INTRODUCTION

The above-captioned petition was filed on February 27, 2001 by LENHOFF & LENHOFF, a California Corporation (hereinafter "Petitioner" or "LENHOFF") alleging that GEORGE GRIEVE (hereinafter "Respondent" or "GRIEVE") failed to remit commissions to the petitioner, stemming from work performed by the respondent as a unit production manager during the term of the parties exclusive talent agency representation agreement. Petitioner seeks 10% commission and interest for two entertainment projects performed by Grieve.

Respondent filed his answer on April 20, 2001, alleging the parties never had a "meeting of the minds" and consequently no
contract was formulated. And alternatively, the petitioner did not fulfill his duties under the agreement and is therefore not entitled to commission either deal.

The hearing was scheduled and held on December 12, 2001, in Los Angeles at the office of the Labor Commissioner before the undersigned attorney specially designated to hear this matter. The petitioner was represented by his attorney Candice S. Klein of Carpenter and Zuckerman; respondent appeared through his counsel Eli M. Kantor. Based upon the evidence, arguments and briefs presented, the Labor Commissioner adopts the following Determination of Controversy.

FINDINGS OF FACT

1. George Grieve is a 16-year veteran, Unit Production Manager (hereinafter "UPM") in the entertainment industry, working and living primarily in Vancouver, Canada. Grieve has never been represented by a talent agent in the entertainment industry prior to this relationship. In early 2000, Grieve desired to elevate his status in the entertainment hierarchy and began to seek work as a line producer. Line producers are generally compensated at a higher level than a UPM and often receive a production credit for their work. Grieve was informed that securing a talent agency was the most effective method to achieve work as a line producer, as the talent agent would seek line producer employment on his behalf.

2. In January 2000, Grieve interviewed several talent agents, including Lenhoff. On February 7, 2000, the parties entered into a two-year written contract, whereby petitioner would act as respondent's exclusive talent agent in the entertainment
industry. Paragraph (1) of the contract provided:

"I hereby employ you as my sole and exclusive Agency for a period of two years from date hereof to assist in obtaining offers of employment and to negotiate contracts for the rendition of my professional services in the fields of Motion Picture, Television and other fields of entertainment."

3. In exchange for Lenhoff's representation, Grieve agreed to pay Lenhoff 10% of all monies earned in connection with his professional services rendered in the entertainment industry during the term of the contract.

4. Soon thereafter, petitioner undertook efforts to secure line producer employment for Grieve. Lenhoff would examine the daily breakdowns and then send out one-line form letters, requesting each production company to consider his client for employment. Lenhoff submitted evidence that he sent out form letters directed at virtually every production in Vancouver. The letter would generally read, "please find several clients we think would be right for your show (as a line producer)," followed by a list of several of Lenhoff's clients.

5. In March 2000, unbeknownst to petitioner, Grieve accepted employment as a UPM in Vancouver for a project titled Freedom. Lenhoff did no participate in securing this employment opportunity for Grieve. Grieve worked on the project until it wrapped in early May 2000. While Grieve worked on Freedom, Lenhoff continued to send out his one-line form letters to production companies, ostensibly hoping someone would be interested in hiring his client as a line producer. As Freedom wrapped, Lenhoff
discovered Grieve's employment on Freedom and requested 10% commission for that project.


7. On June 22, 2000, Grieve dissatisfied with Lenhoff's inability to secure him a position as a line producer, terminated the relationship. Grieve indicated the termination date was retroactive and thus effective 10 days earlier on June 12, 2000, ironically the same day Grieve accepted employment on L.A. Snowday. Accompanied with the termination letter was a 10% commission check to Lenhoff for Grieve's work on Freedom. The termination letter stated, "the commissions are a courtesy, as we had discussed in the beginning I engaged your services to get me work as a [Line] Producer not a production manger [UPM] unless it was a feature. I have never needed representation as Production Manager." Therein lies the rub. Grieve was paying 10% of his salary to his agent for his UPM work, clearly something he had never done in 16 years, without obtaining the benefit of line producer employment.

8. The respondent argues paragraph (1) of the agreement does not reflect the true intent of the parties. Respondent seeks to include evidence of an antecedent oral agreement, whereby the parties agreed to exclude from the contract any work performed by the respondent as a Unit Production Manager (UPM). Accordingly, respondent argues that Lenhoff is not entitled to commission UPM
projects, including L.A. Snowday. In response, Lenhoff acknowledges the parties discussed elevating Grieve's career to the next level, but denies the agreement excluded UPM representation.

