

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
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BEFORE THE STATE LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

KENNETH HECHT,	)	Case No. TAC 31-92
	)	
Petitioner,	)	DETERMINATION
	)	ON PETITION OF
v.	)	KENNETH HECHT
	)	
WILLIAM MORRIS AGENCY, a corporation,	)	
and BRUCE BROWN, an individual,	)	
	)	
Respondents.	)	
_____		

In this proceeding, which arose under the provisions of the Talent Agencies Act (the "Act"), Labor Code §§1700-1700.47.47<sup>1</sup>, both the petitioner KENNETH HECHT ("Hecht") and the respondents WILLIAM MORRIS AGENCY and BRUCE BROWN (collectively "William Morris") asked the Labor Commissioner to determine, as a threshold matter, whether she had jurisdiction to proceed with the adjudication of the substantive claims asserted in the Petition to Determine Controversy filed by Hecht on June 24, 1992. After duly considering the briefs submitted and arguments advanced by the parties and by the Association of Talent Agents as amicus curiae on

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise specified.

1 the issue of jurisdiction, and after duly considering the  
2 supplemental statement on the statute of limitations requested from  
3 and submitted by petitioner, the Labor commissioner now renders the  
4 following decision which resolves the jurisdictional issues and  
5 summarily disposes of the entire petition.

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7 PROCEDURAL AND FACTUAL BACKGROUND  
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9 On April 6, 1992, Hecht filed a civil complaint for  
10 damages against William Morris with the Los Angeles Superior Court,  
11 being Case No. BC052471. In the complaint, Hecht asserted four  
12 causes of action: one for breach of contract and three seeking  
13 tort damages for breach of fiduciary duty, intentional interference  
14 with prospective economic advantage, and fraud, respectively. The  
15 complaint alleged that William Morris had been retained by Hecht to  
16 act as his talent agent, and the first cause of action, for breach  
17 of contract, set forth the pertinent terms of the written talent  
18 agency agreement entered into by the parties on a contract form  
19 previously approved by the Labor Commissioner. Without focusing on  
20 the details specific to each claim, one allegation central to all  
21 four causes of action was that William Morris, without Hecht's  
22 knowledge, had refused two offers of employment extended to Hecht  
23 and had failed to properly pursue employment for Hecht and convey  
24 offers of employment made by third parties.

25 On May 6, 1992, William Morris filed a demurrer to  
26 Hecht's civil complaint asserting the Superior Court lacked  
27 jurisdiction over the claims because exclusive original  
28 jurisdiction was vested in the Labor Commissioner and because, in

1 any event, it was the duty of the Labor Commissioner to determine  
2 the scope of her jurisdiction in the first instance. On May 29,  
3 1992, the court sustained the demurrer and stayed the civil action  
4 pending the outcome of anticipated further proceedings before the  
5 Labor Commissioner.

6 Following the court's ruling, on June 24, 1992 Hecht  
7 initiated the instant proceedings under the Act by filing a  
8 petition restating the four claims set forth in the Superior Court  
9 complaint. On July 10, 1992, William Morris filed a response  
10 denying the claims and setting forth certain affirmative defenses.  
11 Thereafter, the parties requested that the Labor Commissioner first  
12 address the jurisdictional issues on the basis of written briefs.  
13 The Labor Commissioner did so, by interim order, and then requested  
14 an additional statement from petitioner pertaining to the effect of  
15 the statute of limitations on Hecht's claims. By this deter-  
16 mination, the Labor Commissioner now restates her resolution of the  
17 jurisdictional issues and summarily disposes of all claims raised  
18 by the petition.

19 DECISION

- 20  
21 1. THE LABOR COMMISSIONER HAS JURISDICTION OVER THE BREACH OF  
22 CONTRACT CLAIM ASSERTED BY HECHT.

23 The jurisdiction of the Labor Commissioner to determine  
24 contractual disputes arising out of written talent agency  
25 agreements entered into on a contract form approved by the Labor  
26 Commissioner is truly not open to question; the provisions of the  
27 Act specifically and explicitly confer that adjudicatory authority  
28 on the Commissioner.

