

1 Robert W. Woods of Isaacman, Kaufman & Painter.

2 Based on the evidence presented at this hearing and on the other papers on file in this
3 matter, the Labor Commissioner hereby adopts the following decision.

4 **FINDINGS OF FACT**

5 1. Petitioner, an actor and model, is a resident of the State of California.

6 2. Respondents are not licensed as talent agents with the State of California
7 Labor Commissioner's Office.

8 3. In 2002, Petitioner was enrolled in an acting class in Studio City, California.
9 Each Thursday evening, the class instructor brought in different people from the
10 entertainment industry to meet the students. On one Thursday evening in October, 2002,
11 Respondent WARD, who was identified as a talent manager, was brought in as one of the
12 guests. After the class was over, Petitioner handed Respondent WARD his resume and head
13 shot and asked if he could read for him at a later date. In response, Respondent WARD
14 handed Petitioner his business card and told Petitioner that if he had not heard from him in a
15 couple of days, that he should give him a call. Respondent WARD called Petitioner a
16 couple of days later and set up a meeting at his office. At this meeting, Petitioner performed
17 an audition scene for Respondents. Soon thereafter, Respondents and Petitioner entered into
18 a written management agreement dated October 14, 2002.

19 4. At the time that Petitioner entered into the management agreement with
20 Respondents on October 14, 2002, Petitioner already had a commercial agent and a print
21 agent. Consequently, Petitioner testified that he informed Respondents that they would not
22 be entitled to commissions on print or commercial work. Respondents dispute that
23 commercial work was excluded from the list of activities they could commission.

24 5. On January 7, 2005, the parties entered into a renewal contract. Petitioner
25 testified that he had a similar conversation with Respondents regarding entitlement to
26 commissions for print or commercial work. Again, Respondents dispute that they were not
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1 Respondent WARD back writing, among other things, "I don't think that you honestly think
2 that any amount of training, advise, or coaching could have helped book a commercial in
3 which all we did was slate and take poloroids [sic]. Yet you still expect me to just pay you
4 commissions..." The e-mail ended with the following, "[h]owever if the money that I am
5 supposed to live on is being divided up so much that I can not afford to live above the
6 poverty level (less than 15,000. A year not eating out of the trash), then I have to make the
7 necessary changes to keep my buisness [sic] running smooth." There was testimony that
8 Respondent WARD responded to the e-mail by writing, "Do you believe in karma?"
9 However, it is unclear whether the parties spoke again before Petitioner filed the instant
10 petition on September 27, 2005.

11 9. In the petition, Petitioner alleges that Respondents acted as a talent agency by
12 attempting to procure and by procuring employment for him and requesting 15%
13 commissions on all jobs in film, television and commercials. Petitioner seeks a
14 determination that the renewal agreement dated January 7, 2005 is illegal and unenforceable
15 and that Petitioner does not owe any compensation to Respondents nor is he obligated to an
16 arbitration hearing.

17 LEGAL ANALYSIS

18 1. Petitioner is an "artist" within the meaning of Labor Code §1700.4(b).

19 2. Labor Code §1700.4(a) defines "talent agency" as "a person or corporation
20 who engages in the occupation of procuring, offering, promising, or attempting to procure
21 employment or engagements for an artist."

22 3. Labor Code §1700.5 provides that "[n]o person shall engage in or carry on the
23 occupation of a talent agency without first procuring a license...from the Labor
24 Commissioner."

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1 4. Petitioner has the burden of proving that Respondents unlawfully acted as
2 talent agents.

3 "The burden of proof is found at Evidence Code §115 which states,
4 '[e]xcept as otherwise provided by law, the burden of proof requires
5 proof by preponderance of the evidence.' Further, *McCoy v. Board*
6 *of Retirement of the County of Los Angeles Employees Retirement*
7 *Association* (1986) 183 Cal.App.3d 1044 at 1051 states, 'the party
8 asserting the affirmative at an administrative hearing has the burden
of proof, including both the initial burden of going forward and the
burden of persuasion by preponderance of the evidence.' (cite omitted)
**'Preponderance of the evidence' standard of proof requires the
trier of fact to believe that the existence of a fact is more probable
than its nonexistence.'**

9 *In re Michael G.* 74 Cal.Rptr.2d 642, 63 Cal.App.4th 700 [Emphasis added]; See also *Robi*
10 *v. Wolf*, TAC No. 29-00 at pp.6-7, *Behr v. Dauer*, TAC No. 21-00 at pp. 8-9.

11 We find that Petitioner has failed to meet this burden. Petitioner has not provided any
12 evidence of Respondents procuring or even attempting to procure a single engagement or
13 employment opportunity on his behalf. The only evidence provided by Petitioner is a cover
14 letter attached to the renewal contract, dated December 29, 2004, where Respondent WARD
15 writes, "we will continue to submit you and call Casting Directors to get into those doors."
16 This statement, without anything more, is insufficient to show that Respondents actually
17 procured or even attempted to procure any engagements or employment opportunities for
18 Petitioner. In fact, Petitioner admits that at all times relevant, he was represented by a
19 licensed talent agency. Moreover, the evidence presented shows that KSA was responsible
20 for booking employment and engagements for Petitioner. While it appears that Respondents
21 worked closely with KSA in coordinating the auditions KSA procured, this is permitted
22 under the Labor Code. Specifically, Labor Code §1700.44(d) provides: "It is not unlawful
23 for a person or corporation which is not licensed pursuant to this chapter to act in
24 conjunction with, and at the request of, a licensed talent agency in the negotiation of an
25 employment contract." Thus, to the extent that Respondents coordinated the various
26 auditions for Petitioner, we find that based on the evidenced presented, it was done at the

1 request of and in conjunction with KSA, which is a licensed talent agency.

2 4. Having found that Petitioner has not met his burden of proof, we deny the
3 petition.

4 **ORDER**

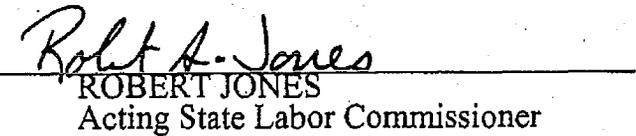
5 For the reasons set forth above, IT IS HEREBY DETERMINED that the Petition to
6 Determine Controversy filed by Petitioner is denied.

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9 Dated: February 6, 2007


EDNA GARCIA EARLEY
Special Hearing Officer

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12 **Adopted:**

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15 Dated: February 6, 2007


ROBERT JONES
Acting State Labor Commissioner