

1 **STATE OF CALIFORNIA**
2 Department of Industrial Relations
3 Division of Labor Standards Enforcement
4 EDNA GARCIA EARLEY, State Bar No. 195661
5 320 W. 4th Street, Suite 430
6 Los Angeles, California 90013
7 Tel.:(213) 897-1511
8 Fax: (213)897-2877

9 Attorney for the Labor Commissioner

10
11 **BEFORE THE LABOR COMMISSIONER**
12
13 **OF THE STATE OF CALIFORNIA**

14
15 NICOLLETTE SHERIDAN, An) Case No.: TAC 21-06
16 Individual; and STARLIKE)
17 ENTERPRISES, INC., A California) **DETERMINATION OF**
18 Corporation,) **CONTROVERSY**
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
29)
30)
31)
32)
33)
34)
35)
36)
37)
38)
39)
40)
41)
42)
43)
44)
45)
46)
47)
48)
49)
50)
51)
52)
53)
54)
55)
56)
57)
58)
59)
60)
61)
62)
63)
64)
65)
66)
67)
68)
69)
70)
71)
72)
73)
74)
75)
76)
77)
78)
79)
80)
81)
82)
83)
84)
85)
86)
87)
88)
89)
90)
91)
92)
93)
94)
95)
96)
97)
98)
99)
100)
101)
102)
103)
104)
105)
106)
107)
108)
109)
110)
111)
112)
113)
114)
115)
116)
117)
118)
119)
120)
121)
122)
123)
124)
125)
126)
127)
128)
129)
130)
131)
132)
133)
134)
135)
136)
137)
138)
139)
140)
141)
142)
143)
144)
145)
146)
147)
148)
149)
150)
151)
152)
153)
154)
155)
156)
157)
158)
159)
160)
161)
162)
163)
164)
165)
166)
167)
168)
169)
170)
171)
172)
173)
174)
175)
176)
177)
178)
179)
180)
181)
182)
183)
184)
185)
186)
187)
188)
189)
190)
191)
192)
193)
194)
195)
196)
197)
198)
199)
200)
201)
202)
203)
204)
205)
206)
207)
208)
209)
210)
211)
212)
213)
214)
215)
216)
217)
218)
219)
220)
221)
222)
223)
224)
225)
226)
227)
228)
229)
230)
231)
232)
233)
234)
235)
236)
237)
238)
239)
240)
241)
242)
243)
244)
245)
246)
247)
248)
249)
250)
251)
252)
253)
254)
255)
256)
257)
258)
259)
260)
261)
262)
263)
264)
265)
266)
267)
268)
269)
270)
271)
272)
273)
274)
275)
276)
277)
278)
279)
280)
281)
282)
283)
284)
285)
286)
287)
288)
289)
290)
291)
292)
293)
294)
295)
296)
297)
298)
299)
300)
301)
302)
303)
304)
305)
306)
307)
308)
309)
310)
311)
312)
313)
314)
315)
316)
317)
318)
319)
320)
321)
322)
323)
324)
325)
326)
327)
328)
329)
330)
331)
332)
333)
334)
335)
336)
337)
338)
339)
340)
341)
342)
343)
344)
345)
346)
347)
348)
349)
350)
351)
352)
353)
354)
355)
356)
357)
358)
359)
360)
361)
362)
363)
364)
365)
366)
367)
368)
369)
370)
371)
372)
373)
374)
375)
376)
377)
378)
379)
380)
381)
382)
383)
384)
385)
386)
387)
388)
389)
390)
391)
392)
393)
394)
395)
396)
397)
398)
399)
400)
401)
402)
403)
404)
405)
406)
407)
408)
409)
410)
411)
412)
413)
414)
415)
416)
417)
418)
419)
420)
421)
422)
423)
424)
425)
426)
427)
428)
429)
430)
431)
432)
433)
434)
435)
436)
437)
438)
439)
440)
441)
442)
443)
444)
445)
446)
447)
448)
449)
450)
451)
452)
453)
454)
455)
456)
457)
458)
459)
460)
461)
462)
463)
464)
465)
466)
467)
468)
469)
470)
471)
472)
473)
474)
475)
476)
477)
478)
479)
480)
481)
482)
483)
484)
485)
486)
487)
488)
489)
490)
491)
492)
493)
494)
495)
496)
497)
498)
499)
500)
501)
502)
503)
504)
505)
506)
507)
508)
509)
510)
511)
512)
513)
514)
515)
516)
517)
518)
519)
520)
521)
522)
523)
524)
525)
526)
527)
528)
529)
530)
531)
532)
533)
534)
535)
536)
537)
538)
539)
540)
541)
542)