1           §§1700.44, subd.(a) provides in relevant part as follows:

2           "In cases of controversy arising under this chapter,  
3           the parties involved shall refer matters in dispute to  
4           the Labor Commissioner, who shall hear and determine the  
5           same, subject to an appeal within 10 days after  
6           determination, to the superior court where the same shall  
7           be heard de novo. To stay any award for money, the party  
8           aggrieved shall execute a bond approved by the superior  
9           court in a sum not exceeding twice the amount of the  
10          judgment. In all other cases the bond shall be in a sum  
11          of not less than one thousand dollars (\$1,000.00) and  
12          approved by the superior court."

13           §1700.23 makes it clear that the words "controversy  
14          arising under this chapter" in §1700.44 have particular reference  
15          to the contracts entered into between artists and talent agencies  
16          pursuant to the provisions of the Act and under the administrative  
17          supervision of the Labor Commissioner.

18           "Every talent agency shall submit to the Labor  
19          Commissioner a form or forms of contract to be utilized  
20          by such talent agency in entering into written contracts  
21          with artists for the employment of the services of such  
22          talent agency by such artists, and secure the approval of  
23          the Labor Commissioner thereof. Such approval shall not  
24          be withheld as to any proposed form of contract unless  
25          such proposed form of contract is unfair, unjust and  
26          oppressive to the artist. Each such form of contract,  
27          except under the conditions specified in Section 1700.45,  
28          shall contain an agreement by the talent agency to refer  
          any controversy between the artist and the talent agency  
          relating to the terms of the contract to the Labor  
          Commissioner for adjustment."

          This express contractual focus is reiterated in §1700.45 which  
          allows the parties to agree to submit their disputes to arbitration  
          and to thereby confer on the arbitrator the authority otherwise  
          vested in the Labor Commissioner to resolve "any controversy under  
          the contract or as to its existence, validity, construction,  
          performance, nonperformance, breach, operation, continuance, or

1 termination".

2 From the foregoing statutory language, it is plain that  
3 the Labor Commissioner has jurisdiction to hear, determine, and, if  
4 appropriate, redress through an award of damages, or otherwise,  
5 Hecht's claim that William Morris breached the terms of the  
6 approved talent agency contract entered into by the parties.  
7 In fact, it is difficult to imagine language which would more  
8 clearly confer such jurisdiction on the Commissioner. Therefore,  
9 the Commissioner will hereafter exercise her authority to hear and  
10 determine the first claim.

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12 2. THE LABOR COMMISSIONER LACKS JURISDICTION TO ADJUDICATE THE  
13 TORT CLAIMS ASSERTED BY HECHT.

14 In recent pronouncements, the California Supreme Court  
15 has delivered a clear message that it should not lightly be  
16 inferred that because an administrative agency is possessed of  
17 certain judicial-like powers the agency has also been vested with  
18 the jurisdiction to adjudicate and redress traditional tort claims.

19 In Youst v. Longo (1987) 43 Cal.3d 64, the Court rejected  
20 the argument that the California Horse Racing Board had  
21 jurisdiction to adjudicate a tort claim for interference with  
22 prospective advantage arising out of an alleged attempt to  
23 influence the outcome of a horse race. The Court stated:

24 ". . . [T]he power to award compensatory and  
25 punitive tort damages to an injured party is a  
26 judicial function. Although the Board has  
27 very broad power to regulate and discipline  
28 wrongful conduct which involves horseracing in  
California, the relevant statutes do not  
authorize awarding affirmative compensatory  
relief such as tort damages." (Id, at 80)  
(emphasis in original)

1 The Court went on to state that the central function of the Board  
2 was regulatory and disciplinary, and that there was nothing in the  
3 statutory provisions establishing the Board's authority to indicate  
4 an intent to propel the Board into the realm of tort law  
5 traditionally occupied by the judiciary.

6 Similarly, in Dyna-Med, Inc. v. Fair Employment & Housing  
7 Com. (1987) 43 Cal.3d 1379, the Court rejected the assertion that  
8 the California Fair Employment and Housing Commission was empowered  
9 to award punitive damages in favor of claimants alleging employment  
10 discrimination. The Court held that neither the language of the  
11 statutory scheme nor the purposes underlying its enactment  
12 indicated an intent to vest the Commission with the authority to  
13 apply the tort remedy of punitive damages; in this regard, the  
14 Court found that the delegation to the Commission of power to make  
15 whatever remedial orders were deemed appropriate was insufficient  
16 to confer such authority. (Id., at 1386-1393)

17 More recently, noting the constitutional problems posed  
18 by delegations of judicial-like powers which may invade the  
19 separation of powers and judicial powers clauses of the California  
20 Constitution (Art.III, §3 and Act VI, §1), the Supreme Court has  
21 emphasized the need to construe any such statutory delegation so as  
22 to preserve its constitutionality. (Walnut Creek Manor v. Fair  
23 Employment & Housing Com. (1991) 54 Cal.3d 245, 271-272)

24 Applying the foregoing principles to the present context,  
25 it is evident that the Labor Commissioner does not have  
26 jurisdiction over the tort claims asserted by petitioner.

