

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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9
10 BEFORE THE LABOR COMMISSIONER
11 OF THE STATE OF CALIFORNIA
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16 CHARLES LENHOFF, individually and) TAC 20-99
17 dba LENHOFF & LENHOFF,)
18)
19 Petitioners,)
20)
21 vs.) DETERMINATION OF
22) CONTROVERSY
23 PETER SVATEK, an individual;)
24 BLUE RIDER PICTURES, an entity of)
25 unknown origin,)
26 Respondent.)
27)

18 INTRODUCTION

19 The above-captioned petition was filed on May 21, 1999 by
20 CHARLES LENHOFF dba LENHOFF & LENHOFF AGENCY (hereinafter
21 "Petitioner" or "LENHOFF") alleging that PETER SVATEK (hereinafter
22 "Respondent" or "SVATEK") breached their contract because SVATEK
23 failed to remit commissions to petitioner for work performed by
24 SVATEK as a director in the entertainment industry. Petitioner
25 alleges the job was created as a result of petitioner's efforts to
26 submit respondent, satisfying all the terms and conditions of the
27 contract. Petitioner seeks 10% commission of respondent's earnings

1 in connection with the film "Silver Wolf"; interest; and attorney's
2 fees. Petitioner also names Blue Rider Pictures as a respondent
3 alleging that Blue Rider Pictures had an obligation to pay all
4 monies owed to SVATEK directly to petitioner.¹

5 Respondent filed his answer on July 6, 1999, defending on
6 the grounds that petitioner's claim is time barred by the statute
7 of limitations contained at Labor Code §1700.44(c)²; petitioner's
8 efforts did not lead to the respondent's eventual employment and
9 therefore petitioner did not satisfy his obligation under the terms
10 of the contract; and the contract terms between SVATEK and the
11 production company were negotiated by another agent after the
12 parties contract had been terminated.

13 The hearing was scheduled and held on December 17, 1999
14 in Los Angeles at the office of the Labor Commissioner before the
15 undersigned attorney specially designated to hear this matter. The
16 petitioner was represented by his attorney Candice S. Klein of
17 Carpenter and Zuckerman; respondent appeared through his counsel
18 Stephen R. Mick of Loeb & Loeb LLP.

19 Based upon the testimony, evidence and briefs presented
20 at this hearing, the Labor Commissioner adopts the following

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22 ¹ Under Labor Code §1700.44, it has been determined that the Labor
23 Commissioner has primary and exclusive jurisdiction to hear and determine
24 controversies between artists and talent agents arising under the Talent Agencies
25 Act. This tribunal is not the appropriate forum for controversies between talent
26 agents and third parties. Also, petitioner provides no evidence, written or
27 otherwise, between Blue Rider Pictures and LENHOFF that would create an
obligation for Blue Rider to pay LENHOFF directly. Most importantly, it was
determined during the hearing that Blue Rider Pictures did not produce the film
in issue. Consequently, Blue Rider Pictures is dismissed from this petition.

² All Code sections cited will refer to the California Labor Code unless
otherwise specified.

1 Determination of Controversy.
2

3 FINDINGS OF FACT

4 1. On February 12, 1997, petitioner doing business as
5 Lenhoff/Robinson Talent and Literary Agency, entered into a one-
6 year written contract extension whereby petitioner would act as
7 respondent's exclusive talent agent for all work performed as a
8 writer/director/producer in the entertainment industry. The
9 contract provided that petitioner would assist in obtaining offers
10 of employment and to negotiate contracts for the rendition of
11 professional services in the fields of publishing, motion
12 pictures,...television and other fields of entertainment. In
13 return, petitioner was to receive 10% of respondent's earnings,
14 excluding projects generated by respondent which were commissioned
15 at 5%.

16 2. Section 5 of the General Services Agreement³,
17 provided that if the artist entered into an employment agreement
18 within four months after termination of the contract between the
19 parties, the agent would be commissioned for that employment, so
20 long as the agent submitted the artist or the agent commenced
21 negotiations during the contract's term.

