

1 EDNA GARCIA EARLEY, Bar No. 195661
STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
3 320 W. 4th Street, Suite 430
Los Angeles, California 90013
4 Telephone: (213) 897-1511
Facsimile: (213) 897-2877

5 Attorney for the Labor Commissioner
6
7

8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 ROBERT HARRIELL & RED CHAIR
ON A GREEN HILL, LLC,

CASE NO. TAC 10296

**DETERMINATION OF
CONTROVERSY**

12
13 Petitioner,
14

15 vs.

16 NATALIE CHASE & RED ARTIST
17 MANAGEMENT, LLC,

18 Respondents.
19
20

21 The above-captioned matter, a Petition to Determine Controversy under
22 Labor Code §1700.44, came on regularly for hearing in Los Angeles, California, before
23 the undersigned attorney for the Labor Commissioner assigned to hear this case.
24 Petitioners ROBERT HARRIELL & RED CHAIR ON A GREEN HILL, LLC
25 (collectively, "Petitioner") appeared in pro per. Respondents NATALIE CHASE & RED
26 ARTIST MANAGEMENT, LLC, (collectively, "Respondent"), also appeared in pro per.
27 Based on the evidence presented at this hearing and on the other papers on file in this
28 matter, the Labor Commissioner hereby adopts the following decision.

FINDINGS OF FACT

1
2 1. Petitioner, an actor, met Respondent, a licensed talent agency, in April/May
3 2007. On May 9, 2007, Respondent and Petitioner entered into a handshake agreement
4 that provided that Respondent would act as Petitioner's talent agent in return for 10%
5 commissions on all of Petitioner's earnings.

6 2. On or about October 4, 2007, Respondent obtained an audition for Petitioner
7 on a non-union commercial to be shot in Japan with Radiant Pictures, Inc. Respondent
8 emailed Petitioner a copy of the breakdown for this job. The breakdown described the
9 pay and project as follows:

10 "Project Notes: rate - \$250 /travel day, \$500/10 hr.
11 shoot day, \$250/fitting/down day/weather holds,
12 \$500/spot for buyout + 10% on all. Shooting 3 spots
13 total, comes out to \$4500 + 10% \$75 per diem,
14 Business class flights, accommodation and
15 transportations provided, shoot dates-10/24 depart LA,
16 10/25 arrive in Tokyo and fitting in evening (about an
17 hour and a half) 10/26 down day, 10/27 shoot, 10/28
18 weather day, 10/29 shoot, 10/30 shoot, 10/31 travel
19 back. ALL TALENT MUST BE A US OR
20 CANADIAN CITIZEN AND HAVE A VALID
21 PASSPORT."

22 3. Petitioner secured the job and shot the commercial in Japan during October,
23 2007.

24 4. On October 11, 2007, Respondent invoiced Radiant Pictures, Inc. \$5,950.00
25 for the shoot plus a \$595.00 Agency Fee and \$50.00 taxi fare for Petitioner from LAX to
26 Petitioner's residence, for a total of \$6,595.00.

27 5. Radiant Pictures, Inc. paid Respondent the total amount of the invoice,
28 \$6,595.00 and Respondent in turn, paid Petitioner \$4,810.00 total for the shoot, keeping
\$1,785.00 (or 30%) as a commission and Agency Fee.

6. Petitioner filed this Petition to Determine Controversy arguing that
Respondent was entitled to only 10% commissions on his total earnings on this project,
per their handshake agreement. Instead, Petitioner argues that Respondent unlawfully

1 kept 30% of the total earned (20% of Petitioner's earnings of \$5,950.00 + \$595.00, the
2 10% Agency Fee). Petitioner argues that the 10% fee on the breakdown is all that
3 Petitioner was entitled to keep as a commission. As such, Petitioner seeks \$1,190.00 from
4 Respondent (\$1,785.00 Respondent collected less \$590 she is legally entitled to per their
5 handshake agreement), as well as reimbursement for expenses incurred in filing this
6 action. Specifically, Petitioner seeks \$50 from Kern Legal Services, \$8.01 in Postal Fees,
7 and \$9.00 in Parking for a total of \$67.01 in expenses.

8 7. Respondent disputes that the handshake agreement was for 10% and instead
9 argues that the parties agreed to 20% commissions on all of Petitioner's earnings.
10 Furthermore, Respondent argues that the 10% Agency Fee has nothing to do with
11 Petitioner or his earnings but rather, is a pre-set fee negotiated by the casting company
12 with the Production/Third Party Company to be paid to whichever agency provides the
13 talent. Respondent argues that it is custom in the industry for the production companies to
14 pay this fee to talent agencies and is separate and apart from any commissions collected
15 by the talent agency from its artist clients.