543)
544)
545)
546)
547)
548)
549)
550)
551)
552)
553)
554)
555)
556)
557)
558)
559)
560)
561)
562)
563)
564)
565)
566)
567)
568)
569)
570)
571)
572)
573)
574)
575)
576)
577)
578)
579)
580)
581)
582)
583)
584)
585)
586)
587)
588)
589)
590)
591)
592)
593)
594)
595)
596)
597)
598)
599)
600)
601)
602)
603)
604)
605)
606)
607)
608)
609)
610)
611)
612)
613)
614)
615)
616)
617)
618)
619)
620)
621)
622)
623)
624)
625)
626)
627)
628)
629)
630)
631)
632)
633)
634)
635)
636)
637)
638)
639)
640)
641)
642)
643)
644)
645)
646)
647)
648)
649)
650)
651)
652)
653)
654)
655)
656)
657)
658)
659)
660)
661)
662)
663)
664)
665)
666)
667)
668)
669)
670)
671)
672)
673)
674)
675)
676)
677)
678)
679)
680)
681)
682)
683)
684)
685)
686)
687)
688)
689)
690)
691)
692)
693)
694)
695)
696)
697)
698)
699)
700)
701)
702)
703)
704)
705)
706)
707)
708)
709)
710)
711)
712)
713)
714)
715)
716)
717)
718)
719)
720)
721)
722)
723)
724)
725)
726)
727)
728)
729)
730)
731)
732)
733)
734)
735)
736)
737)
738)
739)
740)
741)
742)
743)
744)
745)
746)
747)
748)
749)
750)
751)
752)
753)
754)
755)
756)
757)
758)
759)
760)
761)
762)
763)
764)
765)
766)
767)
768)
769)
770)
771)
772)
773)
774)
775)
776)
777)
778)
779)
780)
781)
782)
783)
784)
785)
786)
787)
788)
789)
790)
791)
792)
793)
794)
795)
796)
797)
798)
799)
800)
801)
802)
803)
804)
805)
806)
807)
808)
809)
810)
811)
812)
813)
814)
815)
816)
817)
818)
819)
820)
821)
822)
823)
824)
825)
826)
827)
828)
829)
830)
831)
832)
833)
834)
835)
836)
837)
838)
839)
840)
841)
842)
843)
844)
845)
846)
847)
848)
849)
850)
851)
852)
853)
854)
855)
856)
857)
858)
859)
860)
861)
862)
863)
864)
865)
866)
867)
868)
869)
870)
871)
872)
873)
874)
875)
876)
877)
878)
879)
880)
881)
882)
883)
884)
885)
886)
887)
888)
889)
890)
891)
892)
893)
894)
895)
896)
897)
898)
899)
900)
901)
902)
903)
904)
905)
906)
907)
908)
909)
910)
911)
912)
913)
914)
915)
916)
917)
918)
919)
920)
921)
922)
923)
924)
925)
926)
927)
928)
929)
930)
931)
932)
933)
934)
935)
936)
937)
938)
939)
940)
941)
942)
943)
944)
945)
946)
947)
948)
949)
950)
951)
952)
953)
954)
955)
956)
957)
958)
959)
960)
961)
962)
963)
964)
965)
966)
967)
968)
969)
970)
971)
972)
973)
974)
975)
976)
977)
978)
979)
980)
981)
982)
983)
984)
985)
986)
987)
988)
989)
990)
991)
992)
993)
994)
995)
996)
997)
998)
999)
1000)
1001)
1002)
1003)
1004)
1005)
1006)
1007)
1008)
1009)
1010)
1011)
1012)
1013)
1014)
1015)
1016)
1017)
1018)
1019)
1020)
1021)
1022)
1023)
1024)
1025)
1026)
1027)
1028)
1029)
1030)
1031)
1032)
1033)
1034)
1035)
1036)
1037)
1038)
1039)
1040)
1041)
1042)
1043)
1044)
1045)
1046)
1047)
1048)
1049)
1050)
1051)
1052)
1053)
1054)
1055)
1056)
1057)
1058)
1059)
1060)
1061)
1062)
1063)
1064)
1065)
1066)
1067)
1068)
1069)
1070)
1071)
1072)
1073)
1074)
1075)
1076)
1077)
1078)
1079)
1080)
1081)
1082)
1083)
1084)
1085)
1086)
1087)
1088)
1089)
1090)
1091)
1092)
1093)
1094)
1095)
1096)
1097)
1098)
1099)
1100)
1101)
1102)
1103)
1104)
1105)
1106)
1107)
1108)
1109)
1110)
1111)
1112)
1113)
1114)
1115)
1116)
1117)
1118)
1119)
1120)
1121)
1122)
1123)
1124)
1125)
1126)
1127)
1128)
1129)
1130)
1131)
1132)
1133)
1134)
1135)
