DIVISION OF LABOR STANDARDS ENFORCEMENT By: Laurence T. Emert 107 South Broadway, Room 5015 Los Angeles, CA 90012 (213) 620-2500

Attorney for the Labor Commissioner

BEFORE THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA

PROFESSIONAL ARTISTS MANAGEMENT, a California Corporation,

NO. TAC 12-79 MP 475

Petitioner,

vs.

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DETERMINATION

ROGER PELTZ; ROGER BEHR,

Respondents.

The above-entitled controversy came on regularly for hearing before the Labor Commissioner, Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, by Laurence T. Emert, Industrial Relations Counsel II for the Division of Labor Standards Enforcement, under the provisions of Section 1700.44 of the Labor Code of the State of California; petitioner Professional Artists Management, appearing by the law offices of Michael Levine, and respondents Roger Peltz and Roger Behr, appearing in pro per. Evidence both oral and documentary having been introduced, and the matter being briefed and submitted for decision, the following determination is made:

DETERMINATION

It is the determination of the Labor Commissioner:

That there is nothing due to petitioner from respondents

DISCUSSION

The question to be answered in the case at bar is: Did there exist any agreement either written or oral between the petitioner and respondents, wherein petitioner agreed to act as agent to procure employment for respondents, and in return for this service, respondents agreed to pay petitioner a percentage of their gross compensation for any employment procurred? There is no dispute as to the fact that at all times in question, petitioner was a licensed "artist manager" and that respondents were "artists" as those terms are defined within the Labor Code.

Petitioner has not sustained its burden of establishing the existence of any agreement to procure employment with respondents. While there existed some written agreements between the parties, none of the agreements were for the rendition of services that an artist would normally employ a licensed artist manager.

As to the existence of an oral agreement, petitioner again failed to carry its burden. The preponderance of the evidence was that no such oral agreement existed between the parties. On the contrary, the evidence established that to the extent any bookings were made, they were handled by respondents alone.

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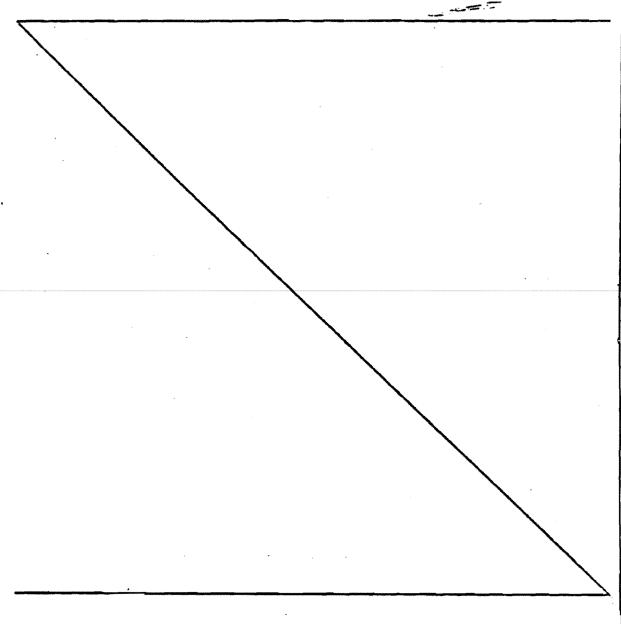
In any event, assuming arguendo, an oral agreement existed between the parties, petitioner is still due nothing.

Under Title 8 of the California Administrative Code, Chapter 6,

Group 3, Article 6, the following regulation concerning an

Artist Manager is found:

"12002. No artists' manager shall be entitled to recover a fee, commission or compensation under an oral contract between an artists' manager and an



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artist unless the particular employment for which such fee, commission or compensation is sought to be charged shall have been procured directly through the efforts or services of such artists' manager and shall have been confirmed in writing within 72 hours thereafter. Said confirmation may be denied within a reasonable time by the other party."

It is clear from this administrative regulation that 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. Petitioner has not complied with this regulation.

The relief request by petitioner is denied

DATED: 10 37 90

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