22 3. In June of 1997, the Division of Labor Standards
23 Enforcement (DLSE) discovered information about petitioner's

24 _____
25 ³ Section 5 of the parties contract states: "If I enter into an agreement
26 which would have been otherwise covered by this General Services Agreement within
27 four (4) months after termination hereof, ..., with any person or business entity
as to whom a submission has been made and/or negotiations commenced on my behalf
during the term of this Agreement then in said event any such employment contract
entered into shall be deemed to have been entered into during the term hereof."

1 partner, Lloyd Robinson, creating "grave concerns" about the
2 agency's moral fitness for licensure. As expressed in a June 3,
3 1997 letter from Division attorney Miles Locker, "[the] concerns
4 stem from ... Mr. Robinson's misconduct as an attorney from May
5 1989 to July 1991, the disciplinary proceedings that were brought
6 against him by the State Bar as a result of that misconduct, his
7 suspension and subsequent resignation from the practice of law, and
8 his deliberate misrepresentations and omissions concerning these
9 matters on application papers filed with the Labor Commissioner."
10 As a result of this new information, on July 10, 1997, petitioner's
11 talent agency license expired and was not renewed.

12 4. DLSE gave LENHOFF three options; one, buy Robinson's
13 portion of the business; two, file a new application for a talent
14 agency license in his own name; or three, get out of the business.
15 LENHOFF needing to disassociate himself from his former partner,
16 applied for a new talent agency license under the name Lenhoff and
17 Lenhoff Agency, a partnership with his wife. LENHOFF eventually
18 secured a new license effective August 22, 1997, and that license
19 remains effective to date. Petitioner was unlicensed and
20 consequently prohibited from acting as a talent agency from July
21 10, 1997 through August 22, 1997.⁴

22 5. LENHOFF testified that during this tumultuous time
23 period the parties orally agreed to be bound by the terms of the
24 original Lenhoff/Robinson contract for the remainder of the

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26 ⁴ Mr. Lenhoff testified his license was ineffective from July 27, 1997
27 through August 15, 1997. A search of the Division of Labor Standards
Enforcement's Licensing and Registration Unit's Database reflected the actual
time period of non-registration was July 10, 1997 through August 22, 1997.

1 contract's term.

2 6. Between 1995 and 1997, LENHOFF directly negotiated a
3 number of projects between respondent and Blue Rider Productions.
4 Blue Rider owned the rights to a script called "Silver Wolf", but
5 Blue Rider had refrained from placing the picture into development.

6 7. Petitioner's testified, on or around January 16,
7 1997, LENHOFF introduced SVATEK to Ricka Fischer, Senior Vice
8 President of Creative Affairs for Disney, to discuss "Silver Wolf"
9 and an unrelated picture. On April 17, 1997 LENHOFF again met with
10 Fischer to discuss whether Disney would be interested in producing
11 "Silver Wolf". LENHOFF then testified, **"subsequent to that [April**
12 **17, 1997] meeting, on August 15, 1997, after receiving permission**
13 **from producers at Blue Rider, I sent the script "Silver Wolf"**
14 **directly to Ricka Fischer by courier at her Disney office."** Disney
15 eventually passed on the project and "Silver Wolf" lay dormant until
16 early 1998.

17 8. On February 1, 1998, SVATEK terminated the contract
18 between the parties via an unequivocal termination letter stating
19 in part, "I would appreciate your referring all inquiries about me
20 or my services to Boyd Hancock [SVATEK'S new agent]. If you don't
21 want to do that, please refer them to me directly....[b]ut please,
22 make no further representations on my behalf."