1136)
1137)
1138)
1139)
1140)
1141)
1142)
1143)
1144)
1145)
1146)
1147)
1148)
1149)
1150)
1151)
1152)
1153)
1154)
1155)
1156)
1157)
1158)
1159)
1160)
1161)
1162)
1163)
1164)
1165)
1166)
1167)
1168)
1169)
1170)
1171)
1172)
1173)
1174)
1175)
1176)
1177)
1178)
1179)
1180)
1181)
1182)
1183)
1184)
1185)
1186)
1187)
1188)
1189)
1190)
1191)
1192)
1193)
1194)
1195)
1196)
1197)
1198)
1199)
1200)
1201)
1202)
1203)
1204)
1205)
1206)
1207)
1208)
1209)
1210)
1211)
1212)
1213)
1214)
1215)
1216)
1217)
1218)
1219)
1220)
1221)
1222)
1223)
1224)
1225)
1226)
1227)
1228)
1229)
1230)
1231)
1232)
1233)
1234)
1235)
1236)
1237)
1238)
1239)
1240)
1241)
1242)
1243)
1244)
1245)
1246)
1247)
1248)
1249)
1250)
1251)
1252)
1253)
1254)
1255)
1256)
1257)
1258)
1259)
1260)
1261)
1262)
1263)
1264)
1265)
1266)
1267)
1268)
1269)
1270)
1271)
1272)
1273)
1274)
1275)
1276)
1277)
1278)
1279)
1280)
1281)
1282)
1283)
1284)
1285)
1286)
1287)
1288)
1289)
1290)
1291)
1292)
1293)
1294)
1295)
1296)
1297)
1298)
1299)
1300)
1301)
1302)
1303)
1304)
1305)
1306)
1307)
1308)
1309)
1310)
1311)
1312)
1313)
1314)
1315)
1316)
1317)
1318)
1319)
1320)
1321)
1322)
1323)
1324)
1325)
1326)
1327)
1328)
1329)
1330)
1331)
1332)
1333)
1334)
1335)
1336)
1337)
1338)
1339)
1340)
1341)
1342)
1343)
1344)
1345)
1346)
1347)
1348)
1349)
1350)
1351)
1352)
1353)
1354)
1355)
1356)
1357)
1358)
1359)
1360)
1361)
1362)
1363)
1364)
1365)
1366)
1367)
1368)
1369)
1370)
1371)
1372)
1373)
1374)
1375)
1376)
1377)
1378)
1379)
1380)
1381)
1382)
1383)
1384)
1385)
1386)
1387)
1388)
1389)
1390)
1391)
1392)
1393)
1394)
1395)
1396)
1397)
1398)
1399)
1400)
1401)
1402)
1403)
1404)
1405)
1406)
1407)
1408)
1409)
1410)
1411)
1412)
1413)
1414)
1415)
1416)
1417)
1418)
1419)
1420)
1421)
1422)
1423)
1424)
1425)
1426)
1427)
1428)
1429)
1430)
1431)
1432)
1433)
1434)
1435)
1436)
1437)
1438)
1439)
1440)
1441)
1442)
1443)
1444)
1445)
1446)
1447)
1448)
1449)
1450)
1451)
1452)
1453)
1454)
1455)
1456)
1457)
1458)
1459)
1460)
1461)
1462)
1463)
1464)
1465)
1466)
1467)
1468)
1469)
1470)
1471)
1472)
1473)
1474)
1475)
1476)
1477)
1478)
1479)
1480)
1481)
1482)
1483)
1484)
1485)
1486)
1487)
1488)
1489)
1490)
1491)
1492)
1493)
1494)
1495)
1496)
1497)
1498)
1499)
1500)
1501)
1502)
1503)
1504)
1505)
1506)
1507)
1508)
1509)
1510)
1511)
1512)
1513)
1514)
1515)
1516)
1517)
1518)
1519)
1520)
1521)
1522)
1523)
1524)
1525)
1526)
1527)
1528)
1529)
1530)
1531)
1532)
1533)
1534)
1535)
1536)
1537)
1538)
1539)
1540)
1541)
1542)
1543)
1544)
1545)
1546)
1547)
1548)
1549)
1550)
1551)
1552)
1553)
1554)
1555)
1556)
1557)
1558)
1559)
1560)
1561)
1562)
1563)
1564)
1565)
1566)
1567)
1568)
1569)
1570)
1571)
1572)
1573)
1574)
1575)
1576)
1577)
1578)
1579)
1580)
1581)
1582)
1583)
1584)
1585)
1586)
1587)
1588)
1589)
1590)
1591)
1592)
1593)
1594)
1595)
1596)
1597)
1598)
1599)
1600)
1601)
1602)
1603)
1604)
1605)
1606)
1607)
1608)
1609)
1610)
1611)
1612)
1613)
1614)
1615)
1616)
1617)
1618)
1619)
1620)
1621)
1622)
1623)
1624)
1625)
1626)
1627)
1628)
1629)
1630)
1631)
1632)
1633)
1634)
1635)
1636)
1637)
1638)
1639)
1640)
1641)
1642)
1643)
1644)
1645)
1646)
1647)
1648)
1649)
1650)
1651)<

