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DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

By: A. D. "JACK" ALLEN, State Bar No. 43196
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Los Angeles, California 90012
(213) 620-2500

Attorney for Labor Commissioner

BEFORE THE STATE LABOR COMMISSIONER

STATE OF CALIFORNIA

JOHN SAWOSKI,)	CASE NO. TAC 3-87
)	
Petitioner,)	DETERMINATION
)	AFTER FAILURE OF
v.)	RESPONDENT TO APPEAR
)	
JEFF ENLOE PRODUCTIONS,)	[Labor Code §1700.44]
)	
Respondent.)	
)	
)	

The above-entitled controversy came on regularly for hearing before the Labor Commissioner, Division of Labor Standards Enforcement, Department of Labor Relations, State of California, by A. D. "Jack" Allen, attorney for the Division of Labor Standards Enforcement, serving as Special Hearing Officer under the provisions of Section 1700.44 of the California Labor Code on January 25, 1990..

Petitioner John Sawoski appeared in person in pro per. Respondent Jeff Enloe Productions failed to appear. Called on the telephone, respondent was not in the City and stated that he had sent a letter on January 22, 1990 requesting a continuance. Since respondent had not received any confirmation that a

1 continuance had been granted, respondent was obligated to attend
2 the hearing.

3 Evidence, both oral and documentary, having been admitted,
4 the matter having been briefed and submitted for decision, the
5 following determination is made:

6 1. That respondent did violate provisions of the Talent
7 Agency Act (the Act) during the period June 27, 1986 and December
8 28, 1987 regarding the petitioner.

9 2. That respondent is ordered to return the sum of \$947.82
10 for commissions paid to him for petitioner's appearances in
11 various bookings arranged by respondent between June 27, 1987
12 and December 28, 1987. In addition, respondent is awarded
13 interest in the amount of \$198.90 from December 28, 1987,
14 pursuant to Civil Code Section 3289 for a total award of
15 \$1,146.70.

16 3. That the letter agreement between petitioner,
17 respondent, and Robert Schilcher dated June 26, 1986 is a
18 "talent agency" agreement.

19 4. That the performance of the petitioner for Survivor
20 Industries on December 19, 1986, was the result of an arrangement
21 by respondent acting as a talent agency in violation of the Act.

22 5. That the performance of the petitioner for Mission
23 Energy on December 5, 1986, was the result of an arrangement by
24 respondent acting as a talent agency in violation of the Act.

25 6. That the performance of the petitioner at Seventh
26 Market Place on December 5, 6, 7, 20, 21, 27, and 28 1986, was
27

1 the result of the respondent acting as a talent agency in
2 violation of the Act.

3 7. Respondent is denied any off-set for services performed
4 under a quantum meruit theory.
5

6 INTRODUCTION
7

8 On January 26, 1987, the Labor Commission received a
9 Petition to Determine Controversy submitted by petitioner, John
10 Sawoski against Jeff Enloe Productions. Petition complied with
11 Labor Code Section 1700.44 and alleged respondent engaged in
12 conduct prohibited by the Act for persons without a valid talent
13 agency license. Respondent did not file an answer.

14 Respondent did submit a letters on May 6, 1988 and on August
15 2, 1988 with copies of all documents.

16 The hearing was held on January 25, 1990, in Room 5015-D,
17 107 South Broadway, Los Angeles.
18

19 APPLICABLE LAW
20

21 With respect to this controversy, the law applicable to the
22 allegations set forth by the petitioner is in the Labor Code,
23 Division 2, Part 6, Chapter 4, commencing with Section 1700
24 through 1700.47. This portion of the Labor Code is commonly
25 known as the Talent Agency Act.

26 In Section 1700.4(a) the term "talent agency" is defined as
27 follows:

1 not require the respondent to provide any more than one musician
2 and that is the extent of the services to be performed by the
3 respondent.

4 In essence, the contracts are the same as the contract with
5 the Sheraton-Ventura. The only difference is that the
6 respondent collected all his fees in advance in the latter
7 contracts while in the Sheraton-Ventura, the commission was
8 collected from each pay check. Since the primary function of the
9 Survivor Industries and Mission Energy contracts was to procure
10 employment for a musician, the contracts fall within the
11 category of Talent Agency contracts.

12 No written contract was submitted for the six engagements
13 for the Seventh Market Place. As respondent states in its
14 letter of August 2, 1988, (Exhibit C) the agreements were oral.
15 Since plaintiff was the only performer provided by the
16 respondent, the inference to be drawn is the same as for the
17 Survivor Industries and Mission Energy contracts, that they were
18 entered into to procure employment for the plaintiff and
19 therefore were Talent Agency contracts.

20 Although respondent states in its letter of August 2, 1988,
21 that it paid a ten per cent commission to its sales person, no
22 evidence was submitted to the Hearing Officer of the payment of
23 such commission and therefore none is deducted from the amount
24 owed to petitioner. Further, respondent's failure to appear
25 resulted in a lack of any evidence which entitles the respondent
26 to any deduction of those expenses.

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CONCLUSION

There is more than a preponderance of the evidence to establish that respondent did in fact operate act as a talent agency when making arrangements for the employment of the petitioner and therefore the contracts between the petitioner and the respondents are void.

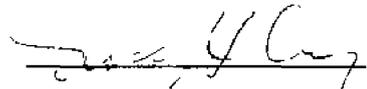
Dated: February 2, 1990



A. D. "JACK" ALLEN
Special Hearing Officer

ADOPTED:

DATED: Feb 25 1990



JAMES H. CURRY,
Deputy Chief Labor
Commissioner