

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 BY: THOMAS S. KERRIGAN, Bar No. 36003
107 South Broadway, Room 5022
3 Los Angeles, California 90012
(213) 897-1511

4 Special Hearing Officer
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8 BEFORE THE STATE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 MICHELLE EDITH MARTIN,) No. TAC 21-96
12 pka MICHELLE WRIGHT,)
)
13 Petitioner) DETERMINATION OF CONTROVERSY
)
14 vs.)
)
15 GILBERT A. CABOT, Individually)
16 and dba REO BROADCASTING)
17 CONSULTANTS, REO GROUP, COMARTS)
18 COMMUNICATIONS ARTS AND MEDIA)
19 PLUS, RICHARD E. OPPENHEIMER,)
20 Individually and dba REO)
BROADCASTING CONSULTANTS, An)
unknown corporation.)
)
21 Respondents.)
)

21 The above-entitled controversy came on regularly for hearing before
22 the Labor Commissioner, Division of Labor Standards Enforcement, State of
23 California by Thomas S. Kerrigan, serving as Special Hearing Officer under
24 the provisions of Labor Code Section 1700.44.

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26 Petitioner Michelle Edith Martin, aka Michelle Wright, appeared
27 through Manatt, Phelps & Phillips by Diane L. Faber and respondents

1 exploring acting opportunities for Wright. He discussed the possibility
2 of Wright appearing on "Northern Exposure" and "Murder, She Wrote."
3 Cabot, in fact, arranged for her to perform at the Neon Cactus at
4 Disneyland on June 17, 1994. Ferriman testified that it was his
5 understanding, based on his discussions with Cabot, that Cabot would
6 assist in the realization of Wright's film and television aspirations by
7 the solicitation of acting opportunities through his claimed connections
8 in Hollywood. Wright also testified that her sole purpose in retaining
9 Cabot and REO was to find acting work. In fact, as both sides concede,
10 Cabot did many other things in supposed furtherance of Wright's acting and
11 singing career, including, *inter alia*, coaching her in acting, appearance,
12 working on the editing for a video she had recorded, and getting involved
13 in resolving potential difficulties with her record label.

14 The June 21, 1994 agreement in writing, drafted by Ferriman and
15 Cabot, identifies Cabot as a "career consultant" whose "professional
16 activities will embrace each and every element and level of WRIGHT'S
17 career endeavors." It compensates Cabot with a percentage of Wright's
18 gross annual income. The agreement was signed by Wright, Ferriman and
19 Cabot.

20 After the signing of this agreement, Cabot attempted to get Wright a
21 second spot on the Jay Leno Show and a performance engagement at the House
22 of Blues in Los Angeles. He was responsible for placing an advertisement
23 about Wright in the July 29, 1994 issue of Daily Variety, bearing the
24 legend, "Thanks for great scripts." A similar advertisement later
25 appeared in the Hollywood Reporter.

26 There is abundant evidence from both sides that there were continuing
27 disagreements between the three principals, and particularly between
28 Wright and Cabot. These difficulties culminated on September 30, 1994,

1 when Wright sent Cabot a letter purporting to terminate their
2 relationship. It is not clear, however, that this evidence of the
3 conflict between the parties impacts upon the ultimate issue to be
4 determined in this case. Furthermore, it is not unusual for artists and
5 their representatives to be at odds with one another.

6 Cabot, the sole witness called by respondents, emphatically denied
7 at the hearing that he was involved with procuring employment for Wright
8 as an actor, describing his role as merely that of a "packager" of
9 productions and as a consultant advising Wright on the details of her
10 prospective acting career. He enumerated services he provided to Wright
11 which clearly do not fall under the classification of solicitation of
12 employment opportunities.

13 Counsel for Wright sought to impeach Cabot's testimony with evidence
14 of multiple felony convictions for, *inter alia*, extortion, theft, and
15 issuing checks without sufficient funds.² These felony convictions have
16 been duly considered in evaluating Cabot's credibility.

