

1 ABDEL NASSAR (SBN 275712)
STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
3 320 W. 4TH St, Suite 600
Los Angeles, California 90013
4 Telephone: (213) 987-1511
Facsimile: (213) 897-2877

5 Attorney for the Labor Commissioner
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8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 ERIC MCGEE, JR., an Individual,

12 Petitioner,

13 vs.

14 THE BROGAN AGENCY, LLC; SHAWN
15 BROGAN, an Individual,

16 Respondents.
17

CASE NO. TAC 52678

DETERMINATION OF CONTROVERSY

18 **I. INTRODUCTION**
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20 The above-captioned matter, a Petition to Determine Controversy pursuant to Labor Code
21 section 1700.44, was filed on October 15, 2018, by ERIC MCGEE, JR., an individual (hereinafter
22 “Petitioner”), alleging that THE BROGAN AGENCY, LLC (hereinafter Respondent) and/or
23 SHAWN BROGAN, an individual, violated the Talent Agencies Act (hereinafter “Act”) at Labor
24 Code section 1700.00, *et seq.* Petitioner seeks damages for Respondent’s untimely disbursement
25 of funds Petitioner earned on a project procured by Respondent.
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27 On October 25, 2019, a hearing was held by the undersigned attorney specially designated
28 by the Labor Commissioner to hear this matter. Petitioner appeared and represented himself.

1 Respondent failed to appear. Due consideration having been given to the testimony and
2 documentary evidence presented, the Labor Commissioner adopts the following determination of
3 controversy.

4 **II. BACKGROUND FACTS**

5 1. Petitioner is an Actor.

6 2. During the relevant period, Respondent was a California licensed talent agency.
7 Shawn Brogan is an agent of Respondent.

8 3. Respondent was Petitioner's talent agent, working under the terms of a written
9 agreement for more than ten years, until on or about March 29, 2018.

10 4. On or about March 13, 2018, Respondent procured a role for Petitioner on a CBS
11 show called Pink Collar Crimes. The job was for one day and paid \$546.00, plus a 10% agency
12 fee. Petitioner performed the work on March 24, 2018. On or about March 30, 2018, the
13 production company paid Respondent \$600.60 for Petitioner's work on the show. Respondent
14 deposited the payment to its trust account on April 3, 2018.

15 5. On or about March 28, 2019, Respondent disbursed \$546.00 to Petitioner for his
16 work on March 24, 2018, representing \$600.60 minus a 10% agency fee.

17 6. In this proceeding, Petitioner seeks waiting time penalties under Labor Code
18 section 203 and any other "accessible fees" for Respondent's delay in issuing him the proceeds of
19 his work on the show on March 24, 2018.
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23 **III. LEGAL ANALYSIS**

24 1. Labor Code section 1700.4, subsection (b), includes "actors" in the definition of
25 "artist." Petitioner is therefore an "artist" under the Act.

26 2. During the relevant period, Respondent was a licensed California talent agency.
27 During the relevant period, Respondent was Petitioner's talent agent under the terms of a written
28

1 agreement for 10% commission.

2 3. Labor Code section 1700.23 vests the Labor Commissioner with jurisdiction over
3 “any controversy between the artist and the talent agency relating to the terms of the contract.”
4 The Labor Commissioner’s jurisdiction includes the resolution of contract claims brought by
5 artists or agents seeking damages for breach of a talent agency contract. *Garson v. Div. Of Labor*
6 *Law Enforcement (1949) 33 Cal.2d 861; Robinson v. Superior Court (1950) 35 Cal.2d 379.* The
7 Labor Commissioner has jurisdiction to determine this matter.
8

9 4. The first issue raised in this Petition is whether Shawn Brogan shares
10 liability, if any, with Respondent. The evidence at hearing does not support a finding that
11 Shawn Brogan would be personally liable. Petitioner testified that his talent-agent
12 agreement was with Respondent. Although, Petitioner named Shawn Brogan individually
13 in this Petition, Petitioner did not introduce evidence to support a finding that any liability
14 of Respondent should be attributed to Shawn Brogan as an individual.
15

16 5. The next issue is whether Petitioner is entitled to waiting time penalties
17 under Labor Code section 203. Labor Code section 203 provides that “[i]f an **employer**
18 willfully fails to pay, without abatement or reduction, in accordance with Sections 201,
19 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any **wages of an employee** who is
20 discharged or who quits, the wages of the employee shall continue as a penalty from the
21 due date thereof at the same rate until paid or until an action therefor is commenced; but
22 the wages shall not continue for more than 30 days.” (Labor Code section 203, subd. (a),
23 emphasis added). The Talent Agencies Act specifies that “[i]n cases of *controversy*
24 **arising under this chapter**, the parties involved *shall refer the matters in dispute* to the
25 Labor Commissioner, who shall hear and determine the same, subject to an appeal ... to
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1 the superior court where the same shall be heard de novo.” (Labor Code § 1700.44, subd.
2 (a), emphasis added.) This case arises from a controversy between an artist and an agent
3 under The Talent Agencies Act. It does not involve an employer-employee relationship.
4 As such, Labor Code section 203 is inapplicable to these proceedings.
5