23 9. In early 1998, GFT Entertainment acquired the rights
24 to "Silver Wolf" from Blue Rider Pictures. Gary Howsman, owner of
25 GFT, stated through declaration⁵ that he directly contacted SVATEK

26 ⁵ Mr. Howsman, a resident of Canada could not be compelled to attend the
27 hearing, consequently his declaration was admitted into evidence. Cal. Code of
Regulations §12031 states, "the Labor Commissioner is not bound by the rules of

1 to direct the film, whom he had worked with on a previous
2 collaboration. Howsman's declaration stated that after he made
3 contact with SVATEK, he negotiated the contract terms with SVATEK'S
4 new agent Boyd Hancock. Howsman specified that prior to his
5 declaration he had never heard of LENHOFF. On May 21, 1998, a
6 contract between Howsman's production company and SVATEK was
7 executed for SVATEK'S exclusive directorial services for "Silver
8 Wolf". Traditional agent commissions for "Silver Wolf" were paid to
9 Boyd Hancock.

10 10. By the petition, petitioner seeks 10% commission on
11 all of respondent's earnings in connection with "Silver Wolf".

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13 CONCLUSIONS OF LAW

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15 There are two relevant issues.

16 1) Whether LENHOFF'S acts of attempting to procure
17 employment for SVATEK during LENHOFF's unlicensed period
18 effectively precludes LENHOFF from receiving commissions for
19 SVATEK'S directorial services on "Silver Wolf"?

20 2) Did SVATEK breach the contract's express 4-month
21 tail provision entitling LENHOFF to commissions for work entered
22 into by SVATEK within 4 months after termination of the contract?

23 1. Petitioner is a licensed "talent agency" within the
24 meaning of Labor Code §1700.4(a).

25 2. Respondent, as a director of motion pictures is an

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27 evidence or judicial procedure."

1 "artist" within the meaning of Labor Code §1700.4(b).

2 3. Labor Code §1700.23 provides that the Labor
3 Commissioner is vested with jurisdiction over "any controversy
4 between the artist and the talent agency relating to the terms of
5 the contract," and the Labor Commissioner's jurisdiction has been
6 held to include the resolution of contract claims brought by
7 artists or agents seeking damages for breach of a talent agency
8 contract. Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d
9 861, Robinson v. Superior Court (1950) 35 Cal.2d 379. Thus, the
10 Labor Commissioner has jurisdiction to determine this controversy
11 pursuant to Labor Code §1700.44(a).

12 4. Labor Code section 1700.5 provides that "no person
13 shall engage in or carry on the occupation of a talent agency
14 without first procuring a license therefor from the Labor
15 Commissioner." The definition of "talent agency" is found at Labor
16 Code §1700.40(a) defining "talent agency" as, "a person or
17 corporation who engages in the occupation of procuring, offering,
18 promising, **or attempting to procure employment or engagements for**
19 **an artist** or artists." LENHOFF'S testimony proved availing.
20 LENHOFF unequivocally established that on August 15, 1997, after
21 seeking permission from Blue Rider Pictures, LENHOFF delivered by
22 courier the "Silver Wolf" script to Disney seeking employment on
23 SVATEK'S behalf. These employment procurement activities were
24 conducted during the unlicensed interim time period between
25 LENHOFF'S expired license and the issuance of his new license.

26 5. In Waisbren v. Peppercorn Production, Inc (1995) 41
27 Cal.App.4th 246, the court held that any single act of procuring

1 employment subjects the agent to the Talent Agencies Act's
2 licensing requirements, thereby upholding the Labor Commissioner's
3 long standing interpretation that a license is required for any
4 procurement activities, no matter how incidental such activities
5 are. Applying Waisbren, it is clear respondent acted in the
6 capacity of a talent agency within the meaning of §1700.4(a)
7 without a valid talent agency license in violation of §1700.5.

8 6. Courts have long held that since the clear object of
9 the Act is to prevent improper persons from becoming [agents]... , a
10 contract between an unlicensed [agent] and an artist is void.
11 Buchwald v. Superior Court, *supra*, 254 Cal.App.2d 347 at 351.
12 Therefore, the oral contract between the parties that was entered
13 into during LENHOFF'S unlicensed period is hereby void *ab initio*
14 and is unenforceable for all purposes. Waisbren v. Peppercorn
15 Inc., *supra*, 41 Cal.App. 4th 246.