9. Complicating matters, is the fact that on September 7, 2000, Grieve accepted employment as a UPM on another Vancouver-based production, Dark Angel. In May 2000, a Lenhoff one-line letter was sent and received by a Dark Angel executive in an attempt by Lenhoff to secure employment for Grieve on that production as a Line Producer. Lenhoff now seeks commissions for Dark Angel and cites paragraph (5) of the representation contract, stating in pertinent part:

"If I enter into any agreement ... within four (4) months after termination hereof, ... with any person or business entity as to whom a submission has been made and/or negotiations commenced on my behalf during the term of the Agreement [emphasis added] then in said event any such employment contract entered into shall be deemed to have been entered into during the term hereof."

10. Lenhoff surmises that his one-line letter seeking employment for Grieve as a Line Producer, coupled with Grieve's acceptance as a UPM for that project entitles Lenhoff to those commissions. Lenhoff seeks 10% commission for Grieve's work as a UPM on both L.A. Snowday and Dark Angel. Lenhoff's submissions, arguendo, on Grieve's behalf were for work as a Line Producer, all of which were unsuccessful.
CONCLUSIONS OF LAW

1. The issues are as follows:
   A. Can evidence of an oral agreement be admitted to modify the terms of the parties written agreement?
   B. Is the petitioner entitled to commission Grieve's work as UPM on L.A. Snowday, notwithstanding Lenhoff's nonparticipation in obtaining UPM work and unsuccessful efforts to procure Line Producer work?
   C. Can the petitioner commission Dark Angel, if the execution of the employment contract and the start of production began after termination of the parties contract, pursuant to paragraph (5) of the written agreement?

2. Petitioner is a licensed "talent agency" within the meaning of Labor Code §1700.4(a).

3. Respondent's status as an "artist" within the meaning of Labor Code §1700.4(b) was not challenged, and consequently respondent is an "artist" for purposes of this controversy.

4. Labor Code §1700.23 provides that the Labor Commissioner is vested with jurisdiction over "any controversy between the artist and the talent agency relating to the terms of the contract", and the Labor Commissioner's jurisdiction has been held to include the resolution of contract claims brought by artists or agents seeking damages for breach of a talent agency contract. Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861, Robinson v. Superior Court (1950) 35 Cal.2d 379. Thus, the Labor Commissioner has jurisdiction to determine this controversy.
pursuant to Labor Code §1700.44(a).

Parole Evidence Rule

5. The respondent seeks admission of an oral agreement specifying what "professional services" in paragraph (1) of the written agreement are commissionable. Petitioner argues the contract speaks for itself and "professional services" include all work performed by respondent in the entertainment industry, including UPM work. Respondent argues his performance as a line producer employment is the only commissionable employment.

6. The parole evidence rule generally prohibits the introduction of any extrinsic evidence to vary or contradict the terms of an integrated written instrument. (Code Civ. Proc., § 1856.) It is based upon the premise that the written instrument is the agreement of the parties. Gerdlund v. Electronic Dispensers 190 Cal.App.3d 263, at 270.

7. Here, the parties executed agreement contained the following integration clause:

"This instrument constitutes the entire agreement between us and no statement, promising or inducement made by any party hereto which is not contained herein shall be binding or valid and this contract may not be enlarged, modified, or altered, except in writing by both parties hereto; and provided further, that any substantial changes in this contract must first be approved by the Labor Commissioner."

8. Allowing evidence of the oral agreement would have the effect of limiting the commissionable services and thereby varying the terms of the written agreement. The term "professional
"services" is not so vague as to require interpretation. Grieve only worked as a UPM and sought work only as a line producer. To allow the introduction of evidence that excludes one half of the definition of "professional services" would radically alter the meaning of the written contract. The parole evidence rule prohibits the admission of extrinsic evidence that varies the terms of an integrated contract and as a result, any evidence of an oral agreement used to change the terms of this integrated contract will be excluded.

9. Moreover, the respondent paid Lenhoff commissions for Freedom. And based on the payment of those commissions for UPM work not secured by Lenhoff, establishes the respondent's implied acceptance of those terms. Grieve's acceptance is further bolstered by Grieve's attempt to back date the termination date 10 days earlier than the actual date of the termination letter. Grieve writes Lenhoff on June 22, 2000, and informs him that the relationship is terminated, but indicates in the letter that the termination is effective June 12, 2000, the day he accepted employment for L.A. Snowday. Grieve was aware the termination date had legal significance and consequently attempted to back date the termination to avoid the payment of commissions for any employment accepted during the contract's term. Respondent's argument that the commissions paid to Lenhoff for Freedom were a "courtesy" is unconvincing. The Labor Commissioner will not rewrite respondent's contract, after he paid commissions for a project he now argues is not commissionable. In short, the terms of the written contract will not be modified by evidence of an antecedent oral communication between the parties.
L.A. SNOWDAY

10. Is the petitioner entitled to commission Grieve's work as a UPM on L.A. Snowday, notwithstanding Lenhoff's nonparticipation in securing Grieve's UPM work and unsuccessful efforts to procure Line Producer work? Paragraph (2) of the contract setting forth the terms and conditions of compensation state,

"[a]s compensation for your said services agreed to be rendered hereunder, I [Grieve] hereby agree to pay you [Lenhoff] a sum equal to ten percent, (10%) of all moneys or things of value as and when received by me, ... as compensation for my professional services [emphasis added] rendered or agreed to be rendered during the term hereof ... entered into or negotiated during the term..."

