

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	JAMES BREUER,)	Case No. TAC 18-95
11)	
11	Petitioner,	)	SUPPLEMENTAL ORDER RE:
12	vs.	)	JURISDICTIONAL ISSUES
12		)	AND NOTICE OF HEARING
13	TOP DRAW ENTERTAINMENT, INC.,	)	ON PETITION TO
13	a New York corporation; ANTONIO U.	)	DETERMINE CONTROVERSY
14	CAMACHO, an individual,	)	HEARING DATE: 8/27/97
15		)	TIME: 10:00 a.m.
15	Respondent.	)	LOCATION: 107 S. Broadway,
16		)	Suite 5015
16		)	Los Angeles, CA

18 By this petition to determine controversy, filed on July 26,
19 1995, petitioner James Breuer alleges, inter alia, that in or
20 about July 1992, the parties entered into an agreement under which
21 respondents were to perform services as petitioner's personal
22 manager, and to attempt to procure employment within the
23 entertainment industry for the petitioner; that thereafter
24 respondents performed services as a talent agent within the
25 meaning of Labor Code §1700.4(a); and that respondents violated
26 Labor Code §1700.5 in that they were never licensed as a talent
27 agency by the State Labor Commissioner. The petitioner seeks a
28 determination that the parties' agreement is void ab initio and

1 unenforceable, that the petitioner has no liability thereon to
2 respondents, and an order requiring respondents to reimburse
3 petitioner for all amounts received pursuant to the parties'
4 agreement.

5 Respondents contend that the Labor Commissioner is without
6 jurisdiction to hear and determine this controversy. In support
7 of this contention, respondents have presented evidence that shows
8 that respondent ANTONIO CAMACHO has been a New York resident at
9 all times relevant herein; that respondent TOP DRAWER
10 ENTERTAINMENT, INC., has been a New York corporation at all times
11 relevant herein; that petitioner lived in New York State when the
12 parties entered into their agreement; that thereafter petitioner
13 lived in New York or New Jersey; that until the filing of this
14 petition, James Breuer never claimed to be a California resident;
15 and that the only payments made by petitioner to respondents were
16 pursuant to petitioner's employment as an entertainer in New York.
17 Respondents argue, therefore, that "the entire business
18 relationship between petitioner and respondents took place outside
19 the State of California". However, respondents concede that
20 during their representation of petitioner, they booked him to
21 "showcase" engagements in California to expose his talent to
22 potential interested parties.

23 In response to our previous order re: jurisdictional issues,
24 petitioner provided a declaration in which he alleges that from
25 January 1993 to the present, he has been a California resident.
26 This allegation is unsupported by any sort of documentation or
27 corroborative evidence, and it fails to overcome respondent's
28 showing that petitioner has been, at all relevant times, a

1 resident of New York or New Jersey. Nonetheless, petitioner has
2 provided other evidence which, taken together, establishes that
3 the Labor Commissioner has jurisdiction to hear and determine this
4 controversy. Specifically, the evidence provided by petitioner
5 shows that Antonio Camacho traveled to California with the
6 petitioner during the period of March 16 through March 24, 1993,
7 in order to promote petitioner's talents to potential employers at
8 an industry "showcase" in Los Angeles; that respondents charged
9 petitioner for their expenses in connection with this business
10 trip to California; that Antonio Camacho obtained auditions for
11 petitioner at various comedy clubs in Los Angeles and that those
12 auditions were held during the period of October 26 to October 29,
13 1992 or 1993; and that Camacho sent written materials to Pam
14 Thomas in Pacific Palisades, California, and to Mitchell Bank at
15 Disney Studios in Burbank, California, in an effort to procure
16 employment for the petitioner.

17 The evidence presented establishes that respondents have
18 sufficient contacts with California for the exercise of
19 jurisdiction by the Labor Commissioner. The guiding principle,
20 set forth by the U.S. Supreme Court in International Shoe Co. v.
21 Washington (1945) 326 U.S. 310, is that a non-resident defendant
22 is subject to personal jurisdiction if that defendant has "certain
23 minimum contacts" with the forum state "such that the maintenance
24 of the [action or proceeding] does not offend traditional notions
25 of fair play and substantial justice". Due process requires that
26 in order to exercise personal jurisdiction over a non-resident as
27 to a specific claim or cause of action (1) the defendant must have
28 "purposefully avail[ed] itself of the privilege of conducting

1 activities within the forum state, thus invoking the benefits and
2 protections of its laws" [Sibley v. Superior Court (1976) 16
3 Cal.3d 442, 446-447], and (2) the plaintiff's claim either arises
4 out of or is connected with the defendant's forum-related
5 activities [Buckey Boiler Co. v. Superior Court (1969) 71 Cal.2d
6 893, 898-899) or there is a "substantial nexus" between
7 defendant's forum-related activities and plaintiff's cause of
8 action [Cornelison v. Chaney (1976) 16 Cal.3d 143, 149], and (3).
9 the exercise of jurisdiction would be fair and reasonable [Id.].
10 As to the first factor, respondents' visit to California to
11 attempt to procure employment for petitioner at the industry
12 showcase, respondents' efforts in obtaining and scheduling
13 auditions for petitioner in California, and respondents'
14 communications with potential California employers on behalf of
15 petitioner establish "purposeful availment". As to the second
16 factor, petitioner's claim under the Talent Agencies Act is
17 unquestionably connected with and arises out of respondents'
18 forum-related activities of attempting to procure employment for
19 petitioner without the requisite talent agency license. As to the
20 final factor, it is apparent that most of the witnesses who could
21 testify to respondents' alleged procurement activities in
22 California are California residents and thus, a hearing in
23 California would be fair and reasonable.

24 For all of the reasons set forth above, it is hereby
25 determined that the Labor Commissioner has jurisdiction to hear
26 and determine this controversy. An evidentiary hearing on the
27 merits of the controversy shall be held on August 27, 1996 at
28 10:00 a.m. at the State Building, 107 S. Broadway, Suite 5015, Los

1 Angeles, California, before the undersigned attorney specially
2 designated by the Labor Commissioner to hear this matter. The
3 determination of this controversy shall be based upon the
4 testimony and evidence presented at this hearing.

5 DATED: 7/18/96

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8 MILES E. LOCKER
9 Attorney for the Labor Commissioner
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