DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
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BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

CLIFTON BRITT; CLIFTON BRITT aka LEXINGTON STEELE; and CLIFTON BRITT dba MERCENARY PICTURES, Petitioner, vs. HARRY WEISS; WEISS AND ASSOCIATES, Respondents.	TAC No. 06-04 DETERMINATION OF CONTROVERSY

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on June 2,2005 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner, assigned to hear the matter. Petitioner was represented by attorney George E. Akwo. Respondent failed to appear at the hearing. Based on the evidence presented at this hearing and on the other papers on file in this matter, the Labor Commissioner hereby adopts the following decision.

FINDINGS OF FACT

1. Petitioner CLIFTON BRITT has been a performing artist in the adult film industry for the past seven years, acting under the stage name Lexington Steele. He has appeared in over 500

films. He has also directed over 40 adult films. More recently, as the owner of Mercenary Pictures, he is engaged in the production of adult films. For the past two years, he has hosted a Playboy TV variety/talk show, "Lex in the City." As host of the show, he interviews guest musicians, athletes, and other adult film performers.

2. Respondent HARRY WEISS, an individual who also does business as WEISS and ASSOCIATES, contacted BRITT in the fall of 2002, offering his services as a talent agent. On November 5, 2002, BRITT and WEISS executed a "Personal Services Contract," under which WEISS agreed that his "primary work involves the pursuit of a career in adult entertainment, administration of a publicity contract for access and promotion via all electronic media, along with magazine and web content photo shoots, endorsement deals, and appearances in movies, videos, and personal/dance appearances." Under this contract, WEISS was to serve as BRITT's exclusive representative for a period of two years, for which BRITT agreed to pay WEISS $500 per month plus 10% of all gross revenues earned by Mercenary Pictures and BRITT personally.

3. In April 2003, BRITT terminated Respondent's services.

4. On August 21, 2003, WEISS filed a lawsuit against BRITT for breach of contract and various other related causes of action. This lawsuit is now pending before the Los Angeles Superior Court (Case No. PC033352). In this lawsuit, WEISS alleges that BRITT terminated the Personal Services Contract with WEISS, and failed to pay WEISS for the services he performed under this contract, "including ... negotiating and securing of

two contracts for {BRITT] ... to produce movies and/or perform in movies and/or television shows."

5. In responses to special interrogatories served in connection with this lawsuit, WEISS stated that he "negotiated and secured" BRITT's contract with Playboy TV to host the show "Lex in the City."

6. At all times relevant herein, WEISS was not licensed as a talent agent by the State Labor Commissioner.

7. On May 22, 2004, BRITT filed this petition to determine controversy, seeking a determination that the Personal Services Contract was void *ab initio*, and that WEISS had no enforceable rights thereunder. The petition was served on WEISS on August 27, 2004, yet WEISS failed to file any answer. Notices of the hearing before the Labor Commissioner were served on WEISS and on Ronald S. Miller, attorney for WEISS in the pending court action.

LEGAL ANALYSIS

1. Labor Code §1700.4(b) defines "artists" to include, *inter alia*, "actors and actresses rendering services ... in the production of motion pictures" and "directors ... of motion picture productions" and "persons rendering professional services in ... television and other entertainment enterprises." BRITT is therefore an "artist within the meaning of Labor Code §1700.4(b).

2. The Labor Commissioner has jurisdiction to hear and determine this controversy pursuant to Labor Code §1700.44(a). *Styne v. Stevens* (2001) 26 Cal.4th 42, 54 {"When the Talent Agencies Act is invoked in the course of a contract dispute, the Commissioner has exclusive jurisidiction to determine ... whether the contract involved the services of a talent agency."]

3. Labor Code section 1700.4(a) defines "talent agency" as "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists." Labor Code §1700.5 provides that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license . . . from the Labor Commissioner." The Talent Agencies Act is a remedial statute; its purpose is to protect artists seeking professional employment from the abuses of talent agencies. For that reason, the overwhelming judicial authority supports the Labor Commissioner's historic enforcement policy, and holds that "[E]ven the incidental or occasional provision of such [procurement] services requires licensure." *Styne v. Stevens, supra,* 26 Cal.4th at 51. The evidence presented here leaves no doubt that Respondent HARRY WEISS, an individual dba WEISS AND ASSOCIATES, acted as a "talent agency" within the meaning of Labor Code §1700.4(a), and that by doing so, violated Labor Code §1700.5. WEISS acted as a talent agency by promising and offering to procure employment for BRITT as an "artist" in the adult entertainment industry, by attempting to procure such employment, and by actually procuring such employment for BRITT as a host on the television show "Lex in the City."

4. An agreement that violates the licensing requirement of the Talent Agencies Act is illegal and unenforceable. "Since the clear object of the Act is to prevent improper persons from becoming [talent agents] and to regulate such activity for the protection of the public, a contract between an unlicensed [agent] and an artist is void." *Buchwald v. Superior Court*

(1967) 254 Cal.App.2d 347, 351. Having determined that a person or business entity procured, promised or attempted to procure employment for an artist without the requisite talent agency license, "the [Labor] Commissioner may declare the contract [between the unlicensed agent and the artist] void and unenforceable as involving the services of an unlicensed person in violation of the Act." *Styne v. Stevens, supra,* 26 Cal.4th at 55. "[A]n agreement that violates the licensing requirement is illegal and unenforceable . . . ." *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246, 262. Moreover, the artist that is party to such an agreement may seek disgorgement of amounts paid pursuant to the agreement, and "may . . . [be] entitle[d] . . . to restitution of all fees paid the agent." *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. This remedy of restitution is, of course, subject to the one year limitations period set out at Labor Code §1700.44(c). Here, petitioner does not seek any restitution as presumably no payments were made to the respondent from one year prior to the date of the filing of the petition to determine controversy to the present, so that recovery of payments that were made is barred by the statute of limitations.

5. The very purpose of Personal Services Contract between WEISS and BRITT was to enable WEISS to procure artistic employment for BRITT, for which WEISS now seeks compensation through his superior court lawsuit. Under controlling case law, discussed above, there can be no question that because WEISS engaged in procurement activities without the requisite talent agency license, this Personal Services Contract is void *ab*

initio, and that WEISS has no enforceable rights thereunder.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that the Personal Services Contract between WEISS and BRITT is void *ab initio*, that WEISS has no enforceable rights thereunder, and that BRITT owes nothing to WEISS for any services that were provided pursuant to that Contract.

Dated: 10/12/05

MILES E. LOCKER
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 11/16/05

DONNA M. DELL
State Labor Commissioner

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

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

(Clifton Britt, et al v. Harry Weiss, et al)
(TAC 6-04)

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

On November 23, 2005, I served the following document:

DETERMINATION OF CONTROVERSY

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

GEORGE AKWO, ESQ.
21018 Osborne Street, Unit #2
Canoga Park, CA 91304

RONALD S. MILLER, ESQ.
Law Offices of Ronald S. Miller
24827 San Fernando Road, Suite 213
Santa Clarita, CA 91321

HARRY WEISS
Century Club
10131 Constellation Way
Century City, CA 90067

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 November 23, 2005, at San Francisco, California.

Mary Ann E. Galapon
MARY ANN E. GALAPON