27 First of all, an examination of the language of the Act  
28 and of the objectives underlying the statutory scheme embodied in

1 the Act fails to disclose any intent to confer on the Labor  
2 Commissioner the authority to adjudicate and redress traditional  
3 tort law claims. The bulk of the Act's provisions are concerned  
4 with the licensing and supervision of talent agencies as defined in  
5 the Act. Incidental to that core function, the Commissioner is  
6 given limited authority to police the content of the written  
7 contracts entered into between talent agencies and artists, and, in  
8 connection therewith, narrow adjudicatory authority to determine  
9 disputes arising out of contracts entered into under or in  
10 violation of the provisions of the Act. In other words, the powers  
11 granted are essentially regulatory in nature, with a very narrow  
12 dispute-resolution appendage directly related to the regulatory  
13 role. As Longo makes clear, such an administrative structure  
14 belies an intent to confer jurisdiction over tort actions on the  
15 administrative body. Moreover, there is nothing in the language of  
16 the Act which would even remotely suggest an intent either to  
17 confer on the Commissioner authority over tort law claims or to  
18 divest the courts of their traditional and long standing  
19 jurisdiction over such claims. In sum, the Act does not  
20 contemplate the availability of tort relief through the Labor  
21 Commissioner.

22 Additionally, constitutional considerations reinforce the  
23 correctness of this conclusion. In Walnut Creek Manor v. Fair  
24 Employment & Housing Com., supra, the Court applied the principles  
25 set forth in its earlier decision in McHugh v. Santa Monica Rent  
26 Control Bd. (1989) 49 Cal.3d 348, and held that the authority  
27 conferred on the Fair Employment and Housing Commission to award  
28 general compensatory tort damages for emotional distress

1 constituted an unconstitutional delegation of adjudicatory  
2 authority violative of the "judicial powers" clause of the  
3 California Constitution. In particular, applying the "substantive"  
4 prong of the McHugh test, the Walnut Creek Court held that the  
5 enforcement of such a tort remedy - which allows the assessment of  
6 unquantifiable and unrestricted damages - was not reasonably  
7 necessary to the effectuation of the Commission's primary  
8 regulatory purpose of swiftly correcting individual acts of  
9 discrimination, and hence amounted to a constitutionally  
10 impermissible transfer of traditional court powers to an  
11 administrative agency. (Walnut Creek, supra, 54 Cal.3d at 255-267)  
12 A similar result was reached in McHugh, where applying the same  
13 reasoning the Court struck down a city ordinance which empowered a  
14 Rent Control Commission to award triple damages to tenants  
15 victimized by excessive rents. (McHugh, supra, at 378-379)

16 Proper consideration of the foregoing principles  
17 overwhelmingly mitigates against any construction of the Act which  
18 would endow the Labor Commissioner with jurisdiction to hear and  
19 determine tort law claims. Apart from licensing oversight, the  
20 Commissioner's chief role is to insure that talent agents enter  
21 into contracts which are fair to artists and to provide a forum for  
22 the threshold resolution of disputes arising out of contracts  
23 governed by the Act. The wide gamut of tort claims which may arise  
24 between talent agents and artists, and the wide range of  
25 unquantifiable damages remedies which may be available to redress  
26 such claims, are not only not incidental to the Commissioner's  
27 central function, but they are absolutely foreign to it. In other  
28 words, the Commissioner has no warrant to step into this uncharted

1 terrain in order to fulfill her statutory mandate, and any  
2 construction of the Act which would place the Commissioner there is  
3 constitutionally suspect and to be avoided.

4 In short, the Commissioner is without jurisdiction to  
5 hear and determine Hecht's second, third, and fourth claims.

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7 3. THE BREACH OF CONTRACT CLAIM IS BARRED BY THE STATUTE OF  
8 LIMITATIONS.

