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

OF THE STATE OF CALIFORNIA

KENNETH HECHT, Petitioner, v. WILLIAM MORRIS AGENCY, a corporation, and BRUCE BROWN, an individual, Respondents.	Case No. TAC 31-92 DETERMINATION ON PETITION OF KENNETH HECHT

In this proceeding, which arose under the provisions of the Talent Agencies Act (the "Act"), Labor Code §§1700-1700.47.47[1], both the petitioner KENNETH HECHT ("Hecht") and the respondents WILLIAM MORRIS AGENCY and BRUCE BROWN (collectively "William Morris") asked the Labor Commissioner to determine, as a threshold matter, whether she had jurisdiction to proceed with the adjudication of the substantive claims asserted in the Petition to Determine Controversy filed by Hecht on June 24, 1992. After duly considering the briefs submitted and arguments advanced by the parties and by the Association of Talent Agents as amicus curiae on

[1] All further statutory references are to the Labor Code unless otherwise specified.

the issue of jurisdiction, and after duly considering the supplemental statement on the statute of limitations requested from and submitted by petitioner, the Labor commissioner now renders the following decision which resolves the jurisdictional issues and summarily disposes of the entire petition.

PROCEDURAL AND FACTUAL BACKGROUND

On April 6, 1992, Hecht filed a civil complaint for damages against William Morris with the Los Angeles Superior Court, being Case No. BC052471. In the complaint, Hecht asserted four causes of action: one for breach of contract and three seeking tort damages for breach of fiduciary duty, intentional interference with prospective economic advantage, and fraud, respectively. The complaint alleged that William Morris had been retained by Hecht to act as his talent agent, and the first cause of action, for breach of contract, set forth the pertinent terms of the written talent agency agreement entered into by the parties on a contract form previously approved by the Labor Commissioner. Without focusing on the details specific to each claim, one allegation central to all four causes of action was that William Morris, without Hecht's knowledge, had refused two offers of employment extended to Hecht and had failed to properly pursue employment for Hecht and convey offers of employment made by third parties.

On May 6, 1992, William Morris filed a demurrer to Hecht's civil complaint asserting the Superior Court lacked jurisdiction over the claims because exclusive original jurisdiotion was vested in the Labor Commissioner and because, in

any event, it was the duty of the Labor Commissioner to determine the scope of her jurisdiction in the first instance. On May 29, 1992, the court sustained the demurrer and stayed the civil action pending the outcome of anticipated further proceedings before the Labor Commissioner.

Following the court's ruling, on June 24, 1992 Hecht initiated the instant proceedings under the Act by filing a petition restating the four claims set forth in the Superior Court complaint. On July 10, 1992, William Morris filed a response denying the claims and setting forth certain affirmative defenses. Thereafter, the parties requested that the Labor Commissioner first address the jurisdictional issues on the basis of written briefs. The Labor Commissioner did so, by interim order, and then requested an additional statement from petitioner pertaining to the effect of the statute of limitations on Hecht's claims. By this determination, the Labor Commissioner now restates her resolution of the jurisdictional issues and summarily disposes of all claims raised by the petition.

DECISION

1. THE LABOR COMMISSIONER HAS JURISDICTION OVER THE BREACH OF CONTRACT CLAIM ASSERTED BY HECHT.

The jurisdiction of the Labor Commissioner to determine contractual disputes arising out of written talent agency agreements entered into on a contract form approved by the Labor Commissioner is truly not open to question; the provisions of the Act specifically and explicitly confer that adjudicatory authority on the Commissioner.

§§1700.44, subd.(a) provides in relevant part as follows:

> "In cases of controversy arising under this chapter, the parties involved shall refer matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo. To stay any award for money, the party aggrieved shall execute a bond approved by the superior court in a sum not exceeding twice the amount of the judgment. In all other cases the bond shall be in a sum of not less than one thousand dollars ($1,000.00) and approved by the superior court."

§1700.23 makes it clear that the words "controversy arising under this chapter" in §1700.44 have particular reference to the contracts entered into between artists and talent agencies pursuant to the provisions of the Act and under the administrative supervision of the Labor Commissioner.

> "Every talent agency shall submit to the Labor Commissioner a form or forms of contract to be utilized by such talent agency in entering into written contracts with artists for the employment of the services of such talent agency by such artists, and secure the approval of the Labor Commissioner thereof. Such approval shall not be withheld as to any proposed form of contract unless such proposed form of contract is unfair, unjust and oppressive to the artist. Each such form of contract, except under the conditions specified in Section 1700.45, shall contain an agreement by the talent agency to refer any controversy between the artist and the talent agency relating to the terms of the contract to the Labor Commissioner for adjustment."

This express contractual focus is reiterated in §1700.45 which allows the parties to agree to submit their disputes to arbitration and to thereby confer on the arbitrator the authority otherwise vested in the Labor Commissioner to resolve "any controversy under the contract or as to its existence, validity, construction, performance, nonperformance, breach, operation, continuance, or

termination".

