D 12/58

DIVISION OF LABOR STANDARDS ENFORCEMENT
LLOYD W. AUBRY, JR., Labor Commissioner
BY: FRANK C. S. PEDERSEN, Attorney
525 Golden Gate Avenue, Room 606
San Francisco, CA 94102

Telephone: (415) 557-2516

Attorney for the Labor Commissioner

BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

HEIDI BOHAY, Petitioner, vs. BREANNA BENJAMIN, an Individual, F.C.O. MANAGEMENT, INC., Respondent.	Case No. TAC 16-85
PETER RECKELL, Petitioner, vs. BREANNA BENJAMIN, an Individual, F.C.O. MANAGEMENT, INC., a corporation, Respondent.	Case No. TAC 22-85 [Consolidated] DETERMINATION

The above-entitled controversy came on regularly for hearing in Los Angeles, California, on December 3, 1986, and December 5, 1986, before the Labor Commissioner of the State of California by Elizabeth Stewart, serving as Special Hearing Officer under the provisions of Section 1700.44 of the Labor

Code of the State of California; Petitioners Heidi Bohay and Peter Reckell were represented by Timothy D. Reuben of Rosenfeld, Meyer & Susman; and Respondent Breanna Benjamin and F.C.O. Management, Inc., by Peter Laird of Arrow, Edelstein & Gross, P.C.

The Hearing Officer, Elizabeth Stewart, having retired before a decision was made and Frank C. S. Pedersen, attorney for the Labor Commissioner, having been appointed in her place and having listened to the tapes of oral evidence and having read the documentary evidence and the brief of Respondent, the following detemination is made:

1. That Respondent did act in the capacity of talent agent during the year previous to filing of petitions in these actions and therefore the Labor Commissioner has jurisdiction of these actions.

2. That the arguments entered into between Petitioners and Respondent are void and unenforceable and that Petitioners have no liability thereunder to Respondent; and Respondent has no rights or privileges thereunder.

3. That Petitioners are not entitled to the return of commissions already paid.

4. That all parties pay their own attorney's fees and costs.

I

INTRODUCTION

On May 31, 1985, and on June 25, 1985, Petitioners Heidi Bohay and Peter Reckell, respectively, filed Petition to

Determine Controversy pursuant to Labor Code Section 1700.44.

The Petitioners alleged that Respondent procured or attempted to procure employment for Petitioners without being licensed as a talent agent and to void their agreement and the return of commissions already paid.

Respondent filed a cross-petition for commissions.

ISSUES

1. Does the Labor Commissioner have jurisdiction?

2. Are the agreements void?

3. Are Petitioners entitled to the return of commissions already paid?

4. Is Respondent entitled to future commissions?

DISCUSSION

On August 25, 1982, Respondent and Petitioner Pete Reckell entered into an agreement for management services by Respondent; and on September 1, 1983, Respondent entered into a similar contract with Heidi Bohay.

On the dates of said agreements, Petitioners were residents of California; and Respondent maintained an office in California, where one Harry Sandler was employed by Respondent.

Within one year of the filing of the Petitions herein, said Harry Sandler procured employment for Petitioners herein; and within said one year period, Respondent submitted pictures and resumes of Petitioners to producers pursuant to Breakdown Services, LTD., which lists specific roles available in the industry.

///

For most of the time involved, Petitioners also had licensed talent agents.

All of the foregoing is undisputed. Respondent alleges that Harry Sandler was acting outside the scope of his employment when he procured employment for Petitioners; that sending pictures and resumes pursuant to the "Breakdown" services does not constitute "attempting to procure" and that if Respondent was "procuring" or "attempting to procure," it was with the knowledge of licensed talent agents.

Harry Sandler was admittedly an employee, and his actions were in furtherance of Respondent's business; and Respondent is therefore liable for his acts which included "procuring" employment.

The act of sending pictures and resumes to producers pursuant to "Breakdown" services is clearly an act of "attempting to procure", particularly when Respondent alleges that Petitioners were represented by talent agents who presumably would be responding to the "Breakdown" services.

Finally, Respondent alleges that any "attempt to procure" was conducted in conjunction with a licensed talent agency and introduced as an exhibit a letter from S.G.A. Representation, Inc., a licensed talent agency which stated that it "was aware that Breanna Benjamin was making submissions on behalf of" Peter Reckell.

Even if such hearsay evidence were sufficient to support a finding, being aware of is not evidence that Respondent acted "in conjunction with, and at the request of, a

licensed talent agency" as required by Labor Code Section 1700.44(d).

DETERMINATION OF ISSUES

1. Respondent acted as a talent agent without being licensed and therefore the Labor Commissioner has sole jurisdiction to hear these controversies.

2. Both the agreements are void and no further commissions are due to Respondent as Respondent was not licensed nor were said agreements approved by the Labor Commissioner.

3. From evidence in this case, it must be concluded that Respondent committed no acts of moral turpitude and Petitioners are therefore not entitled to the return of commissions already paid. See Southfield v. Barrett, 13 C.A. 3d 290, which states:

> ". . . The rule requiring courts to withhold relief under the terms of an illegal contract is based on the rationale that the public importance of discouraging such prohibited transactions outweighs equitable consideration of possible injustice as between the parties. However, the rule is not an inflexible one to be applied in its fullest rigor under any and all circumstances. A wide range of exceptions has been recognized. Where the public cannot be protected because the transaction has already been completed, no serious moral turpitude is involved, defendant is the only one guilty of the 'greatest moral fault,' and defendant would be unjustly enriched at the expense of plaintiff if the rule were applied, the general rule should not be applied. In such circumstances, equitable

///

///

///

solutions have been fashioned to avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff." (Cases cited)

Dated: December 28, 1988

FRANK C. S. PEDERSEN
Hearing Officer

ADOPTED:

Dated: 12/27/89

LLOYD W. AUBRY, JR.
State Labor Commissioner