1 YOCHES, INC., A California Corporation dba BAYONEE ENTERTAINMENT; and
2 ROB LEE, An Individual, appeared and were represented by Joseph P. Costa, Esq. and
3 Charles M. Coate, Esq. of Costa, Abrams & Coate. In addition to Petitioner Nicollette
4 Sheridan and Respondent Rob Lee, Eric Tannenbaum, Peter Young, Henry Cohen,
5 Michael Edelstein, Julia Buchwald and Peter Traugott all appeared as witnesses.
6

7
8 Based on the evidence presented at this hearing and on the other papers on file in
9 this matter, the Labor Commissioner hereby adopts the following decision.

10 **FINDINGS OF FACT**

11
12 Petitioner Nicollette Sheridan is an artist who currently stars in the television
13 series "Desperate Housewives." Petitioner Starlike Enterprises, Inc., A California
14 Corporation, is Ms. Sheridan's loan out company. (Petitioners will hereinafter,
15 collectively be referred to as "Petitioner"). Respondent Rob Lee is the owner of Yoches
16 Inc. which does business as Bayonne Entertainment. (Respondents will hereinafter,
17 collectively be referred to as "Respondent"). In addition to being a personal manager, in
18 2003, Respondent, who is a former attorney, was also acting as a producer, primarily in
19 the television business. During this time, Respondent was not a licensed talent agent.
20
21

22 In or about May 2003, Petitioner and Respondent, who had previously been
23 acquaintances, entered into a management agreement. The management agreement
24 between the parties was oral and didn't include many terms. Notwithstanding, the parties
25 gave conflicting testimony on their agreement with respect to entitlement of
26 commissions. Petitioner testified that she promised to pay Respondent 10% of her
27 earnings as long as they worked together. In contrast, Respondent testified that the
28

1 parties agreed he would continue receiving commissions on any deals that he made
2 during the term. Additionally, Respondent testified that as a prerequisite to working as
3 Petitioner's manager, he first needed to find a licensed talent agent to represent
4 Petitioner. This testimony was also disputed by Petitioner. Nonetheless, prior to
5 October, 2003, Petitioner agreed to be represented by licensed talent agents, Don
6 Buchwald & Associates. Petitioner terminated her representation with Respondent in
7 November, 2004.
8

