

1 subsequent employment invoked paragraph 10 of the parties'
2 contract, enabling the petitioner to commission 10% of respondent's
3 DA BOOM CREW earnings.

4 Respondent filed his answer on December 13, 2004, denying
5 any commissions are owed in connection with his work on DA BOOM
6 CREW.

7 The hearing was held on September 28, 2005, in the Los
8 Angeles district office of the Labor Commissioner before the
9 undersigned attorney specially designated to hear this matter. The
10 petitioner appeared through their representative, President, Donna
11 Felten; respondent appeared through his counsel, Matthew Kaufman of
12 Harris & Kaufman.

13 Based upon the testimony, evidence and briefs presented
14 at this hearing, the Labor Commissioner adopts the following
15 Determination of Controversy.

16
17 FINDINGS OF FACT

18 1. On August 21, 2001, petitioner doing business as
19 Natural Talent, Inc., entered into a two-year written contract
20 whereby the petitioner would act as respondent's exclusive talent
21 agent for all work performed in the entertainment industry. The
22 respondent was an animator seeking employment opportunities in
23 television and theatrical animation. The contract provided that
24 the petitioner would assist in obtaining offers of employment and
25 negotiate contracts for the rendition of professional services in
26 all areas of entertainment. In return, the petitioner was to
27 receive 10% of respondent's earnings for work performed in the

1 entertainment industry.

2 2. On or around December 18, 2001, the petitioner
3 submitted the respondent for employment. The petitioner sent a
4 sample of respondent's work to Bruce Smith, an executive of
5 Hyperion Animation Company, Inc. As a result of the submission,
6 House was hired to work as director of animation for Hyperion's
7 animated television series, *The Proud Family*. During *The Proud*
8 *Family* engagement, petitioner worked with both Smith and *The Proud*
9 *Family's* production manager, Gillian Higgins. *The Proud Family*
10 engagement began on March 4, 2002 and ended on July 25, 2003. On
11 August 20, 2003, approximately four weeks after *The Proud Family*
12 concluded, the contract between the parties expired and the
13 respondent elected not to renew the contract.

14 3. Sometime after *The Proud Family* concluded, Bruce
15 Smith, working as executive director for Jambalaya Studios, a
16 subsidiary of Hyperion Animation Company, Inc., launched into his
17 next project, an animated television series titled *DA BOOM CREW*.
18 Jambalaya Studios co-produced the series with Berliner Film
19 Company Productions (BFC), and the two companies went into
20 production in April of 2004.

21 4. In or around February 2004, BFC Senior Vice
22 President of Productions, Michael Hefferon, began hiring the staff
23 for *DA BOOM CREW* and after considering several candidates, chose
24 the respondent as director of animation. At the request of
25 Hefferon, Bruce Smith directly contacted House to offer him the
26 director's position.

27 5. The animated series was produced in Germany which

1 required House to relocate to Berlin. House, who was unwilling to
2 relocate to Berlin, declined the position. Heffron insisted on
3 hiring House and arranged a conference call with Heffron, House and
4 Jillian Higgins, the line producer whom House had previously worked
5 with on *The Proud Family*. Heffron and Higgins were able to
6 alleviate House's concerns, and on April 1, 2004, House accepted
7 the position as *DA BOOM CREW's* director of animation.

8 6. The petitioner learned of Houses's new employment
9 arrangement and argued that her introductions of House to Smith and
10 Higgins invoked paragraph 10 of the parties' contract enabling the
11 petitioner to commission 10% of respondent's *DA BOOM CREW* earnings.

12 Paragraph 10 of the parties contract states:

13 "I hereby agree that in the event I
14 choose not to resign with NTI after
15 the expiration of this contract,
16 there is a contingency for a period
17 of one year which states that if I
18 approach any of the contacts that
19 were originally introduced to me by
20 NTI and a deal is negotiated and
21 closed then NTI shall be entitled to
22 10% commission on such deal."

23 7. The respondent terminated the parties' relationship
24 on August 20, 2003. The *DA BOOM CREW* engagement began production
25 in April 2004, during the one-year contingency period referenced in
26 paragraph 10, and consequently the petitioner seeks 10% of Houses's
27 *DA BOOM CREW* earnings.

CONCLUSIONS OF LAW

1. The central issue is whether the facts support the invocation of paragraph 10, entitling the petitioner to 10% of

1 respondent's *DA BOOM CREW* earnings. In short, did NTI introduce
2 House to Smith and Higgins and did House approach Smith or Higgins,
3 whom he had previously worked with on *The Proud Family*, resulting
4 in a *DA BOOM CREW* deal?

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

7 3. Respondent, as a director of animation for a
8 television series, is an "artist" within the meaning of Labor Code
9 §1700.4(b).

10 4. Labor Code §1700.23 provides that the Labor
11 Commissioner is vested with jurisdiction over "any controversy
12 between the artist and the talent agency relating to the terms of
13 the contract," and the Labor Commissioner's jurisdiction has been
14 held to include the resolution of contract claims brought by
15 artists or agents seeking damages for breach of a talent agency
16 contract. Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d
17 861, Robinson v. Superior Court (1950) 35 Cal.2d 379. Thus, the
18 Labor Commissioner has jurisdiction to determine this controversy
19 pursuant to Labor Code §1700.44(a).

