



1 §1700.25(e)(1) and (2).

2 Respondent filed her answer and cross petition on April  
3 25, 1999, alleging that an employer/employee relationship existed  
4 between the parties, and in her cross-petition respondent seeks  
5 payment for back-wages and penalties pursuant to §203. After  
6 numerous continuations, the hearing commenced on July 13, 2000,  
7 at the Los Angeles Office of the Labor Commissioner. Petitioner  
8 was represented by Ronald A. DiNicola of Mitchell Silberberg &  
9 Knupp LLP; respondent appeared *in propria persona*. Due  
10 consideration having been given to the testimony, documentary  
11 evidence, and briefs submitted, the Labor Commissioner adopts the  
12 following determination of controversy.

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14 FINDINGS OF FACT

15 1. The petitioner is the daughter of boxing great  
16 Muhammad Ali. In January 1999, Ali, owner of a Marina Del Rey  
17 nail salon, publicized her decision to enter the world of women's  
18 professional boxing. The public response to petitioner's  
19 decision was immediate and overwhelming. Requests for  
20 interviews, photo shoots and public appearances came fast and  
21 furious.

22 2. The respondent had public relations, advertisement  
23 and promotional experience in the entertainment industry for over  
24 twenty-six years. Ali, unsophisticated in these matters, turned  
25 to her salon client for guidance. And on January 23, 1999,  
26 Cutler agreed to handle all of the incoming calls and requests,  
27 in exchange for free nail services and the opportunity to design  
28 new business cards for Ali.

1                   3.     Respondent was eager to expand her role with Ali  
2 and on February 2, 1999, she met with Magic Johnson Entertainment  
3 to discuss a possible relationship between Johnson's company and  
4 Ali. Discussions included a documentary film project designed to  
5 chronicle Ali's blossoming boxing career. As the requests for  
6 Ali continued to build, it became apparent that free nail service  
7 would not adequately compensate the respondent for her efforts.  
8 On February 8, 1999, respondent approached Ali with a one-year  
9 written contract providing, *inter alia*, that respondent would  
10 "employ 'Agency' to provide promotional, motion picture and  
11 public relations services for Laila Ali." In return for those  
12 services, Cutler would receive \$6,000.00 per month. The nail  
13 salon's earnings netted far less than \$6,000.00 a month. Ali  
14 unable to afford respondent's request, scoffed at the monthly  
15 amount and refused to sign the contract. On the other hand,  
16 Cutler's cross petition and unconvincing testimony claimed that  
17 Ali had orally agreed to the terms, though respondent later  
18 recanted her testimony by testifying that the \$6,000.00 was never  
19 agreed upon.

20                   4.     Despite the parties inability to reach an  
21 agreement, the respondent continued to provide services and seek  
22 opportunities for Ali. Cutler approached both Everlast and Nike,  
23 ostensibly to assess interest in endorsement deals. On February  
24 12, 2000, respondent scheduled a photo shoot with Vogue Magazine  
25 and a London tabloid in which respondent negotiated Ali's  
26 compensation from the \$750.00 offer to a \$5,000.00 payment on  
27 behalf of Ali. Notably, the \$5,000.00 was wired to respondent's  
28 account, where it remains today.

1                   5.    As interest in an Ali documentary increased,  
2 additional discussions with the Magic Johnson Entertainment group  
3 were necessary. Respondent was eager to organize a deal for the  
4 documentary and expressed to Ali that a \$150,000.00 to  
5 \$200,000.00 payment for a documentary was plausible. On January  
6 24, 1999, respondent approached Ali with a second contract. This  
7 contract purported to allow Cutler to "represent [Ali] in the  
8 attempt to secure a documentary film commitment", for 10 percent  
9 of any funds paid to the petitioner. Ali again refused to sign  
10 the contract. Ali was unhappy with respondent's attempt to  
11 expand her role and verbally terminated their existing  
12 relationship.

13                   6.    Despite Ali's verbal termination, on February 26,  
14 1999, Cutler attended a second meeting with the Magic Johnson  
15 Entertainment group to further discuss the documentary. On the  
16 same day, Ali served written notice of termination and demanded  
17 Cutler remit the \$5,000.00 Ali earned in connection with the  
18 London tabloid photo shoot and interview. Cutler refused to  
19 tender payment and demanded \$12,000.00 from Ali pursuant to the  
20 alleged oral contract for \$6,000.00 per month. Cutler stated  
21 that she would hold petitioner's \$5,000.00 in trust against the  
22 \$12,000.00 owed to Cutler for the two months of rendered  
23 services. Cutler's cross petition seeks \$12,000.00 in back wages

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1 and penalties pursuant to Labor Code §203<sup>2</sup>.

