



1 A hearing was held as scheduled on October 23, 1996 in Los Angeles, California, before  
2 the undersigned attorney for the Labor Commissioner, acting as Special Hearing Officer.  
3 Petitioner appeared through attorney Gary E. Moll of Harold J. Levy & Associates, Respondent  
4 appeared *in pro per* Based on the evidence and testimony received, the Labor Commissioner  
5 adopts the following determination of controversy.

6 **FINDINGS OF FACT**

7 1. On or about December 3, 1990, OKUN received a letter from Touring Productions,  
8 Inc. requesting that OKUN locate CARTER to star in a tour of "FUNNY THING HAPPENED ON  
9 THE WAY TO THE FORUM." Touring Productions was offering CARTER \$5,000 per week but  
10 told OKUN that he should look for any payment of commission or fee to CARTER since CARTER  
11 did not have representation at the time. (See Exhibit "C")

12 2. OKUN contacted CARTER shortly thereafter, told CARTER about the offer, and  
13 negotiated the contract back and forth with the producer, on CARTER's behalf, raising the fee  
14 from \$5,000 per week to \$7,250 per week. A contract was signed on January 3, 1991 between  
15 CARTER and Touring Productions. The contract was admitted into evidence at the hearing as  
16 Exhibit "B." The contract was prepared on OKUN's letterhead.

17 3. On January 25, 1991, OKUN sent CARTER a copy of the contract along with a  
18 letter confirming that there was an oral agreement to pay OKUN a 10% commission on this  
19 engagement. There was never any written agreement, agency or otherwise, between CARTER  
20 and OKUN during this time.

21 4. CARTER was booked in the first production of the play on or about July, 1991 and  
22 performed 8 or 9 days. Based on this performance and payment, a check was given to OKUN by  
23 CARTER for \$1,200.00 on or about August 13, 1991. See Exhibit "D." Thereafter, a ten week tour  
24 of the play commenced on October 4, 1991 after a two day rehearsal. The tour was completed  
25 and CARTER was compensated therefor. No further payments were made to OKUN.

26 5. On October 30, 1991, OKUN commenced Small Claims Court action No. 3062  
27 requesting payment of "Consultation fee on booking of theater tour" from CARTER. Thereafter,  
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1 the Petition initiating this proceeding was filed and the Small Claims Court action was stayed  
2 pending this proceeding before the Labor Commissioner.

3 6. OKUN is currently a talent agent licensed with the State of California. He applied  
4 for his license on November 21, 1991 and received his license on February 21, 1992.

5 CONCLUSIONS OF LAW

6 1. Petitioner CARTER is an "artist" within the meaning of Labor Code Section  
7 1700.4(b). The Labor Commissioner has jurisdiction to determine this controversy pursuant to  
8 Labor Code Section 1700.44(a).

9 2. Labor Code Section 1700.5 provides that "no person shall engage in or carry on the  
10 occupation of a talent agency without first procuring a license therefor from the Labor  
11 Commissioner." The term "talent agency" is defined at Labor Code Section 1700.4(a) as "a person  
12 or corporation who engages in the occupation of procuring, offering, promising or attempting to  
13 procure employment or engagements for an artist or artists."

14 3. OKUN procured employment for CARTER in FUNNY THING HAPPENED ON THE  
15 WAY TO THE FORUM. He negotiated the contract on CARTER's behalf and, in fact, raised his  
16 fee from the initial offer of \$5,000 to \$7250. The contract was signed in January 1991, more than  
17 one year prior to OKUN obtaining a license as a talent agent from the State of California. At the  
18 time, CARTER orally agreed to pay OKUN a 10% commission on his salary, when paid. After the  
19 first engagement, CARTER in fact paid OKUN \$1200.

20 4. A contract between an artist and a person acting as an unlicensed talent agent is  
21 unlawful and void from its inception. The unlicensed talent agent has no right to collect  
22 commissions purportedly earned pursuant to such an unlawful agreement. Buchwald v. Superior  
23 Court (1967) 254 Cal.App.2d 347.

24 5. In procuring CARTER's employment in FUNNY THING HAPPENED ON THE WAY  
25 TO THE FORUM, OKUN acted as talent agent without being licensed by the State of California.  
26 Although OKUN performed a service for CARTER, the law is clear. It is unlawful to procure  
27 employment for an artist without being licensed as a talent agent. The licensing statute strictly  
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1 regulates an agent's conduct, including requiring that the form of the contract between a talent  
2 agent and the artist be approved by the Labor Commissioner. Labor Code Section 1700.23.

3 6. CARTER obtained his employment on FUNNY THING HAPPENED ON THE WAY  
4 TO THE FORUM as a direct result of OKUN's unlawful procurement activities. As a result, OKUN  
5 has no right to commissions based on CARTER's earnings from "Funny Thing Happened on the  
6 Way to the Forum." The oral agreement between OKUN and CARTER for payment of 10% of  
7 CARTER's earnings was executed while OKUN was not licensed as was the contract for  
8 employment. OKUN forfeited his right to commissions on CARTER's earnings by procuring this  
9 employment for him at a time when he was in violation of the Act's licensing requirements.  
10 Consequently, the parties' oral agreement is invalid to the extent that it purports to give OKUN a  
11 right to commissions for the employment he procured for CARTER.

12 DETERMINATION

13 For all of the above reasons, IT IS HEREBY ORDERED:

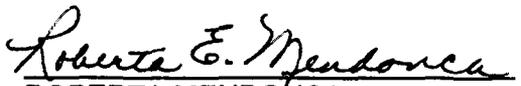
- 14 1. That the parties' oral agreement authorizing respondent to collect commissions in  
15 connection with Petitioner's employment in "Funny Thing Happened on the Way to the Forum" is  
16 invalid and void from its inception; and
- 17 2. Respondent must disgorge commissions already received based on the oral  
18 agreement; i.e., the payment of \$1200 on August 13, 1991 which was within one year of the filing  
19 of the Petition.

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21 DATED: October 29, 1996

  
ANNE STEVASON  
Special Hearing Officer

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

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26 DATED: 11/18/96

  
ROBERTA MENDONCA  
STATE LABOR COMMISSIONER