

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

10	ALFRED MONACELLA,)	No. TAC 7-95
)	
11	Petitioner,)	
)	
12	vs.)	CERTIFICATION OF LACK
)	OF CONTROVERSY
13	INTERNATIONAL CREATIVE MANAGEMENT,)	(Labor Code §1700.44)
	INC., a Delaware corporation; PAUL)	
14	HAAS, an individual; ALAN BERGER,)	
	an individual; DOES 1-100, inclusive))	
15)	
	Respondent.)	
16)	

17 The above-captioned petition to determine controversy
18 seeks a determination that the dispute between petitioner and
19 respondents - - a dispute that is the subject of a pending
20 superior court action - - is not governed by section 1700.44 of
21 the California Labor Code. Section 1700.44 gives the Labor
22 Commissioner exclusive primary jurisdiction over controversies
23 arising under the Talent Agencies Act (Labor Code §1700, et seq.)
24 between talent agencies and artists. The term "artists" is
25 defined at Labor Code §1700.4(b). The definition does not
26 include producers, and the Labor Commissioner does not interpret
27 this statute to give the Labor Commissioner jurisdiction over
28 disputes where one of the parties is a producer.

1 The petition to determine controversy alleges that
2 petitioner "was and is now a producer . . . who employed the
3 International Creative Management Agency ("ICM") to represent his
4 interests"; and that "in May 1991, Paul Haas [an ICM agent]
5 negotiated a written employment contract under which Petitioner
6 would work as a producer for the Kushner-Locke Company."
7 Subsequently, Kushner-Locke fired Petitioner, and Petitioner
8 filed a lawsuit against Kushner-Locke, ICM, and Haas, alleging,
9 inter alia, that ICM and Haas committed fraud and breached their
10 fiduciary duty to Petitioner.

11 Whatever the merits of this dispute, it is apparent
12 that Petitioner was not an "artist" within the meaning of Labor
13 Code §1700.4(b). The evidence on this issue - - the written
14 employment agreement between Petitioner and Kushner-Locke - -
15 states that Petitioner is to be employed as a "sales/development
16 executive", a term consistent with the duties usually undertaken
17 by producers in the entertainment industry. There is nothing in
18 the history of the Talent Agencies Act which would indicate that
19 a person in an executive position is entitled to the protections
20 the legislature felt were needed by artists.

21 Consequently, we conclude that there is no controversy
22 within the meaning of Labor Code §1700.44 and that the Labor
23 Commissioner is without jurisdiction to determine the merits of
24 the parties' dispute.

25
26 DATED: 9/27/95



MILES E. LOCKER
Attorney for Labor Commissioner

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. §1013a)

(ALFRED MONACELLA v. INTERNATIONAL CREATIVE MANAGEMENT, INC.;)
(PAUL HAAS; ALAN BERGER)
(TAC 7-95)

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, Suite 3166, San Francisco, California 94102.

On September 28, 1995, I served the following document:

CERTIFICATION OF LACK OF CONTROVERSY

(Labor Code §1700.44)

by placing a true copy thereof in envelope addressed as follows:

TINA L. GENTILE, ESQ.
KERN & SUPOWIT
One Bunker Hill Building
601 West Fifth Street, Suite 1100
Los Angeles, CA 90071

ANN K. PENNERS, ESQ.
RINTALA, SMOOT, JAENICKE & BRUNSWICK
10351 Santa Monica Boulevard, Suite 400
Los Angeles, CA 90025

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on September 28, 1995, at San Francisco, California.


MARY ANN E. GALAPON