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CONCLUSIONS OF LAW

1. Petitioner is a celebrity/athlete who has done countless photo shoots. As a model and subject of a film documentary, petitioner is an "artist" within the meaning of Labor Code §1700.4(b).

2. The issues to be determined are:

a) Whether a contract was formed between the parties and if so, what were the terms and rights of the parties to the contract?

b) Based on the evidence produced at this hearing, did the respondent operate as a "talent agency" within the meaning of Labor Code §1700.40(a), or an employee? If so, what is the significance?

3. Respondent was unable to demonstrate that an oral contract for \$6,000.00, a month (or any other amount) was created. The testimony and evidence reflected that all subsequent offers were refuted by Ali. There was never a meeting of the minds and therefore never an acceptance. Cutler's second meeting with Magic Johnson Entertainment was unbeknownst to Ali, and the termination was clear, thus the elements of an implied contract were also not met. In fact, the only contract created

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<sup>2</sup> A cross petition for wages is procedurally inappropriate in this forum. Labor Code §1700.44 vests the Labor Commissioner with jurisdiction to hear and determine controversies between artists and talent agents that arise under the Talent Agencies Act. Other sections of the Labor Code provide the Labor Commissioner with jurisdiction and authority to investigate, hear disputes and award penalties involving unpaid wages between employees and employers. See Labor Code §98 and §203.

1 between the parties was the agreement for Cutler to handle media  
2 requests in exchange for free nail service. However, the  
3 terminations both orally and in writing on February 24<sup>th</sup> and 26<sup>th</sup>  
4 by the petitioner were clear.

5           4. Labor Code §1700.40(a) defines "talent agency" as,  
6 "a person or corporation who engages in the occupation of  
7 procuring, offering, promising, or attempting to procure  
8 employment or engagements for an artist or artists." Cutler met  
9 with the Magic Johnson Entertainment group which lead to  
10 discussions about the documentary. Cutler relayed this news to  
11 Ali, set up additional meetings in an effort to solidify a deal,  
12 while attempting to have Ali sign a representation agreement.  
13 Moreover, Cutler took a photo shoot offer of \$750.00 and used her  
14 negotiating skill to increase Ali's compensation to \$5,000.00.  
15 Cutler's attempts to sell a documentary chronicling Ali to Magic  
16 Johnson Entertainment and her efforts in raising compensation  
17 with respect to the London tabloid photo shoot are both attempts  
18 to procure and actual procurement of employment or engagements  
19 for Ali.

20           5. In Waisbren v. Peppercorn Production, Inc (1995)  
21 41 Cal.App.4th 246, the court held that any single act of  
22 procuring employment subjects the agent to the Talent Agencies  
23 Act's licensing requirement, thereby upholding the Labor  
24 Commissioner's long standing interpretation that a license is  
25 required for any procurement activities, no matter how incidental  
26 such activities are to the agent's business as a whole.

27           6. Applying Waisbren, it is clear respondent acted in  
28 the capacity of a talent agency within the meaning of Labor Code

1 §1700.4(a). Labor Code §1700.5 provides that "no person shall  
2 engage in or carry on the occupation of a talent agency without  
3 first procuring a license therefor from the Labor Commissioner."  
4 It was stipulated the respondent had never obtained a talent  
5 agency license.

6           7. Respondent contends that she was hired as  
7 petitioner's public relations **employee** for a salary of \$6,000.00  
8 per month. Consequently, respondent argues she is entitled to  
9 wages and that an agency relationship simply does not exist. The  
10 courts and the legislature do not agree. An "employee" is one  
11 who is subject to the absolute control and direction of his  
12 employer in regard to any act, labor or work to be done in the  
13 course and scope of his employment. Crooks v. Glens Falls Indem.  
14 Co., 124 Cal.App.2d 113, 121. An "agent" is defined by section  
15 2295 of the Civil Code as follows: "An agent is one who  
16 represents another, called the principal, in dealings with third  
17 persons." Although both relate to voluntary action under  
18 employment and express the idea of service, the service performed  
19 by an [employee] may be inferior in degree to work done by an  
20 agent for his principal. Accordingly, while both a[n] [employee]  
21 and an agent are workers for another under an express or implied  
22 employment, an agent works not only for, but in the place of his  
23 principal. People v. Treadwell, 69 Cal.226, 236. Furthermore, as  
24 stated in Wallace v. Sinclair, 114 Cal.App.2d 220 [250 P.2d 154]:  
25 "Agency is the relation that results from the act of one person  
26 ... to conduct one or more transactions with one or more third  
27 persons and to exercise a degree of discretion in effecting the  
28 purpose of the principal. Gipson v. Davis Realty Co. 215

