

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
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4 Special Hearing Officer
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BEFORE THE LABOR COMMISSIONER
STATE OF CALIFORNIA

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WESLEY SNIPES,) CASE NO. TAC 36-96
Petitioner,) DETERMINATION
vs.)
DOLORES ROBINSON ENTERTAINMENT,)
a California corporation; and)
DOLORES ROBINSON, an individual)
Respondents.)

19 A Petition to Determine Controversy was filed in this matter on
20 November 16, 1996. Petitioner [hereinafter referred to as "Snipes"]
21 alleges, *inter alia*, therein that respondents [hereinafter collectively
22 referred to as "Mrs. Robinson"] violated the Talent Agencies Act by acting
23 in the capacity of a talent agent without being licensed, in violation of
24 Labor Code section 1700.5. The Petition recites that earlier Mrs.
25 Robinson filed a demand for arbitration with the American Arbitration
26 Association seeking commissions allegedly due her pursuant to the written
27 agreement under which Mrs. Robinson performed the services in question.

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1 Snipes seeks a determination from the Labor Commissioner that this written
2 agreement is void *ab initio* and is therefore unenforceable. Snipes also
3 seeks restitution of all sums paid to Mrs. Robinson as commissions
4 pursuant to the written agreement.

5 Mrs. Robinson has conceded that she is not a licensed talent agent
6 but denies that she has violated the Talent Agencies Act. She argues that
7 she did not solicit work for Snipes and, in the alternative, that she
8 acted "in conjunction with, and at the request of, a licensed talent
9 agency" within the meaning of Labor Code section 1700.44(d). In addition,
10 she claims that the Petition is barred by the one-year statute of
11 limitations set forth in Labor Code section 1700.44(c) and has requested
12 dismissal of the Petition on this ground.

13 The matter came on for two days of hearing on October 29 and 30,
14 1997, before Thomas S. Kerrigan, Special Hearing Officer, in Los Angeles,
15 California. Snipes appeared through his attorneys, Stanton L. Stein and
16 Karen L. Dillon of Stein & Kahan; Mrs. Robinson appeared through Lawrence
17 Y. Iser and Kristen L. Spanier of Greenberg, Glusker, Fields, Claman &
18 Machtinger. The matter was taken under submission at the close of the
19 hearing.

20 ISSUES

21 The questions presented in this matter are as follows:

- 22 1. Did Mrs. Robinson function as a talent agent as defined in the
23 Labor Code?
- 24 2. If so, did Mrs. Robinson act "in conjunction with, and at the
25 request of," a licensed talent agent?
- 26 3. Is the Petition barred by the one-year statute of limitations

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1 contained in Labor Code section 1700.44 (c)?¹

2 DISCUSSION AND FINDINGS

3 The parties stipulated that at all times material to the allegations
4 of the Petition Snipes was an artist within the meaning of Labor Code
5 section 1700.44 (b) and Mrs. Robinson was not a licensed talent agent.

6 It is uncontradicted that Snipes was represented by Creative Artists
7 Agency [hereinafter referred to as "CAA"], one of the leading talent
8 agencies in the world, in July of 1990, a time when he was first beginning
9 to attain prominence as a film actor. He expressed the desire at that
10 time to be represented by an artist's manager to Donna Chavous, who was
11 then his representative at CAA. Chavous recommended to Snipes that he
12 meet with Mrs. Robinson. Snipes subsequently met with Mrs. Robinson and
13 decided to retain her as his artist manager. Shortly thereafter, they
14 entered into the aforementioned written agreement. Mrs. Robinson
15 continued to represent Snipes in this capacity until he purported to
16 terminate their relationship in the middle of 1994.

17 There was testimony from Douglas Robinson, Snipes' present agent and
18 no relation to Mrs. Robinson, and Barry Hirsch, Snipes' attorney, that
19 though Mrs. Robinson worked mostly in the personal area for Snipes, she
20 also negotiated major film deals on Snipes' behalf. For example, on the
21 film *Water Dance*, Mrs. Robinson purportedly negotiated perquisites for
22 Snipes, including travel, housing, per diem, and a rental car, though
23 supposedly not requested by CAA to do so. She also had discussions with
24 the producers of the film *Sugar Hill* about Snipes' compensation for
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26 ¹ Mrs. Robinson's position in this regard was rejected in an Order Denyi
27 Respondents' Request for Certification of Lack of Controversy, which order antedat
28 the hearing, on the ground that the Petition was filed within one year
respondent's demand for arbitration. Her renewed objection on this point is al
rejected.