9 The Act contains the following statute of limitations  
10 provision, at Section 1700.44, subd. (c):

11 "No action or proceeding shall be brought  
12 pursuant to this chapter with respect to any  
13 violation which is alleged to have occurred  
14 more than one year prior to commencement of  
15 the action or proceeding."

16 In the present case, Hecht's petition identifies only two  
17 specific acts by William Morris which are claimed to be in breach  
18 of the talent agency contract between the parties, namely the  
19 rejection by William Morris - without Hecht's prior knowledge or  
20 consent - of two bona fide offers of employment extended to Hecht.  
21 Both of these acts, which occurred in late May or early June of  
22 1989, were discovered in "early Summer of 1989", in other words,  
23 approximately three years prior to the filing of the instant  
24 petition.

25 In an effort to escape the apparent bar of the statute of  
26 limitations, Hecht invokes the doctrine of "delayed commencement".  
27 That doctrine provides that, where a party is contractually  
28 obligated to perform over a period of time, the other party may

1 waive a material breach and stand on the contract, in which case  
2 the statute does not commence to run until the last day for  
3 performance under the contract, ie.: the date of termination.  
4 (Issaelsky v. Title Ins. Co. (1989) 212 Cal.App.3d 611; 3 Witkin,  
5 California Procedure (3d.Ed. 1985), Actions §§376 - 378 & 1994  
6 Supp.) Hecht argues that the doctrine should apply here because of  
7 William Morris' continuing obligation to use its best efforts to  
8 obtain employment for Hecht.

9           It is clear, however, that the delayed commencement  
10 doctrine can have no application to the facts of this case. As  
11 revealed by the documents on file in this proceeding, the original  
12 contract between the parties was entered into on September 13, 1985  
13 and provided for termination at the end of two years. However,  
14 prior to its expiration, the parties agreed to extend the contract  
15 for an additional two years, thereby entering into a new contract  
16 which would continue in effect until September 13, 1989. It was  
17 during the life of this second contract and prior to its expiration  
18 that the above-described acts of breach occurred.

19           If, for the sake of discussion, one assumes the  
20 availability of the delayed commencement doctrine under §1700.44,  
21 the one-year statute of limitations would have begun to run at the  
22 latest on the date when the second contract terminated, namely  
23 September 13, 1989. It follows that even under the doctrine the  
24 time period for initiating a proceeding under the Act would have  
25 expired on September 13, 1990, more than a year and a half prior to  
26 the filing of the instant petition. Consequently, regardless of  
27 the availability of the delayed commencement rule, Hecht's claim  
28 for breach of contract is time barred.

1           While it is true that the contract between Hecht and  
2 William Morris was again extended for an additional two years, from  
3 September 13, 1989 through September 13, 1991, this was a new,  
4 separate, and distinct third contract and could not serve to extend  
5 the statute of limitations for asserting a claim for breach of the  
6 prior second contract.

7           Hecht also invokes the continuous representation rule  
8 which operates to toll the statute of limitations in legal  
9 malpractice actions; that rule, however, is simply one aspect of  
10 the delayed commencement doctrine, and for the reasons stated  
11 cannot serve to extend the limitations period on a claim for breach  
12 of a previously concluded contract.

13           Hecht also alleges in the petition that William Morris  
14 breached the third contract by failing to use reasonable efforts to  
15 procure employment for Hecht. This allegation, however, is wholly  
16 conclusory and lacks any factual support. When asked to identify  
17 specific facts supporting this conclusory assertion of breach,  
18 Hecht was unable to do so. Consequently, the inescapable  
19 conclusion is that this claim for breach is without factual  
20 foundation.

21           Since Hecht is unable to proffer any facts which could be  
22 proved in support of a timely claim for breach of any of the  
23 contracts he entered into with William Morris, it is proper here to  
24 dispense with the taking of testimony and to summarily dispose of  
25 the petition.

DISPOSITION

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ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Labor Commissioner does have jurisdiction over Hecht's first claim for breach of contract.

2. The Labor Commissioner does not have jurisdiction over Hecht's second, third, and fourth claims which are based on the law of torts, and these claims are therefore dismissed.

3. The claim of Hecht for breach of contract is held to be barred by the statute of limitations.

Dated: May 11, 1995

  
WILLIAM A. REICH  
Attorney and Special Hearing Officer  
for the Labor Commissioner

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

Dated: May 19, 1995

  
VICTORIA L. BRADSHAW  
State Labor Commissioner