16 7. LENHOFF'S subsequent acquisition of a talent agency
17 license does not negate this result. The Labor Commissioner is
18 responsible for the enforcement of the Talent Agencies Act and that
19 responsibility includes protecting the health, safety and welfare
20 of the public from improper persons acting as talent agents.
21 Pursuant to §1700.7 the Labor Commissioner may cause an
22 investigation to be made as to the character and responsibility of
23 the applicant prior to licensure. The Labor Commissioner had the
24 discretion to give LENHOFF a temporary license during the interim
25 time, but chose not to. It is clear, after contemplating LENHOFF'S
26 prior association with unsavory characters, the Labor Commissioner
27 had concerns about whom LENHOFF would conduct business with. The

1 Labor Commissioner refrained from issuing Mr. LENHOFF a license
2 until he and any new associate had entirely completed the
3 application process and the Labor Commissioner was satisfied as to
4 the character and responsibility of all persons associated with
5 LENHOFF'S new talent agency application. Petitioner was not
6 authorized to conduct talent agency activities until he received
7 his new license. It was Mr. LENHOFF'S responsibility to avoid
8 conducting agency activities during this unlicensed period. He
9 refused to do so and must therefore bear the consequences of his
10 illegal activity.

11 8. As a result, the breach of contract issue does not
12 require discussion but will be briefly addressed. Section 5 of the
13 contract between the parties established the following:

14 **"If I [SVATEK] enter into an agreement** which would have
15 **been otherwise covered by this General Services Agreement**
16 **within four (4) months after termination hereof, ... with**
17 **any person or business entity as to whom a submission has**
18 **been made and/or negotiations commenced on my behalf**
19 **during the term of this Agreement then in said event any**
20 **such employment contract entered into shall be deemed to**
21 **have been entered into during the term hereof."**

22 9. Courts have long held, "he who shakes the tree is the
23 one to gather the fruit." *Willison v. Turner Resilient Floors*, 89
24 *Cal.App.2d 589 (1949)* Respondent's argument that LENHOFF did not
25 shake the tree has merit. Uncontroverted evidence in the form of
26 Howsman's declaration established that LENHOFF'S efforts did not
27 result in SVATEK'S employment. LENHOFF submitted SVATEK'S name to
Disney and Showtime executives, but these production companies

1 passed on the project. It was GFT Entertainment who eventually
2 purchased the rights to produce "Silver Wolf" after the film lay
3 idle for months. Moreover, reflected in the fact that petitioner
4 named Blue Rider Pictures as a co-respondent, establishes
5 petitioner's mistaken belief that Blue Rider Pictures produced
6 "Silver Wolf". They did not.

7 10. The contract term clearly provides that LENHOFF is
8 entitled to commission if SVATEK enters into an agreement with **any**
9 **person or business entity as to whom a submission has been made**
10 **and/or negotiations commenced.** Petitioner's own testimony
11 established LENHOFF never submitted SVATEK to Gary Howsman, or GFT
12 Entertainment and/or a GFT subsidiary, the eventual producer of the
13 picture. Additionally, all contract negotiations were commenced
14 and conducted by SVATEK'S new agent Boyd Hancock.

15 11. Petitioner failed to present testimony or other
16 evidence that respondent entered into an employment agreement with
17 anyone whom LENHOFF had negotiated with. Consequently and
18 alternatively, petitioner did not perform his obligation under the
19 terms of section 5 of the contract. As a result, petitioner is not
20 entitled to commission this project based on a breach of contract
21 theory.

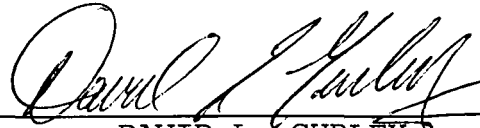
22 ORDER

23 For the above-stated reasons, IT IS HEREBY ORDERED that
24 the 1997 oral contract between petitioner CHARLES LENHOFF dba
25 LENHOFF & LENHOFF, and respondent PETER SVATEK is unlawful and void
26 *ab initio*. Respondent has no enforceable rights under that
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contract.


Dated: 3/15/00



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 3/15/00



RICH CLARK
Chief Deputy Labor Commissioner