1 appearing in that film and admitted to Hirsch and Douglas Robinson that
2 she had negotiated the perquisites on that film as well. With respect to
3 the film *Star Gate*, Mrs. Robinson represented to them that she had
4 received a seven million dollar offer for Snipes' services. She related
5 to them her discussions with the producers of the film *White Men Can't*
6 *Jump* about Snipes being "right" for a role in that film. She also told
7 them she had negotiated an Acura automobile for Snipes as compensation for
8 appearing in a Taco Bell commercial.

9 Snipes testified that all proposals for his services went through
10 Mrs. Robinson. He claimed that she promised at the beginning of their
11 relationship to seek opportunities for him in films. He claimed she was
12 the person who was primarily involved in obtaining perquisites for him
13 when he worked on these films, including the employment of trainers,
14 bodyguards, and chefs. He first heard about film projects from Mrs.
15 Robinson, not from his agent. On one film, *Demolition Man*, she told him
16 she was able to double an offer to Snipes from two million dollars to four
17 million dollars.

18 Chavous, on the other hand, testified that she, Mrs. Robinson, and
19 Barry Hirsch, Snipes' attorney, functioned as a "team" in furthering
20 Snipes' career. To her knowledge, CAA was the only member of the team to
21 solicit deals for Snipes. According to Chavous, Mrs. Robinson worked in
22 the area of attending to Snipes' personal needs after the deal was
23 consummated by Chavous, e.g., making sure he had the proper amenities on
24 the set during filming of a number of motion pictures in which he
25 appeared.

26 Mrs. Robinson denied that she negotiated any film deals for Snipes,
27 insisting that she primarily worked in the area of handling personal
28 concerns for Snipes while he was making these films, including interceding

1 when Snipes, his attendants, friends, or family ran into personal
2 difficulties that required attention. Evidence of various incidents that
3 required Mrs. Robinson's intervention in this regard was adduced at the
4 hearing. She admitted that as part of coordinating the efforts on behalf
5 of Snipes career she oversaw the efforts of the other members of the
6 "team" and made suggestions, but that CAA and Hirsch did the direct
7 negotiating on all of Snipes film deals.

8 There is, as it can be seen, an apparent contradiction between the
9 testimony of Douglas Robinson, Barry Hirsch, and Snipes, on the one hand,
10 and Mrs. Robinson and Donna Chavous, on the other. If the former group of
11 witnesses is to be believed, Mrs. Robinson's actions qualify as those of a
12 talent agent. As counsel for Snipes point out, even negotiations that
13 "exploit" employment offers emanating from the outside constitute
14 prohibited solicitation when done by unlicensed persons within the meaning
15 of the Talent Agency Act (see *Hall v. X Management, Inc.*, T.A.C. 19-90 at
16 pp. 29-30).

17 But if Mrs. Robinson and Donna Chavous were to be discredited in
18 their testimony on this important point, that would not end our inquiry.
19 Mrs. Robinson's second line of defense is that even assuming the Labor
20 Commissioner finds that she acted as a talent agent in negotiating a
21 contract or contracts on behalf of Snipes, she is exempt from the
22 prohibitions of the law under the provisions of Labor Code section 1700.44
23 (d). The assertion of this defense necessitates careful analysis. To
24 qualify under those express provisions requires the satisfaction of a
25 twofold burden of proof, i.e., the person claiming the exemption must
26 prove that he or she acted both (1) "at the request of," and (2) "in
27 conjunction" with, a licensed talent agent during the course of the events
28 in question.

1 Here, the undisputed evidence is that Mrs. Robinson was introduced to
2 Snipes by Donna Chavous, Snipes agent at CAA, and that Ms. Chavous
3 recommended Mrs. Robinson to Snipes for retention as his artist manager.