20 5. The applicable provision contained within paragraph
21 10 of the contract states in pertinent part:

22 "I hereby agree that in the event I
23 choose not to resign with NTI after
24 the expiration of this contract,
25 there is a contingency for a period
26 of one year which states that if I
27 approach any of the contacts that
were originally introduced to me by
NTI and a deal is negotiated and
closed then NTI shall be entitled to
10% commission on such deal."

1 6. Few principles are more firmly established that in
2 construing a contract, "the whole of a contract is to be taken
3 together, so as to give effect to every part, if reasonably
4 practicable, each clause helping to interpret the other." Cal.
5 Civ. Code § 1641. Further, it must be presumed that "the parties
6 meant something by the language used." *Bradner v. Vasquez*, 102
7 Cal. App. 2d 338, 342, 227 P.2d 559 (1951). In sum:

8 Any contract must be construed as a
9 whole, with the various individual
10 provisions interpreted together so
11 as to give effect to all, if
12 reasonably possible or practicable.
13 [Citations] Courts must interpret
 contractual language in a manner
 which gives force and effect to
 every provision, and not in a way
 which renders some clauses nugatory,
 inoperative or meaningless.

14 *City of Atascadero v. Merrill Lynch, Pierce, Fenner &*
15 *Smith, Inc.*, 68 Cal.App.4th 445, 473, 80 Cal. Rptr. 2d 329 (1999)
16 (emphasis in the original).

17 7. Accordingly, a reading of paragraph 10 states that
18 an introduction must be made by the petitioner, and then the
19 **respondent must approach the contact** which results in a deal being
20 negotiated and closed. Paragraph 10 is clear in its meaning. "The
21 words of a contract are to be understood in their ordinary and
22 popular sense" Cal. Civ. Code § 1644.

23 8. The parties' testimony conflicted as to whether NTI
24 introduced House to Smith as House testified he worked with Smith
25 on an earlier project. It was clear that NTI introduced House to
26 Higgins who was intrinsically involved in House accepting the

27

1 position.

2 9. Whether the respondent approached anyone connected
3 with *DA BOOM CREW* became the central issue and proved very
4 problematic for the petitioner. The petitioner did not provide
5 evidence to support a finding that the respondent approached a
6 contact introduced by the petitioner. In fact, the petitioner does
7 not argue that House approached Smith or Higgins. Conversely, The
8 respondent provided ample evidence in the form of testimony and
9 documentary evidence which established that Jambalaya Studios and
10 Berliner Film Companie sought the respondent's services and not the
11 reverse. To cite but one example, Exhibit E attached to the
12 petitioner's petition, supports the respondent's position that
13 Higgins and Hefferon approached House. In fact, both parties
14 agreed that the respondent rejected Smith's offer and it was
15 Heffron and Higgins who ultimately persuaded House to accept the
16 position. In conclusion, House did not approach any contact made
17 by the petitioner and therefore paragraph 10 of the contract is
18 inapplicable.

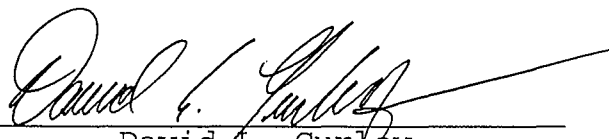
19 10. Moreover, to hold that the respondent may not
20 accept employment in his chosen field stemming from a third party's
21 direct offer would infringe on the petitioner's ability to make a
22 livelihood, thereby restricting the respondent's ability to be a
23 productive member of society. This conclusion cannot be
24 countenanced absent the clear contractual intent of the parties.

25 11. The petitioner has not met her burden of proof.
26 The proper burden of proof is found at Evidence Code §115 which
27 states, "[e]xcept as otherwise provided by law, the burden of proof

1 requires proof by preponderance of the evidence." Further, McCoy
2 v. Board of Retirement of the County of Los Angeles Employees
3 Retirement Association (1986) 183 Cal.App.3d 1044 at 1051 states,
4 "the party asserting the affirmative at an administrative hearing
5 has the burden of proof, including both the initial burden of going
6 forward and the burden of persuasion by preponderance of the
7 evidence (cite omitted). "Preponderance of the evidence" standard
8 of proof requires the trier of fact to believe that the existence
9 of a fact is more probable than its nonexistence. In re Michael G.
10 74 Cal.Rptr.2d 642, 63 Cal.App.4th 700. Here, the petitioner has
11 not established by a preponderance of the evidence that the
12 respondent approached anyone connected with *DA BOOM CREW* and the
13 petitioner is therefore not entitled to 10% of the respondent's
14 earnings stemming from *DA BOOM CREW*. As a result, the petitioner
15 is not entitled to a monetary recovery.

16 ORDER

17 For the above-stated reasons, IT IS HEREBY ORDERED that
18 the Petition is dismissed.

19
20 Dated: 11/30/05 
21 David L. Gurley
22 Attorney for the Labor Commissioner

23 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

24
25 Dated: 12/7/05 
26 Donna M. Dell
27 State Labor Commissioner