6 6. However, Petitioner is entitled to interest. Labor Code section 1700.25
7 provides in relevant part:
8

9 (a) A licensee who receives any payment of funds on behalf of an artist shall
10 immediately deposit that amount in a trust fund account maintained by him or her
11 in a bank or other recognized depository. The funds, less the licensee's
12 commission, shall be disbursed to the artist within 30 days after receipt.
13 However, notwithstanding the preceding sentence, the licensee may retain the
14 funds beyond 30 days of receipt in either of the following circumstances:

13 (1) To the extent necessary to offset an obligation of the artist to the talent
14 agency that is then due and owing.

15 (2) When the funds are the subject of a controversy pending before the
16 Labor Commissioner under Section 1700.44 concerning a fee alleged to be
17 owed by the artist to the licensee.

18 ...

19 (c) If disputed by the artist and the dispute is referred to the Labor Commissioner,
20 the failure of a licensee to disburse funds to an artist within 30 days of receipt shall
21 constitute a “controversy” within the meaning of Section 1700.44 .

22 (d) Any funds specified in subdivision (a) that are the subject of a controversy
23 pending before the Labor Commissioner under Section 1700.44 shall be retained
24 in the trust fund account specified in subdivision (a) and shall not be used by the
25 licensee for any purpose until the controversy is determined by the Labor
26 Commissioner or settled by the parties.

27 (e) If the Labor Commissioner finds, in proceedings under Section 1700.44 , that
28 the licensee's failure to disburse funds to an artist within the time required by
subdivision (a) was a willful violation, the Labor Commissioner may, in addition
to other relief under Section 1700.44 , order the following:

(1) Award reasonable attorney's fees to the prevailing artist.

(2) Award interest to the prevailing artist on the funds wrongfully withheld
at the rate of 10 percent per annum during the period of the violation.

...

1 In this case, Respondent received payment for Petitioner's work on the show and deposited the
2 funds to its trust account on April 3, 2018. However, Respondent did not disburse to Petitioner
3 his share of the funds until March 28, 2019, almost a year later. In addition, Respondent did not
4 withhold the funds because of a pending controversy between the parties regarding the funds.
5
6 Petitioner filed the instant Petition on October 15, 2018---more than five months after Respondent
7 deposited the funds in its trust account. Respondent unlawfully and willfully withheld from
8 Petitioner his share of the funds for more than 30 days after it received them. Thus, Respondent
9 owes Petitioner \$49.07 in interest calculated as follows: \$546.00 unlawfully withheld from May
10 3, 2018 to March 27, 2019, at 10% interest.¹

11
12 **IV. ORDER**

13 The relief sought in the Petition is granted as follows:

14 Petitioner Eric McGee Jr. shall recover from Respondent The Brogan Agency, LLC,
15 \$49.07 in interest.

16 **IT IS SO ORDERED.**

17 Dated: August 13, 2020

18 Respectfully Submitted

19 By: 
20 Abdel Nassar
21 Attorney for the Labor Commissioner

22 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

23
24 Dated: August 14, 2020

25 By: 
26 Lilja Garcia-Brower
27 California State Labor Commissioner

28 ¹ As indicated above, Respondent failed to appear at the hearing. Notably, this Determination finds the Respondent engaged in a willful violation of the Talent Agencies Act and consequently the Determination will be placed in Respondent's licensing files for further evaluation by the Labor Commissioner's Licensing and Registration Unit.

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PROOF OF SERVICE
ERIC MCGEE, JR., an Individual,
Petitioner,
vs.
THE BROGAN AGENCY, LLC;
SHAWN BROGAN, an Individual,
Respondents

CASE NO. TAC 52678

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is Division of Labor Standards Enforcement, Department of Industrial Relations, 320 W. 4th Street, Room 600, Los Angeles, California 90013.

On August 18, 2020, I served the following document(s) described as:

DETERMINATION OF CONTROVERSY

on the interested party(ies) in this action as follows:

Eric McGee Jr.



The Brogan Agency, LLC
Shawn Brogan
1517 Park Row, Venice, CA 90291
shawn@thebroganagency.com

- (BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
- (BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with fully prepaid postage thereon for certified mail with the United States Postal Service this same day in the ordinary course of business at our office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
- (BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- (BY EMAIL)** I caused the documents to be sent to the persons at the email addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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(STATE) I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed on August 18, 2020, at Los Angeles, California.


Jonna Lyn Estioko