

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 BY: THOMAS S. KERRIGAN, State Bar No. 36003
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6 BEFORE THE LABOR COMMISSIONER

7 STATE OF CALIFORNIA
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10 LARA POLE p/k/a LARA PIPER,) CASE NO. TAC 14-91
11)
Petitioner,) DETERMINATION
12)
vs.)
13)
SIMONE SHEFFIELD, An Individual,)
14)
Respondent.)
15)
_____)

16
17 On March 21, 1991, Petitioner Lara Pole (professionally known as Lara
18 Piper) filed a Petition to Determine Controversy pursuant to the
19 provisions of Labor Code Section 1700.44, alleging therein that Respondent
20 Simone Sheffield violated the Talent Agencies Act (Labor Code §1700, et
21 seq.) by procuring or attempting to procure employment for Petitioner
22 without being licensed as a talent agent. By this petition, Pole seeks,
23 inter alia, a determination that any purported agreements between the
24 parties are void ab initio and an order that Sheffield return to her all
25 monies received pursuant to these purported agreements.

26 The matter came on regularly for hearing before Special Hearing
27 Officer Thomas S. Kerrigan for the Labor Commissioner, David M. Cordrey
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1 appearing on behalf of Petitioner and with Respondent not present.
2 Respondent was given due notice of the hearing and failed to appear.
3 Petitioner having testified and presented documentary evidence and the
4 matter having been submitted for decision, the following findings of fact
5 are made:

6 FINDINGS OF FACT

7 1. That Petitioner was and is an artist within the meaning of
8 Labor Code Section 1700.4 (b).

9 2. That at all times material hereto Respondent was not licensed
10 as a talent agent.

11 3. That the parties entered into oral and written management
12 agreements during 1987 and after, whereby Respondent agreed to function as
13 an artist manager on behalf of Petitioner in consideration for a specified
14 commission.

15 4. That Respondent undertook to directly solicit employment
16 opportunities for Petitioner in the entertainment industry continuously
17 during the period of the agreement, used her contacts to arrange for more
18 than fifty interviews and auditions for Petitioner for television and film
19 work between 1987 and 1990 and directly negotiated contracts for
20 Petitioner with respect to certain of these employment opportunities.
21 During this same period of time Respondent affirmatively discouraged the
22 Petitioner from securing the services of a licensed talent agency.

23 5. That Respondent received monies in commissions from
24 compensation paid for Petitioner's services during the period of these
25 management agreements.

26 DISCUSSION

27 Labor Code Section 1700.5 provides that "no person shall engage in or
28 carry on the occupation of a talent agency without first procuring a

1 license therefor from the Labor Commissioner." The uncontradicted
2 testimony in this case reveals that respondent actively and continuously
3 participated in the solicitation of work for Petitioner throughout the
4 course of their contractual relationship and that she secured and
5 negotiated contracts on behalf of Petitioner. This testimony, specifying
6 multiple instances of solicitation and negotiations of contracts by
7 respondent on behalf of Petitioner, constitutes more than sufficient
8 evidence of unlawful procurement by a person not licensed as a talent
9 agency. See, e.g., Waisbren v. Peppercorn Productions, Inc. (1995) 41
10 Cal. App. 4th 246, 254-255, declaring even "incidental" solicitation to be
11 unlawful. By engaging in the conduct described above without a license as
12 a talent agency, respondent systematically violated the law during the
13 entire course of the agreement.

14 Labor Code Section 1700.44(d) provides that "it is not unlawful for a
15 person or corporation which is not licensed pursuant to this chapter to
16 act in conjunction with, and at the request of, a licensed talent agency
17 in the negotiation of an employment contract." There is evidence that
18 Sheffield worked with a licensed talent agency at some later point in the
19 relationship between the parties, but this was clearly several months
20 after Sheffield had embarked on a course of conduct of soliciting and
21 negotiating contracts on her own on Petitioner's behalf. Accordingly,
22 respondent may not invoke the defense of Section 1700.44(d) in view of the
23 facts disclosed in the record in this case.

24 Petitioner has also presented evidence concerning unauthorized
25 changes allegedly made by Sheffield to the 1989 written agreement between
26 the parties and various misrepresentations allegedly made by Sheffield.
27 Since this agreement is found to be invalid on a separate and independent
28 ground, the Labor Commissioner need not address this additional issue.

1 Petitioner has requested her attorney's fees in this proceeding based
2 on repondent's alleged fraud and misrepresentation. This request is
3 denied. The Talent Agency Act does not authorize an award of attorney's
4 fees under the circumstances present in this case.

5 DETERMINATION

6 1. All written or other agreements entered into between Simone Sheffield
7 and Lara Pole since 1987 are hereby declared to be null and void and
8 unenforceable for all purposes.

9 2. Simone Sheffield is hereby ordered to render forthwith an accounting
10 to Lara Pole of all monies received which are directly or indirectly
11 attributable to the sale or marketing of Lara Pole's artistic endeavors
12 since 1987, and to pay all such sums to Lara Pole within thirty days of
13 the date of this Determination.

14 DATED: October 25, 1996

Thomas S. Kerrigan
THOMAS S. KERRIGAN
Special Hearing Officer

16 The above Determination is adopted by the Labor Commissioner in its
17 entirety.

18 DATED: 11/18/96

Roberta E. Mendonca
ROBERTA E. MENDONCA
State Labor Commissioner