and uses it "to perpetrate a
19 fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose."
20 (9 Witkin, Summary of Cal. Law (10th ed. 2005) Corporations, §9, p. 785.) A corollary
21 factor warranting the application of alter ego is a corporation's lack of adequate
22 capitalization and consequent inability to meet its contractual and statutory obligations.
23 (*Id.* at §14, pp. 791-793.)

24
25 4. In the present case, it is established that Venturella owned, dominated, and
26 controlled the Pinkerton entity. Pinkerton was held out as a licensed talent agency that
27 would discharge its duties and obligations to artists in conformity with the requirements
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1 of the TAA and that pursuant thereto it would receive moneys on behalf of artists and
2 deposit those moneys in a trust account, so that the artist's share of the moneys would be
3 protected and thereafter promptly disbursed to the artist. Here, under the personal
4 direction of Venturella, moneys received by Pinkerton on behalf of Abrams were not
5 deposited in a trust account but were instead improperly diverted to other purposes and
6 objectives benefitting not Abrams but Venturella and Pinkerton. This misappropriation of
7 the money belonging to Abrams constituted the use of Pinkerton to perpetrate a fraud on
8 Abrams. Additionally, Pinkerton was wholly undercapitalized and lacked the financial
9 resources with which to pay Abrams the money that it owed to her after having
10 misappropriated the money that belonged to her. In sum, the identity of Pinkerton as
11 separate and apart from Venturella had ceased to exist, and recognizing any such separate
12 identity in these circumstances would sanction a fraud and promote injustice.

13
14 5. Accordingly, it is determined that the alter ego doctrine is properly applied
15 in this case to hold Venturella liable for the actions engaged in by Pinkerton in violation
16 of the TAA, and for the contractual and statutory obligations of Pinkerton to Abrams.

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18 6. In the context of the representation relationship with Abrams, Pinkerton did
19 not have an identity separate and apart from that of Venturella, and Venturella and
20 Pinkerton were "one and the same." (*Moore v. Phillips* (1959) 176 Cal.App.2d 702, 710.)
21 Consequently, a claim made against Venturella was also at the same time a claim made
22 against Pinkerton. In such circumstances, as the courts have recognized, it is proper to
23 add and treat the corporate entity as a defendant with concurrent liability on the
24 underlying claim. (See *Toko-Towa Co., Ltd. v. Morgan Creek Productions* (2013) 217
25 Cal.App.4th 1096, 1100, 1106; *Moore v. Phillips, supra*, 176 Cal.App.2d at p. 710.)

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27 7. Accordingly, for the reasons stated, Pinkerton is added and treated as a
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1 respondent in this case.

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3 8. Based on the undisputed facts, it is determined that Abrams is entitled to
4 recover from Venturella and Pinkerton, jointly and severally, the sum of \$800.00 which
5 was payable to her for the Texas Health Resources commercial and which remains due,
6 owing, and unpaid.

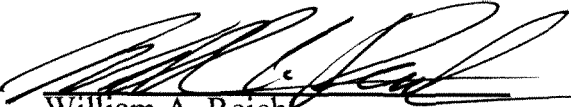
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8 9. In addition, because of the willful failure to pay Abrams the \$800.00 within
9 30 days of the receipt of the funds from the producer, Abrams is entitled to recover
10 interest at the rate of 10% per annum from June 11, 2014.

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12 **DISPOSITION**

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14 For the reasons set forth above,

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16 **IT IS HEREBY ORDERED** that Respondents LYNN VENTURELLA and THE
17 PINKERTON MODEL AND TALENT COMPANY, LLC aka PINKERTON MODEL
18 AND TALENT CO., LLC shall pay to petitioner STEPHANIE DENISE ABRAMS the
19 sum of \$800.00, together with interest thereon, at 10% per annum, from June 11, 2014
20 until paid in full.

21
22 Dated: 5/4/15



William A. Reich
Special Hearing Officer
for the Labor Commissioner

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24 Adopted:

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26 Dated: 5/4/2015



Julie A. Su
State Labor Commissioner