16 LEGAL ANALYSIS

17 1. Petitioner, an actor, is an "artist" within the meaning Labor Code
18 §1700.4(b).

19 2. At all times relevant, Respondent was a licensed talent agency.

20 3. Labor Code §1700.44(a) provides in relevant part: "In cases of
21 controversy arising under this chapter, the parties involved shall refer the matters in
22 dispute to the Labor Commissioner...."

23 4. The credible evidence presented establishes that the parties agreed that
24 Petitioner would pay Respondent 10% in commissions on all earnings in return for
25 Respondent acting as Petitioner's talent agent and not 20% as Respondent argues.

26 5. The primary issue, however, is whether the 10% fee listed on the breakdown
27 is an Agency Fee and if so, whether Respondent's commissions are limited to this fee or
28 whether this Agency Fee is separate and apart from any commissions the talent agency is

1 entitled to pursuant to the parties' handshake agreement.

2 6. Petitioner points out that the breakdown does not expressly state that 10% is
3 an Agency Fee. However, Respondent has provided an email from the production
4 company stating that the 10% listed on the breakdown is in fact an Agency Fee that is
5 intended for the talent agency that supplies the talent to the production company.

6 7. Petitioner next argues that Respondent is prohibited by Labor Code
7 §1700.40(c) from collecting an Agency Fee from the production company. Section
8 1700.40 (c) provides:

9 No talent agency may accept any referral fee or similar
10 compensation from any person, association, or
11 corporation providing services of any type expressly set
12 forth in subdivision (b) to an artist under contract with
the talent agency.

13 Labor Code §1700.40(b) provides:

14 No talent agency may refer an artist to any person,
15 firm, or corporation in which the talent agency has a
16 direct or indirect financial interest for other services to
17 be rendered to the artist, including, but not limited to,
18 photography, audition tapes, demonstration reels or
19 similar materials, business management, personal
management, coaching, dramatic school, casting or
talent brochures, agency-client directories, or other
printing.

20 Respondent correctly argues that Labor Code §1700.40(c) must be read together with sub-
21 section (b) which prohibits a talent agency from referring an artist to a firm/company in
22 which the agency has a direct or indirect financial interest for other services to be
23 rendered to the artist including those expressly listed. The evidence in this case
24 established that Agency Fees, such as the one paid to Respondent, are commonly paid to
25 talent agents by the production companies. So long as said fees are not "registration fees"
26 or fees charged for services expressly listed in Labor Code §1700.40(b) (or similar
27 services), and are not intended to be part of the artist's compensation (even though they
28 may be based on a percentage of the artist's total earnings), those fees are between the

1 talent agency and the third party companies and the Labor Commissioner has no
2 jurisdiction over such fee arrangements. The evidence, however, must clearly establish
3 that the Agency Fee is separate and apart from the fees the production company pays to
4 the artist. There must be no question that the fees are intended for the agency and are not
5 meant for the artist.

6 Here, although the terms "Agency Fee" were not expressly stated on the
7 breakdown, the terms "Agency Fee" were listed on Respondent's invoice to Radiant
8 Pictures, on the Purchase Order from Radiant Pictures and on the email from Maki Osada
9 of Radiant Pictures to Respondent, wherein she writes: "When I put the call through Terry
10 Berland Casting, I added 10% agency fee on top of the fees for talent, as this is a standard
11 for the industry. My understanding is that this additional 10% fee is to go to the talent
12 agency and not to the talent."

13 There is no dispute that Respondent did not explain this practice to Petitioner or
14 explain the breakdown to him. Notwithstanding, the evidence supports a finding that the
15 Agency Fee is in addition to the artist's compensation and was not meant for Petitioner.

16 8. Based on the foregoing, we find that Respondent was entitled to only
17 \$1,190.00 from the total monies Radiant Pictures paid for this job. This amount reflects a
18 10% commission on Petitioner's earnings of \$5,950.00, which is \$595, per the parties'
19 handshake agreement. Additionally, the amount reflects Respondent's Agency Fee of
20 10% of Petitioner's earnings, per Respondent and Radiant Pictures, Inc.'s agreement.
21 Since Respondent retained \$1,785.00 from the total amount paid by Radiant Pictures, Inc.
22 to Petitioner, (\$6,595.00), **Respondent owes Petitioner \$595.00 in earnings.**

23 9. Pursuant to Labor Code §1700.25(e)(2), Petitioner is entitled to 10% interest
24 on the unpaid earnings, calculated from November 24, 2007 (30 days after payment from
25 Radiant Pictures, Inc. should have been received by Respondent per Respondent's invoice
26 dated October 11, 2007 and Talent Deal memo dated October 22, 2007 stating Radiant
27 Pictures shall make payment within 2 weeks after invoice is submitted by Respondent),
28 for a total of **\$140.68 in interest** (10% on \$595 for 863 days).