1 Cal.App.2d 190, 205.

2           8. Representation seems to be the chief  
3 characteristic of agency while control by the employer is the  
4 primary element of employment. Intent of the parties also plays  
5 an important role in establishing the true nature of the  
6 relationship. Utilizing those standards, it becomes abundantly  
7 clear that Cutler acted as an agent and not as respondent  
8 contends, an employee. Cutler approached companies, used her  
9 independent judgment and discretion in seeking to advance the  
10 public persona of Ali and negotiated finances with third parties  
11 on Ali's behalf. Moreover, Cutler was the industry expert and  
12 was never subject to any control and direction of Ali.  
13 Conversely, Cutler used her vast experience in the entertainment  
14 industry to do whatever was necessary to increase benefits for  
15 Ali.

16           9. Finally, the express terms of the contracts that  
17 Cutler herself prepared, manifested her intent. Cutler coined  
18 her role as the "agency" and sought to "represent" Ali. The  
19 terms of the contract speak for themselves and Cutler's intent to  
20 represent Ali as an agent was equally apparent.

21           10. Cutler's responsibilities for Ali were never  
22 clearly articulated. But, it was Cutler who sought to expand her  
23 role and in doing so Cutler engaged with impunity in the  
24 activities of an agent as defined in both the Civil Code and the  
25 Labor Code. Respondent acted in the capacity of a talent agent  
26 within the meaning of the Talent Agencies Act, and her  
27 unconvincing argument that she is an employee fails.

28           11. Petitioner seeks attorney's fees and interest



1 pursuant to Labor Code §1700.25(e)<sup>3</sup>. The respondent's  
2 withholding of petitioner's earnings are the subject of a  
3 controversy within the meaning of 1700.25(a)(2) and consequently  
4 are not "willful". The petitioner is not entitled to attorney's  
5 fees or interest.

6  
7 ORDER

8 For the above-stated reasons, the respondent acted  
9 illegally as petitioner's unlicensed talent agent. IT IS HEREBY  
10 ORDERED that the Respondent, NORMALYNN CUTLER dba CUTLER  
11 ENTERPRISES has no enforceable rights under any agreement with  
12 the petitioner and shall immediately remit \$5,000.00 to  
13 petitioner for earnings in connection with the London tabloid.  
14 Respondent's cross petition is dismissed.

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<sup>3</sup> §1700.25 providing in pertinent part:

19 (a) A licensee who receives any payment of funds on behalf of an artist shall ...  
20 be disbursed to the artist within 30 days after receipt. However, notwithstanding  
21 the preceding sentence, the licensee may retain the funds beyond 30 days of  
22 receipt in either of the following circumstances:

23 (2) When the funds are the subject of a controversy pending before the Labor  
24 Commissioner under Section 1700.44 concerning a fee alleged to be owed by the  
25 artist to the licensee.

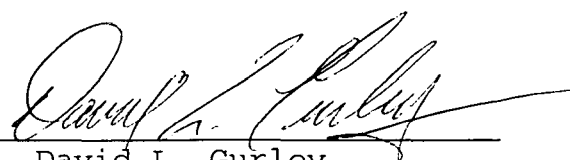
26 (c) If disputed by the artist and the dispute is referred to the Labor  
27 Commissioner, the failure of a licensee to disburse funds to an artist within 30  
28 days of receipt shall constitute a "controversy" within the meaning of Section  
1700.44.

(e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that  
the licensee's failure to disburse funds to an artist within the time required  
by subdivision (a) was a willful violation, the Labor Commissioner may, in  
addition to other relief under Section 1700.44, order the following:

- (1) Award reasonable attorney's fees to the prevailing artist.
- (2) Award interest to the prevailing artist on the funds wrongfully withheld  
at the rate of 10 percent per annum during the period of the violation.

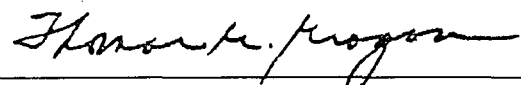
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Dated: 3-20-01

  
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David L. Gurley  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: 3/20/01

  
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THOMAS GROGAN  
Deputy Chief

