

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 State of California
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4 Telephone: (415) 975-2060
5 Attorney for the Labor Commissioner

6
7 BEFORE THE LABOR COMMISSIONER
8 OF THE STATE OF CALIFORNIA
9

10 MARI SMITH PRESENTS, INC.,)	No. TAC 5-96
)	
11 Petitioner,)	
)	
12 vs.)	DISMISSAL OF PETITION
)	TO DETERMINE CONTROVERSY
13 ED SMITH dba GOLD PLATING COMPANY,)	FOR LACK OF JURISDICTION
)	
14 Respondent.)	
)	

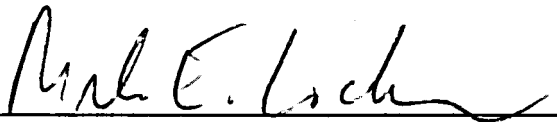
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16 The above-captioned petition was filed on March 26, 1996 by
17 Mari Smith Presents, Inc. Model & Talent Agency (hereinafter
18 "MSP"), and alleges that on or about May 4, 1995, MSP and Ed Smith
19 dba Gold Plating Company (hereinafter "respondent") entered into a
20 written contract under which respondent agreed to pay MSP a total
21 of \$444 for the modeling services of Diane Wagner, a model
22 represented by MSP, during the period of May 6 and 7, 1995; that
23 Wagner performed the contracted for services; and that respondent
24 failed to pay any part of the amount owed to MSP pursuant to the
25 parties' agreement. By this petition, MSP requests that the Labor
26 Commissioner issue a determination ordering respondent to pay the
27 amount specified in the contract, plus interest.

28 Although MSP seems to have stated a prima facie breach of

1 contract case against the respondent, there is no jurisdictional
2 basis upon which the Labor Commissioner may hear or determine this
3 case. The Talent Agencies Act (Labor Code sections 1700, et seq.)
4 governs the relationship between talent agents and the artists
5 they represent. Under Labor Code §1700.44, the Labor Commissioner
6 has jurisdiction to hear and determine disputes arising under the
7 Talent Agencies Act - - that is, disputes between artists and
8 their agents. Indeed, the Labor Commissioner is vested with
9 initial and exclusive jurisdiction to hear such disputes, in other
10 words, an artist and talent agent must take their dispute to the
11 Labor Commissioner for resolution. But here, the petition
12 concerns a dispute between a talent agency and a business that
13 hired the services of an artist represented by the agency. This
14 is not a dispute that arises under the Talent Agencies Act, and
15 there is nothing in the Talent Agencies Act that would permit the
16 Labor Commissioner to exercise jurisdiction over the purchaser of
17 an artist's services.

18 Because this dispute cannot be heard by the Labor
19 Commissioner, this petition must be dismissed. MSP may seek
20 relief against respondent by filing a court action for breach of
21 contract damages. This matter properly belongs before a court and
22 not the Labor Commissioner.

23 DATED: 8/16/96

24 
25 _____
26 MILES E. LOCKER
27 Attorney for the Labor Commissioner
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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

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

(MARI SMITH PRESENTS, INC. v. ED SMITH dba GOLD PLATING COMPANY)
(TAC 5-96)

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 45 Fremont St., Suite 3220, San Francisco, CA 94105.

On August 16, 1996, I served the following document:

DISMISSAL OF PETITION TO DETERMINE CONTROVERSY

FOR LACK OF JURISDICTION

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

MARI SMITH
MARI SMITH PRESENTS, INC.
101 State Place, Suite D
Escondido, CA 92029

ED SMITH
dba GOLD PLATING COMPANY
704 63rd St. N.
St. Petersburg, FL 33710

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 August 16, 1996, at San Francisco, California.


MARY ANN E. GALAPON