4 There can accordingly be no question that at least initially Mrs. Robinson
5 was performing her services in response to a request from CAA.

6 Furthermore, there is no evidence that when Douglas Robinson came into the
7 picture that either he or anyone else from CAA asked Mrs. Robinson to
8 cease what she was doing on Snipes' behalf. In fact, the evidence is
9 squarely to the contrary.² Accordingly, it appears clear that Mrs.

10 Robinson performed her functions from 1990 through 1994 at the continuing
11 request of CAA.

12 The second requirement of the exemption is that the artist manager
13 shows that he or she worked "in conjunction" with the licensed talent
14 agent. The arrangement here commenced, according to the testimony of Mrs.
15 Robinson and Donna Chavous, as a bona fide team undertaking. Donna
16 Chavous was responsible for soliciting work for Snipes and negotiating his
17 contracts and Mrs. Robinson was responsible for handling his personal
18 affairs. In this connection Douglas Robinson admitted that after he took
19 over the account he spoke to Mrs. Robinson on the telephone "ten times a
20 day." The exhibits received in evidence, moreover, show that CAA and
21 Hirsch were intimately involved in all of the negotiations and that Mrs.
22 Robinson was at all times working closely with them. This correspondence

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24 ² Though there was testimony that later on CAA never expressly requested
25 Mrs. Robinson to negotiate this or that perquisite, this testimony must be
26 discounted when the entire arrangement between the parties is duly considered. It
27 is understandable that in daily interaction over the course of time during a
28 continuing series of business transactions the parties tend to begin to deal with
one another as though certain things were understood. The requirements of the
statute cannot be construed to call for a game of "Mother May I?" every time an
artist manager takes some action during a long term relationship of the nature
reflected in this case. To find otherwise would be to ignore the realities of day
to day life in the film industry.

1 may be the most reliable indicator of the true relationship between the
2 parties. When viewed *in toto*, the evidence therefore establishes that
3 Mrs. Robinson acted in conjunction with CAA in performing services on
4 Snipes behalf.

5 We accordingly find that Mrs. Robinson did not violate the provisions
6 of the Talent Agencies Act because, whether or not she engaged in or
7 carried on the occupation of an unlicensed talent agent without being
8 licensed within the meaning of Labor Code section 1700.5, a disputed
9 factual issue which we do not here resolve, it is clear that she acted at
10 the request of and in conjunction with a licensed talent agent within the
11 meaning of Labor Code section 1700.44(d) at all times.

12 Counsel for Snipes warns that if the exemption contained in section
13 1700.44(d) is found to exist in this case, it will be taken by
14 unscrupulous artist managers as a sign that the law may be circumvented by
15 pro forma alliances between artist managers and licensed talent agents
16 with the result that what would otherwise qualify as violations of the law
17 may go unregulated. While we are cognizant of the possibilities of abuse
18 in this area, the determination here is limited to the facts of this case.
19 The undisputed evidence presented, which was well documented by the
20 correspondence and other exhibits offered by Mrs. Robinson, showed a close
21 and continuing relationship between her organization and one of the most
22 well-known talent agencies in the world. Based on this record we find no
23 showing of either subterfuge or an attempt to circumvent the law.

24 CONCLUSIONS OF LAW

25 1. Petitioner is an "artist" within the meaning of Labor Code
26 section 1700.44(a). The Labor Commissioner has jurisdiction to determine
27 this controversy pursuant to Labor Code section 1700.44(a).

28 2. Respondents acted "in conjunction with, and at the request of,

1 a licensed talent agency" within the meaning of Labor Code section 1700.44
2 (d) and therefore their actions, if any, in the negotiation of employment
3 contracts for petitioner are not unlawful.

4 DETERMINATION

5 Petitioner having failed to sustain its burden of proving that
6 respondents violated Labor Code section 1700.5, the Petition is dismissed
7 with prejudice.

8 DATED: April 1, 1998

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

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10 *Thomas Kerrigan*
11 Thomas S. Kerrigan
Special Hearing Officer

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

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16 DATED: April 27, 1998

Jose Millan
Jose Millan
State Labor Commissioner

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