17 Even in the absence of such impeachment, however, Cabot's testimony
18 cannot be credited. To do so would require the discounting of conceded
19 facts, e.g., the fact that Wright already had an experienced artist
20 manager at the time she entered into this agreement with Cabot; the fact
21 that Cabot successfully obtained an engagement for Wright at Disneyland;
22 the fact that Cabot actively expended efforts to get Wright appearances on
23 the Jay Leno show and elsewhere; and the fact that Cabot actively
24 initiated an advertising campaign to get her film and television work.

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26 ² Leaving no stone unturned, counsel also sought to introduce articles
27 from the Los Angeles Times cataloguing Cabot's allegedly unsavory career as what
28 that newspaper described as a "con man". While the Labor commissioner is not
governed by the rules of evidence in these proceedings (6, Calif. Code of Regs.
§12030), the Special Hearing Officer has declined to consider this and other
evidence of Cabot's prior alleged "bad acts".

1 This latter evidence is far more pervasive of the true nature of the
2 relationship with Wright than respondents' self-serving characterization.

3 The totality of the evidence in this case, therefore, clearly
4 establishes that Cabot and REO³ were operating as talent agents who
5 actively solicited employment on Wright's behalf in a number of instances.
6 This evidence goes far beyond satisfying the minimal standard requirement
7 established in Waisbren v. Peppercorn Productions, Inc. (1995) 41 Cal.
8 App. 4th 246, 255-260.

9 CONCLUSIONS OF LAW

10 1. Petitioner is an "artist" within the meaning of Labor Code
11 §1700.4(b).

12 2. The Labor Commissioner has jurisdiction to determine this controversy
13 pursuant to Labor Code §1700.44 (a).

14 3. Respondents Gilbert A. Cabot and REO Broadcasting Consultants
15 violated Labor Code §1700.5, in that they, and each of them, engaged in
16 and carried out the occupation of a talent agency without first procuring
17 a license therefor from the Labor Commissioner. The oral and written
18 agreements between said respondents and petitioner are accordingly void ab
19 initio and are unenforceable for all purposes (Waisbren v. Peppercorn
20 Productions, Inc., supra, 41 Cal. App. 4th 246; Buchwald v. Superior Court
21 (1967) 254 Cal. App. 2d 347). Respondents accordingly had no right to the
22 commissions collected from petitioner.

23 4. The petition is dismissed with respect to all other respondents named
24 therein, on the ground that petitioner has made no showing with respect to
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26 ³ The petition also names as respondents "REO Group, Comarts
27 Communications Arts and Media Plus, Richard E. Oppenheimer, individually and dba
28 REO Broadcasting Consultants, an unknown corporation." No showing was made by
petitioner that these individually named respondents violated the Talent Agencies
Act.

1 these respondents sufficient to show a violation or violations by them of
2 the Talent Agencies Act.

3 5. Petitioner is entitled to recover all commissions paid to respondents
4 Gilbert A. Cabot and REO Broadcasting Consultants for the one year period
5 preceding filing of the petition (Labor Code §1700.44(c)).

6 6. The request for an accounting is denied since petitioner has not made
7 a showing that an accounting is necessary (St. James Church of Christ
8 Holiness v. Superior Court (1955) 135 Cal.App. 2d 352, 359).

9 7. Since, in the absence of a stipulation between the parties concerning
10 the amount of commissions paid, further proceedings will be necessary for
11 determination of actual damages, jurisdiction is hereby retained for that
12 purpose, and a hearing is hereby scheduled for August 12, 1997 at 10:00
13 a.m. at 107 S. Broadway, Room 5015, Los Angeles, CA 90012.

14 DETERMINATION

15 The oral and written contracts entered into between petitioner and
16 Gilbert A. Cabot and REO Broadcasting Consultants are each void and
17 unenforceable for all purposes. Petitioner is to recover all commissions
18 paid to said respondents pursuant to these agreements since June 10, 1995,
19 the exact sum to be determined at a further hearing to be held on August
20 12, 1997.

21 DATED: June 12, 1997

Thomas Kerrigan
THOMAS S. KERRIGAN
Special Hearing Officer

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24 The above determination is adopted in its entirety.

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26 DATED: 6/25/97

John C. Duncan
JOHN C. DUNCAN
Chief Deputy Director
Department of Industrial Relations