From the foregoing statutory language, it is plain that the Labor Commissioner has jurisdiction to hear, determine, and, if appropriate, redress through an award of damages, or otherwise, Hecht's claim that William Morris breached the terms of the approved talent agency contract entered into by the parties. In fact, it is difficult to imagine language which would more clearly confer such jurisdiction on the Commissioner. Therefore, the Commissioner will hereafter exercise her authority to hear and determine the first claim.

2. THE LABOR COMMISSIONER LACKS JURISDICTION TO ADJUDICATE THE TORT CLAIMS ASSERTED BY HECHT.

In recent pronouncements, the California Supreme Court has delivered a clear message that it should not lightly be inferred that because an administrative agency is possessed of certain judicial-like powers the agency has also been vested with the jurisdiction to adjudicate and redress traditional tort claims.

In Youst v. Longo (1987) 43 Cal.3d 64, the Court rejected the argument that the California Horse Racing Board had jurisdiction to adjudicate a tort claim for interference with prospective advantage arising out of an alleged attempt to influence the outcome of a horse race. The Court stated:

> ". . . [T]he power to award compensatory and punitive tort damages to an injured party is a judicial function. Although the Board has very broad power to regulate and discipline wrongful conduct which involves horseracing in California, the relevant statutes do not authorize awarding affirmative compensatory relief such as tort damages." (Id, at 80) (emphasis in original)

The Court went on to state that the central function of the Board was regulatory and disciplinary, and that there was nothing in the statutory provisions establishing the Board's authority to indicate an intent to propel the Board into the realm of tort law traditionally occupied by the judiciary.

Similarly, in Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379, the Court rejected the assertion that the California Fair Employment and Housing Commission was empowered to award punitive damages in favor of claimants alleging employment discrimination. The Court held that neither the language of the statutory scheme nor the purposes underlying its enactment indicated an intent to vest the Commission with the authority to apply the tort remedy of punitive damages; in this regard, the Court found that the delegation to the Commission of power to make whatever remedial orders were deemed appropriate was insufficient to confer such authority. (Id., at 1386-1393)

More recently, noting the constitutional problems posed by delegations of judicial-like powers which may invade the separation of powers and judicial powers clauses of the California Constitution (Art.III, §3 and Act VI, §1), the Supreme Court has emphasized the need to construe any such statutory delegation so as to preserve its constitutionality. (Walnut Creek Manor v. Fair Employment & Housing Com. (1991) 54 Cal.3d 245, 271-272)

Applying the foregoing principles to the present context, it is evident that the Labor Commissioner does not have jurisdiction over the tort claims asserted by petitioner.

First of all, an examination of the language of the Act and of the objectives underlying the statutory scheme embodied in

the Act fails to disclose any intent to confer on the Labor Commissioner the authority to adjudicate and redress traditional tort law claims. The bulk of the Act's provisions are concerned with the licensing and supervision of talent agencies as defined in the Act. Incidental to that core function, the Commissioner is given limited authority to police the content of the written contracts entered into between talent agencies and artists, and, in connection therewith, narrow adjudicatory authority to determine disputes arising out of contracts entered into under or in violation of the provisions of the Act. In other words, the powers granted are essentially regulatory in nature, with a very narrow dispute-resolution appendage directly related to the regulatory role. As Longo makes clear, such an administrative structure belies an intent to confer jurisdiction over tort actions on the administrative body. Moreover, there is nothing in the language of the Act which would even remotely suggest an intent either to confer on the Commissioner authority over tort law claims or to divest the courts of their traditional and long standing jurisdiction over such claims. In sum, the Act does not contemplate the availability of tort relief through the Labor Commissioner.

Additionally, constitutional considerations reinforce the correctness of this conclusion. In Walnut Creek Manor v. Fair Employment & Housing Com., supra, the Court applied the principles set forth in its earlier decision in McHugh v. Santa Monica Rent Control Bd. (1989) 49 Cal.3d 348, and held that the authority conferred on the Fair Employment and Housing Commission to award general compensatory tort damages for emotional distress

constituted an unconstitutional delegation of adjudicatory authority violative of the "judicial powers" clause of the California Constitution. In particular, applying the "substantive" prong of the McHugh test, the Walnut Creek Court held that the enforcement of such a tort remedy - which allows the assessment of unquantifiable and unrestricted damages - was not reasonably necessary to the effectuation of the Commission's primary regulatory purpose of swiftly correcting individual acts of discrimination, and hence amounted to a constitutionally impermissible transfer of traditional court powers to an administrative agency. (Walnut Creek, supra, 54 Cal.3d at 255-267) A similar result was reached in McHugh, where applying the same reasoning the Court struck down a city ordinance which empowered a Rent Control Commission to award triple damages to tenants victimized by excessive rents. (McHugh, surpa, at 378-379)

