

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
By: FRANK C. S. PEDERSEN,
2 Special Hearing Officer
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5 Attorneys for the Labor Commissioner
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8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA
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11 DANIEL O'BANNON,) NO. TAC 1-81
) SF MP 98
12)
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)
13) DETERMINATION
)
14) JOSEPH NELSON,
)
15) Respondent.
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19 The above-entitled controversy came on regularly for
20 hearing in Beverly Hills, California, on July 6, 1981 before
21 the Labor Commissioner of the State of California by Frank C.
22 S. Pedersen, Counsel for the Division of Labor Standards
23 Enforcement, serving as Special Hearing Officer under the
24 provisions of Section 1700.44 of the Labor Code of the State of
25 California; petitioner Daniel O'Bannon appearing by the law
26 office of Levy & Normington by Chase Mellen III and respondent
27 Joseph Nelson appearing by the law office of Klinger & Leevan
28 by Paul S. Leevan.

1 Evidence, both oral and documentary having been
2 introduced, and the transcripts of Joseph Nelson's testimony in
3 the arbitration proceedings having been submitted by
4 stipulation, and the matter having been briefed and submitted
5 for decision, the following determination is made:

6 It is the determination of the Labor Commissioner:

7 1. That the contracts entered into by the parties hereto
8 on April 16, 1977 and April 26, 1978 are void and no rights
9 flow therefrom and that respondent is not entitled to any
10 commissions thereunder.

11 2. That respondent is not required to return any
12 commissions that he received from petitioner arising out of the
13 screenplay "Alien."

14 I.

15 INTRODUCTION

16 Petitioner alleges that respondent acted as a talent
17 agency without being licensed as such, and annexed exhibits to
18 the petition which were contracts in the usual "personal
19 manager" form dated April 26, 1977 and April 26, 1978. The
20 petition requests that respondent give an accounting of all
21 funds received by him and that the said contracts be declared
22 void.

23 The respondent claims that the Labor Commissioner has no
24 jurisdiction as the matter is presently the subject of
25 arbitration proceedings.

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1 II.

2 ISSUES

3 Inasmuch as the petitioner is admittedly not licensed as a
4 talent agency, the remaining issues are:

5 1. Does the Labor Commissioner have jurisdiction of this
6 matter?

7 2. Is respondent entitled to recover back all
8 commissions paid to commissioner?

9 3. Are the contracts entered into valid?

10 III.

11 DISCUSSION

12 A great deal of the testimony and exhibits in this matter
13 relate to a co-author of "Alien", a Ronald Shusett, who is not
14 a party to this action.

15 The respondent Joseph Nelson for some years represented
16 Mr. Shusett in various matter, including the handling of
17 finances, and sometime prior to the date of the first agreement
18 between petitioner and respondent on April 26, 1977 Ronald
19 Shusett recommended to petitioner Daniel O'Bannon that he
20 should employ Joseph Nelson in the same capacity that he
21 (Ronald Shusett) had employed him and subsequently the contract
22 of April 16, 1977 was signed between petitioner and respondent.

23 There was testimony by both parties as to the handling of
24 certain financial details by Mr. Nelson. There was also
25 testimony as to Mr. Nelson's attempts to procure employment for
26 Mr. O'Bannon relating to screenplays other than "Alien".

27 Petitioner's Exhibit 2 is an agreement dated October 1,
28 1976, between Brandywine Productions and Dan O'Bannon and

1 Ronald Shusett concerning the screenplay "Alien" which was
2 subsequently made into a movie.

3 All of petitioner's compensation and rights were set forth
4 in that agreement with Brandywine Productions and although
5 respondent may have advised petitioner subsequent to April 26,
6 1977, none of his actions could be construed as procuring or
7 attempting to procure employment, (insofar as "Alien" is
8 concerned) as that had already been finalized as of October 1,
9 1976 and petitioner only asks relief pursuant to the contracts
10 dated April 26, 1977 and April 26, 1978.

11 Furthermore, the testimony largely pertains to
12 negotiations that respondent entered into on behalf of Ronald
13 Shusett.

14 There is evidence that respondent did, subsequent to the
15 first contract of April 16, 1977, attempt to procure employment
16 for petitioner in addition to other services involving finances
17 and advising petitioner.

18 Petitioner's own testimony indicates that while respondent
19 may have attempted to procure employment, he actually never
20 procured employment, nor did petitioner ever pay respondent any
21 commissions other than from the earnings of petitioner from the
22 movie "Alien".

23 The petitioner stated that from April 16, 1977 to the end
24 of 1979 Mr. Nelson did not procure any contract of employment
25 (Reporter's Transcript Page 87, Line 16-19) and Page 29, Lines
26 2-6).

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1 Upon questioning by the Hearing Officer, petitioner
2 testified that all commissions came out of "Alien" (Reporter's
3 Transcript Page 293, Lines 3-8).

4 Petitioner further testified that he was paying respondent
5 10% of his gross earnings for the managing and handling of his
6 finances (Reporter's Transcript Page 297, Lines 6-15).

7 Respondent in alleging that the Labor Commissioner does
8 not have jurisdiction refers to the terminology of the
9 contracts that respondent is not an employment agent or
10 theatrical agent or artist's manager, etc. This same point was
11 raised in the case of Buchwald v. Superior Court, 254
12 Cal.App.2d 347, and in fact pursuant to an identical contract.
13 The Court rejected this argument, stating "Clearly the Act may
14 not be circumvented in allowing language of the written
15 contract to control. . . . The form of the transaction, rather
16 than its substance would control."

17 The Hearing Officer now makes the following Findings of
18 Fact and Conclusions of Law:

19 FINDING OF FACT

20 1. Petitioner is an artist within the definition of
21 Labor Code Section 1700.4.

22 2. Respondent acted as a talent agency within the
23 meaning of Labor Code Section 1700.4 from and after April
24 [illegible].

25 3. Respondent was never licensed as a talent agency nor
26 were any contracts ever approved by the Labor Commissioner.

27 4. All commissions paid by petitioner to respondent
28 arose out of the screenplay and movie "Alien" and all details

1 relating to the employment of petitioner thereunder were
2 finalized on October 1, 1976 prior to any contracts between
3 petitioner and respondent.

4 5. Any commissions paid to respondent by petitioner were
5 for advising and counseling him and for managing his financial
6 affairs and not for the procurement of employment.

7 6. From the date of April 16, 1977 through the
8 termination of the agreement between petitioner and respondent,
9 respondent did attempt to procure employment for petitioner.

10 7. The contracts entered into by petitioner and
11 respondent dated April 16, 1977, and April 26, 1978 are void.

12 CONCLUSIONS OF LAW

13 1. The contracts entered into by and between the parties
14 are void, and no rights flow therefrom.

15 2. Respondent is not entitled to any commissions arising
16 out of said contracts.

17 3. Petitioner is not entitled to have any commissions
18 repaid to him that have already been paid by him to respondent.

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20 DATED: January 26, 1982

21 _____/s_____

22 Frank C. S. Pedersen
Special Hearing Officer

23 ADOPTED: February 2, 1982

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25 _____/s_____

26 Patrick W. Henning
27 Labor Commissioner
State of California