9
10 During the period of October 23, 2003 to November, 2004, as Petitioner's
11 personal manager, Respondent arranged meetings for Petitioner with various television
12 producers and other professionals in the entertainment industry. Additionally,
13 Respondent actively participated in negotiations with ABC Touchstone Television to
14 obtain Petitioner her current role on the hit series "Desperate Housewives." Petitioner
15 paid Respondent 10% commissions of her earnings up until the point she terminated him
16 despite stating in a letter to him that she would continue paying him commissions for the
17 remainder of the first season. Petitioner has filed this petition seeking a determination
18 that the oral management agreement between the parties is void *ab initio* since
19 Respondent promised to procure, attempted to procure and procured employment for her
20 without having been licensed as a talent agent in violation of the California Talent
21 Agencies Act, (hereinafter, "Act"). Respondent's position is that any alleged acts of
22 procurement were done at the request of and in conjunction with Petitioner's licensed
23 talent agents.
24
25
26
27
28

///

1 **Meeting with Eric Tannenbaum**

2 Petitioner contends that Respondent's first violation of the Act occurred when he
3 set up a November 4, 2003 meeting with Eric Tannenbaum, a producer for his own
4 company, The Tannenbaum Company, based at Warner Brothers and Executive Producer
5 of the television series "Two and a Half Men." The meeting took place at Mr.
6 Tannenbaum's office and was attended by Mr. Tannenbaum, his wife, Kim Tannenbaum,
7 Petitioner and Respondent. Petitioner testified that the purpose of this meeting was to
8 discuss two projects for her to appear as an actress. The first project was for Petitioner to
9 appear on an "arc"¹ on Two and a Half Men. The second project was to discuss a show
10 that Petitioner had created called "My Mother Myself" which would star Petitioner and
11 which the Tannenbaums might be interested in producing.
12

13 Respondent, on the other hand, testified that the purpose of the meeting was for
14 Petitioner to be introduced to the Tannenbaums who were good friends of his. Moreover,
15 Respondent testified that he took the meeting on behalf of Petitioner's licensed talent
16 agent, Julia Buchwald of Don Buchwald & Associates, and with her authorization. With
17 regard to the two projects discussed at the meeting, Respondent explained: "...when you
18 go into a meeting like that, even though it's a meet and greet, you try to figure out at least
19 a couple of things to talk about." (Reporter's Transcript 40:6-9)² Additionally,
20
21
22
23
24
25
26

27 ¹ The parties described an "arc" as when a character comes on a show for multiple episodes.

28 ² All future references to the Reporter's Transcript will be indicated by the abbreviations, "R.T" followed by the page and line numbers.

1 Respondent testified that there was no specific role or audition on "Two and a Half Men"
2 that was discussed and that future employment was purely speculative.
3

4 Mr. Tannenbaum testified at this hearing that Respondent contacted him to discuss
5 his client Nicollette Sheridan. When asked what Respondent told him about his
6 relationship with Petitioner, Mr. Tannenbaum responded: "To the best of my recollection,
7 he was representing her, they were talking about a bunch of different things and trying to
8 find the right situation for her. And I'm sure we talked about her show and – maybe
9 talked about having Nicollette be on 'Two and a Half Men'." (R.T. 69:22-70:2)
10 Additionally, when asked if he recalled discussing the "My Mother Myself" project at
11 this meeting, Mr. Tannenbaum testified that Petitioner pitched the project to him and that
12 it was a project that the Tannenbaum Company would produce which would star
13 Petitioner. (See R.T. 71:13-23).
14
15
16

17 Mr. Tannenbaum also testified that no talent agent was present at the meeting but
18 that he recalled speaking to Julia Buchwald right afterwards. (R.T. 79:15 and 79:25-
19 80:5). Julia Buchwald testified at this hearing that it was not her idea to set up the
20 meeting with Mr. Tannenbaum. (R.T.160:6-5). Significantly, she stated that she could
21 not remember if she learned about the meeting with Mr. Tannenbaum before or after the
22 meeting. (R.T. 145:9-14 and 159:10-13). Moreover, she testified that she had never
23 suggested setting up such meeting prior to Respondent setting it up. (R.T. 160:6-11).
24
25

26 Both parties testified that no specific role, audition or employment opportunity
27 involving the Tannenbaums and the show "Two and a Half Men" or Petitioner's project,
28 "My Mother Myself" followed this meeting.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Meeting with Peter Golden

Ten days after meeting with the Tannenbaums, Respondent set up a meeting for Petitioner with Peter Golden who was in charge of casting for CBS television projects. Per Petitioner, this meeting was set up to discuss what projects Mr. Golden had that she could be right for and to her knowledge, no agent was involved in setting this meeting up. However, when asked about this meeting, Respondent couldn't recall even taking the meeting.