11. Again, the contract is clear on its face. Grieve negotiated and signed the contract purporting to compensate Lenhoff at 10% for all of his "professional services" in the entertainment industry during the term of the contract. Grieve's argument that Grieve didn't accept the L.A. Snowday offer until after termination is without merit. Again, the termination letter was written June 22, 2000, and Grieve accepted employment on June 22, 2000. Grieve's attempt to back-date the agreement to ostensibly avoid the payment of commissions will not be countenanced and smacks of bad faith. Lenhoff is entitled to commission L.A. Snowday.

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12. Is the petitioner entitled to commission Dark Angel, if the execution of the employment contract and the start of production began after termination of the parties' contract, pursuant to paragraph (5) of the written agreement?

13. This engagement presents a different issue as Grieve accepted employment on September 7, 2000, some 2½ months after termination of the representation agreement, but within the four-month subsequent period allowing the agent to commission a deal if the agent submitted the artist or negotiated the employment contract during the parties' contractual term.

The contract states,

"If I enter into any agreement ... within four (4) months after termination hereof, ... with any person or business entity as to whom a submission has been made and/or negotiations commenced on my behalf during the term of the Agreement then in said event any such employment contract entered into shall be deemed to have been entered into during the term hereof."

14. Lenhoff seeks 10% commission and argues his submission for Grieve as a Line Producer in May 2000, satisfies the condition precedent of submission, and entitles Lenhoff to commission this deal. The evidence established that Lenhoff submitted Grieve for Line Producer and not for a UPM. Lenhoff did not submit his client for the position he received. Further, Dark Angel producer, Steve Sassen testified that Lenhoff had absolutely nothing to do with the hiring of Grieve for Dark Angel.

15. Title 8 California Code of Regulations (CCR) §12001(b) maintains that,
"[a] talent agency may provide for the payment of compensation after the termination thereof with respect to any employment contracts entered into or negotiated for or to any employment accepted by the artist during the term of the talent agency contract... To be entitled to the payment of compensation after termination of the contract between the artist and the talent agency, the talent agency shall be obligated to serve the artist and perform obligations with respect to any employment contract."

16. The regulation's intent was to compensate an agent for work performed during the relationship, after subsequent termination by the artist. Here, it cannot be said that Lenhoff's efforts accomplished anything for his client. He did not submit Grieve, nor was he a factor for any position Grieve accepted. He did not negotiate any contract on Grieve's behalf and Dark Angel employment was accepted long after termination. Lenhoff expects to commission three deals for which he was had no participation in securing. Lenhoff's actions on behalf of his client do not satisfy either the terms of paragraph (5) of the parties' contract, nor do they satisfy the conditions set forth in CCR §12001(b). In short, Lenhoff is not entitled to commission Dark Angel.

17. An agency relationship is created for the benefit of the principle. Respondent should have been free to concentrate on the creative aspects of the production and not concerned with securing his own employment. The express terms of this contract created a specific duty for the agent to use "reasonable efforts"
creating employment opportunities and negotiating employment contracts on his client's behalf. Lenhoff did not perform his part of the bargain.

ORDER

For the above-stated reasons, IT IS HEREBY ORDERED that: respondent, within thirty days, shall provide an accounting of his earnings for L.A. Snowday, and pay 10% of these earnings, plus interest at the rate of 10% per year from the dates that the earnings upon which these commissions are based were received by respondent. The petitioner is not entitled to commissions earnings for Dark Angel.

Dated: 4/23/02

David L. Gurley
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: 04/23/2002

ARTHUR S. LUCAN
State Labor Commissioner
STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

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

LENHOFF & LENHOFF VS GEORGE GRIEVE
SF 006-01 TAC 6-01

I, Benjamin Chang, 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 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102.

On April 23, 2002, I served the following document:

DETERMINATION OF CONTROVERSY

by facsimile and by placing a true copy thereof in envelope(s) addressed as follows:

CANDICE S. KLEIN, ESQ.
CARPENTER & ZUCKERMAN
9200 SUNSET BLVD., STE 1207
LOS ANGELES, CA 90069

ELI M. KANTOR, ESQ.
ATTORNEY AT LAW
9595 WILSHIRE BLVD., STE 405
BEVERLY HILLS, CA 90212-2512

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 April 23, 2002, at San Francisco, California.

BENJAMIN CHANG