

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
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9 Attorney for the Labor Commissioner

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BEFORE THE LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

10 DOUG APATOW dba DOUG APATOW AGENCY, ) Case No. TAC 75-92  
11 )  
12 Petitioner, )  
13 vs. ) DETERMINATION OF  
14 ) CONTROVERSY  
15 JOHN TINTORI, )  
16 )  
17 Respondent. )  
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INTRODUCTION

On October 7, 1992, Petitioner DOUG APATOW dba DOUG APATOW AGENCY filed a petition to determine controversy pursuant to Labor Code §1700.44, alleging that Respondent JOHN TINTORI failed to pay him for his services in procuring employment for Respondent as a film editor in the production of the movie "Mr. Wonderful". By his petition, APATOW seeks payment of commissions in the amount of 10% of Respondent's gross earnings from his employment with the "Mr. Wonderful" production. TINTORI filed an answer to the petition, denying that APATOW was entitled to commissions in an amount any greater than 5% of Respondent's gross earnings from his employment with the movie production.

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1           2. Beginning in July 1991, APATOW engaged in numerous  
2 communications with Marianne Moloney, the producer of the  
3 upcoming motion picture "Mr. Wonderful", in an attempt to procure  
4 employment for TINTORI as the film editor for the "Mr. Wonderful"  
5 production.

6           3. On July 15, 1992, Moloney contacted APATOW and  
7 advised him of her intent to hire TINTORI as the editor for the  
8 "Mr. Wonderful" production. However, Moloney indicated that  
9 before offering any employment, she needed to speak with TINTORI.  
10 APATOW advised Moloney to contact TINTORI at his residence in  
11 Brooklyn, New York. APATOW immediately called TINTORI, leaving a  
12 message concerning these developments.

13           4. During the hearing, APATOW testified that his  
14 July 15, 1992 conversation with Moloney did not constitute the  
15 commencement of Respondent's employment on the "Mr. Wonderful"  
16 production, since there was still a possibility that the terms  
17 the employment would not be settled and an agreement might not  
18 reached.

19           5. On July 16, 1992, TINTORI telephoned APATOW, and  
20 advised him that he no longer wanted to retain his services as an  
21 agent; that he was going to be represented by a new agency; and  
22 that this new agency would negotiate his employment agreement  
23 with the "Mr. Wonderful" production. TINTORI offered to pay  
24 commissions to APATOW at the rate of 5% of his gross earnings in  
25 connection with his prospective employment on this motion  
26 picture. APATOW ultimately rejected this offer, and insisted  
27 that he was entitled to commissions at the 10% rate.

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1 Respondent's termination of APATOW's services. APATOW played no  
2 role in negotiating the actual terms of this employment  
3 agreement. Although it is true that APATOW was the procuring  
4 cause of this employment agreement, the fact that the employment  
5 agreement was negotiated and executed subsequent to APATOW's  
6 termination is determinative. This is the only logical  
7 interpretation of the distinction between 10% commissions and 5%  
8 commissions, as a contrary interpretation, finding APATOW  
9 entitled to the higher rate based on his efforts to procure an  
10 employment agreement that was not negotiated and executed during  
11 the period of his representation of TINTORI, would render the 5%  
12 rate a nullity, and establish the 10% rate as the only rate.  
13 This does not appear to have been the intent of the parties at  
14 the time they entered into their oral agreement.

15 DETERMINATION

16 For all of the above-stated reasons, IT IS HEREBY  
17 ORDERED that Respondent JOHN TINTORI pay Petitioner DOUG APATOW  
18 dba DOUG APATOW AGENCY \$6,940.70 (5% of Respondent's gross  
19 earnings received from August 1992 until April 26, 1993 in  
20 connection with his employment with the "Mr. Wonderful"  
21 production); plus 5% of any additional gross earnings that have  
22 been or will be received in connection with this employment from  
23 April 27, 1993; plus, pursuant to Civil Code §§3287 and 3289,  
24 interest on the unpaid commissions at the rate of 10% per year  
25 from the date each commission payment became due.

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27 DATED: 11/8/93

  
MILES E. LOCKER, Attorney for  
the Labor Commissioner

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

DATED: 11-9-93

*Victoria Bradshaw*  
VICTORIA BRADSHAW  
STATE LABOR COMMISSIONER