Proper consideration of the foregoing principles overwhelmingly mitigates against any construction of the Act which would endow the Labor Commissioner with jurisdiction to hear and determine tort law claims. Apart from licensing oversight, the Commissioner's chief role is to insure that talent agents enter into contracts which are fair to artists and to provide a forum for the threshold resolution of disputes arising out of contracts governed by the Act. The wide gamut of tort claims which may arise between talent agents and artists, and the wide range of unquantifiable damages remedies which may be available to redress such claims, are not only not incidental to the Commissioner's central function, but they are absolutely foreign to it. In other words, the Commissioner has no warrant to step into this uncharted

terrain in order to fulfill her statutory mandate, and any construction of the Act which would place the Commissioner there is constitutionally suspect and to be avoided.

In short, the Commissioner is without jurisdiction to hear and determine Hecht's second, third, and fourth claims.

3. THE BREACH OF CONTRACT CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.

The Act contains the following statute of limitations provision, at Section 1700.44, subd. (c):

> "No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding."

In the present case, Hecht's petition identifies only two specific acts by William Morris which are claimed to be in breach of the talent agency contract between the parties, namely the rejection by William Morris - without Hecht's prior knowledge or consent - of two bona fide offers of employment extended to Hecht. Both of these acts, which occurred in late May or early June of 1989, were discovered in "early Summer of 1989", in other words, approximately three years prior to the filing of the instant petition.

In an effort to escape the apparent bar of the statute of limitations, Hecht invokes the doctrine of "delayed commencement". That doctrine provides that, where a party is contractually obligated to perform over a period of time, the other party may

waive a material breach and stand on the contract, in which case the statute does not commence to run until the last day for performance under the contract, ie.: the date of termination. (Issaelsky v. Title Ins. Co. (1989) 212 Cal.App.3d 611; 3 Witkin, California Procedure (3d.Ed. 1985), Actions §§376 - 378 & 1994 Supp.) Hecht argues that the doctrine should apply here because of William Morris' continuing obligation to use its best efforts to obtain employment for Hecht.

It is clear, however, that the delayed commencement doctrine can have no application to the facts of this case. As revealed by the documents on file in this proceeding, the original contract between the parties was entered into on September 13, 1985 and provided for termination at the end of two years. However, prior to its expiration, the parties agreed to extend the contract for an additional two years, thereby entering into a new contract which would continue in effect until September 13, 1989. It was during the life of this second contract and prior to its expiration that the above-described acts of breach occurred.

If, for the sake of discussion, one assumes the availability of the delayed commencement doctrine under §1700.44, the one-year statute of limitations would have begun to run at the latest on the date when the second contract terminated, namely September 13, 1989. It follows that even under the doctrine the time period for initiating a proceeding under the Act would have expired on September 13, 1990, more than a year and a half prior to the filing of the instant petition. Consequently, regardless of the availability of the delayed commencement rule, Hecht's claim for breach of contract is time barred.

While it is true that the contract between Hecht and William Morris was again extended for an additional two years, from September 13, 1989 through September 13, 1991, this was a new, separate, and distinct third contract and could not serve to extend the statute of limitations for asserting a claim for breach of the prior second contract.

Hecht also invokes the continuous representation rule which operates to toll the statute of limitations in legal malpractice actions; that rule, however, is simply one aspect of the delayed commencement doctrine, and for the reasons stated cannot serve to extend the limitations period on a claim for breach of a previously concluded contract.

Hecht also alleges in the petition that William Morris breached the third contract by failing to use reasonable efforts to procure employment for Hecht. This allegation, however, is wholly conclusory and lacks any factual support. When asked to identify specific facts supporting this conclusory assertion of breach, Hecht was unable to do so. Consequently, the inescapable conclusion is that this claim for breach is without factual foundation.

Since Hecht is unable to proffer any facts which could be proved in support of a timely claim for breach of any of the contracts he entered into with William Morris, it is proper here to dispense with the taking of testimony and to summarily dispose of the petition.

DISPOSITION

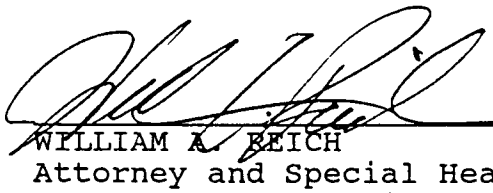
ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Labor Commissioner does have jurisdiction over Hecht's first claim for breach of contract.

2. The Labor Commissioner does not have jurisdiction over Hecht's second, third, and fourth claims which are based on the law of torts, and these claims are therefore dismissed.

3. The claim of Hecht for breach of contract is held to be barred by the statute of limitations.

Dated: May 11, 1995



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for the Labor Commissioner

The above Determination is adopted in its entirety by the Labor Commissioner.

Dated: May 19, 1995

VICTORIA L. BRADSHAW
State Labor Commissioner