

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 Patrick W. Hemming
4 State Labor Commissioner
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7 Los Angeles, CA 90012
8 (213) 620-2500

9 Attorney for the Labor Commissioner

10
11 BEFORE THE LABOR COMMISSIONER
12 OF THE STATE OF CALIFORNIA

13 INTERNATIONAL CREATIVE MANAGEMENT,)
14 a Division of Marvin Josephson)
15 Associates, Inc.,)

CASE NO. LA 220 - CVW
MP 439
AN 220

16 Petitioner,

DEFENDANT

17 vs

18 DEBBIE REYNOLDS,

19 Respondent.

20 The above-entitled controversy came on regularly for
21 hearing before the Labor Commissioner, DIVISION OF LABOR STANDARDS
22 ENFORCEMENT, Department of Industrial Relations, State of
23 California, by, CARL G. JOSEPH, Attorney for the Labor Standards
24 Enforcement, serving as Hearing Officer under the provisions of
25 Section 1700.44 of the Labor Code of the State of California.
26 Petitioner, INTERNATIONAL CREATIVE MANAGEMENT, a Division of
27 MARVIN JOSEPHSON ASSOCIATES, appearing by the Law Offices of
CAROL E. FREIS, JOSEPH Z. EPSTEIN and respondent, DEBBIE REYNOLDS,

1 appearing by Law Offices of DAVID RUDICH. Evidence both oral
2 and documentary having been introduced, and the matter being
3 briefed and submitted for decision, the following determination
4 is made:

5 DETERMINATION

6 It is the determination of the Labor Commissioner:

7 That there is nothing due to petitioners from respondent.

8 There are two issues that must be addressed in the case
9 at bar.

10 The first issue is whether there existed any agreement,
11 either written or oral, between the petitioner and respondent,
12 wherein, petitioner agreed to act as agent to procure employment
13 for respondent, and in return for this service, respondent agreed
14 to pay petitioner a percentage of her gross compensation for any
15 employment procured.

16 The second issue is if the hearing officer, after
17 examining the facts presented, can find no legal remedy avail-
18 able for the petitioner, if he has the authority to grant
19 equitable relief and if so, whether such relief is warranted.

20 There is no dispute as to the fact that at all times in
21 question, petitioner was a licensed "Artist Manager" and that
22 respondent was an "Artist" as these terms are defined within the
23 Labor Code.

24 Petitioner has not sustained its burden of establishing
25 the existence of any agreement to procure employment signed by the
26 respondent or an authorized agent of hers. While the petitioner
27 introduced various writings, none met the requirements set forth

1 by the California Administrative Code regulations concerning the
2 requirement of a written agreement between the artist and manager.

3 As far as an oral agreement between petitioner and
4 respondent, the petitioner again failed to carry its burden.
5 While there was evidence introduced at the hearing pointing to
6 oral agreements between petitioner and one BOB FALLIN, at no
7 time did petitioner converse directly with the respondent nor are
8 the facts sufficient to prove that BOB FALLIN was an authorized
9 agent of the respondent.

10 In any event, assuming arguendo, an oral agreement
11 existed between the parties, petitioner is still due nothing.
12 Under Title 3 of the California Administrative Code, Chapter 5,
13 Group 3, Article 6, the following regulation concerning an artist
14 manager is found:

15 "12002: No artist's manager shall be entitled
16 to recover a fee, commission or compensation
17 under an oral contract between an artist's
18 manager and an artist, unless, the particular
19 employment for which such fee, commission or
20 compensation is sought to be charged, shall
21 have been procured directly through the artist's
22 manager and shall have been confirmed in writing
23 within 72 hours thereafter. Said confirmation
24 may be denied within a reasonable time by the
25 other party."

26 It is clear from the Administrative regulation that
27 before an artist manager can recover a fee for his services in
procuring employment for an artist under an oral contract, he
must confirm in writing within 72 hours, the employment found
for the artist. The petitioner herein introduced letters for-
warded to respondent as proof of confirming oral agreements
between petitioner and BOB FALLIN. There are two flaws with this

1 evidence. First of all, we again face the fact that the oral
2 agreements were not between the respondent and the petitioner,
3 but between BOB FALLIN, (who was never clearly associated with
4 the respondent as her agent) and the petitioner, thus, any
5 proposed agreement between them would not be binding on the
6 respondent. Petitioner has alleged that BOB FALLIN was acting
7 as the agent for respondent. Normally, an agency relationship
8 is created by an express contract or some other expressed author-
9 ization, and while a contract creating the agency may be oral,
10 such is not the case where the agency is to enter into a contract
11 required by law to be in writing (See California Administrative
12 Code, article 6, Section 12002; California Civil Code, Section
13 2309). Second, the letters that alleged to be confirmations, did
14 not contain the full terms of the oral agreements, thus failing
15 to fulfill the requirements set forth in the California Adminis-
16 trative Code.

17 The second issue of equitable relief is also denied the
18 petitioner.

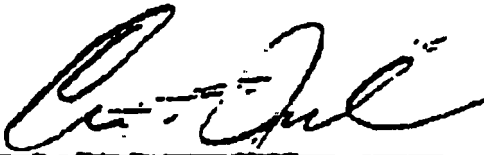
19 While the Hearing Officer finds that Jurisdiction may
20 exist in which to offer such relief, there is doubt as to whether
21 such relief is warranted, whereas, petitioner is a large corpo-
22 ration, whose business is comprised mainly of artist-manager
23 transactions concerning artist-manager agreements. In addition,

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1 the Hearing Officer does not wish to set forth into areas of
2 relief not yet granted by this agency, which might be open to
3 discernment by the Judicial and Legislative Branches.

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5 THE RELIEF REQUEST BY PETITIONER IS DENIED.

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8 DATED: 7 2, 1982


9 CARL G. JOSEPH
Hearing Officer

10
11 ADOPTED
12 DATED: _____, 1982

13 PATRICK W. HENNING
California Labor
Commissioner