

1 DIVISION OF LABOR STANDARDS ENFORCEMENT

2 By: FRANK C. S. PEDERSEN,
3 Special Hearing Officer
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7 Attorneys for the Labor Commissioner

8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10	NICHOLAS SCHRAM,)	
)	
11	Petitioner,)	NO. TAC 11-81
)	SF MP 108
12	vs.)	
)	
13	LESTER KINSEY, JR., DONALD)	<u>DETERMINATION</u>
	KINSEY, RALPH E. KINSEY,)	
14	individually and doing)	
	business as DONALD KINSEY AND)	
15	THE CHOSEN ONES,)	
)	
16	Respondents.)	
)	

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18 The above-entitled controversy came on regularly for

19 hearing in San Francisco, California, on May 17, 1983, before

20 the Labor Commissioner of the State of California by Frank C.

21 S. Pedersen, Counsel for the Division of Labor Standards

22 Enforcement, serving as Special Hearing Officer under the

23 provisions of Section 1700.44 of the Labor Code of the State

24 of California; petitioner appearing in person and by his

25 attorney William C. Gordon, and respondents not appearing.

26 The record shows that respondents LESTER KINSEY, JR. and RALPH

27 E. KINSEY were served by certified mail in Gary, Indiana on

1 September 1, 1981 and respondent DONALD KINSEY was served
2 personally at San Carlos, California, on August 25, 1981.

3 Evidence, both oral and documentary having been introduced
4 and the matter being submitted, the following determination
5 is made.

6 It is the determination of the Labor Commissioner:

7 1. That the contract entered into between the parties
8 hereto on April 6, 1979 was a legal contract and enforceable
9 against respondents DONALD KINSEY and RALPH E. KINSEY, the
10 contract showing on its face that LESTER KINSEY, JR. signed
11 only as a "personal manager" and this action is accordingly
12 dismissed as to him.

13 2. That petitioner advanced to respondents the sum of
14 \$41,355.00 and is owed uncollected commissions totalling
15 \$642.00 from the date of the contract, April 6, 1979, to August
16 20, 1980, when respondents terminated the contract.

17 3. That respondents DONALD KINSEY and RALPH E. KINSEY
18 pay to petitioner the sum of \$41,997.00.

19 DISCUSSION

20 Petitioner and respondents entered into a 3 year contract
21 on April 6, 1979, at which time petitioner was a licensed
22 talent agency and respondents DONALD KINSEY and RALPH E. KINSEY
23 were artists. LESTER KINSEY, JR. signed the contract as
24 "Personal Manager".

25 Petitioner advanced to respondents DONALD KINSEY and
26 RALPH E. KINSEY cash, living and promotional expenses in the
27 total amount of \$45,784.00 including uncollected commissions

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in the amount of \$643.00.

The amount advanced by petitioner included interest in the amount of \$3,987.00 paid by him for various loans, and said sum is hereby disallowed.

Respondent terminated the contract on August 20, 1980 in a letter from Shelton, Kalcheim & Cotnoir, their attorneys in Chicago.

The Hearing Officer now makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. That petitioner was licensed as a talent agency during the time involved herein.

2. That respondents DONALD KINSEY and RALPH E. KINSEY were artists and LESTER KINSEY, JR. was a personal manager.

3. That petitioner advanced to and for respondents DONALD KINSEY and RALPH E. KINSEY the total sum of \$41,997.00 for living and promotional expenses and has uncollected commissions due in the sum of \$642.00.

4. The contract of April 6, 1979 is a valid contract.

CONCLUSIONS OF LAW

1. Respondents DONALD KINSEY and RALPH E. KINSEY are directed to pay to petitioner the sum of \$41,997.00.

2. The petition is dismissed as to respondent LESTER KINSEY, JR.

DATED: June 22, 1983


Frank C. S. Pedersen
Special Hearing Officer

ADOPTED: June 23, 1983


C. Robert Simpson
Labor Commissioner
State of California