Meeting with Hank Cohen, President of Worldwide Television for MGM

Respondent testified that during the same time he was representing Petitioner as her manager, he was also working as a consultant with Hank Cohen, President of Worldwide Television for MGM. At the time, MGM was producing Stargate Atlantis, a television series being shot in Vancouver. Respondent testified that at Mr. Cohen's request, he set up a meeting with Petitioner for the purpose of Petitioner possibly appearing on the television series. The meeting took place between Petitioner, Respondent and Mr. Cohen.

Mr. Cohen testified that when he first brought up Petitioner's name to Respondent, it was while Respondent was providing consulting services to him. Mr. Cohen had received a list of actors from his casting director. The list included Petitioner's name and as he typically would do, Mr. Cohen asked Respondent if he knew Petitioner. Respondent answered that Petitioner was a friend and a neighbor but did not inform him that he also represented Petitioner as her manager or that she had a licensed talent agent he should contact. Rather, Respondent agreed to set up a meeting between the three.

1 Mr. Cohen admitted that the meeting was set up to discuss the possibility of Petitioner
2 appearing in one of the roles in Stargate Atlantis. Furthermore, Mr. Cohen testified that
3 no talent agents ever contacted him before or after the meeting and that he had no further
4 communications with Petitioner about the role, after their meeting.
5

6 Julia Buchwald testified that she never suggested Respondent set up a meeting
7 with Mr. Cohen. (R.T.160:16-19).
8

9 **Meeting with Peter Traugott of Brillstein-Grey Productions at the Polo Lounge**

10 Petitioner testified that Respondent set up this meeting with Peter Traugott, a
11 producer at Brillstein-Grey Productions for the purpose of pitching "My Mother Myself"
12 to Brillstein-Grey to produce and for her to star in. In fact, Petitioner testified that
13 Respondent asked her to write her pitch down on paper, which she did and which she
14 brought to the meeting.
15
16

17 Respondent testified that as with the Eric Tannenbaum meeting, Respondent set up
18 a meeting for Petitioner to meet Peter Traugott, a producer at Brillstein-Grey Productions.
19 The meeting took place over drinks at the Polo Lounge in the Beverly Hills Hotel. When
20 asked by Petitioner's attorney if he set up the meeting because he wanted Mr. Traugott or
21 Brillstein-Grey to try to possibly employ Petitioner in the future, Respondent answered:
22

23 "Well, my - - you know, again, it goes to what my job is as
24 a manager. And that is I get - - I'm supposed to support
25 someone's career. And with the agency knowing what I'm
26 doing and knowing that I have a primary relationship, you
27 know, with Peter, so I coordinated that meeting and certainly
28 wanted to create a positive atmosphere where something down
the road could happen. And if it did, obviously the agency
would then be involved in a primary way of handling that
matter. I think that's at least the way I should be doing my

1 job as a manager.” R.T. 52:6-18.

2
3 Furthermore, Respondent testified that Julia Buchwald was aware of virtually any
4 meeting he had and was always invited to those meetings. However, Ms. Buchwald
5 testified that she had no knowledge that her agency tried to set up any potential
6 employment for Petitioner on “My Mother Myself,” (R.T. 158:19-22), and also testified
7 the she never suggested such meeting be set up with Mr. Traugott. (R.T. 160:20-23).
8

9 Mr. Traugott testified that he understood the meeting to be a “general meeting.”

10 He described his understanding of such a meeting as such:

11
12 “The other term that we use is ‘general meeting.’ Come say hello,
13 meet my client. Happens all the time with writers as well as actors.
14 And it’s a get to know you, general “hi, how are you, where you
15 from? Maybe there’s something we can do together in the future.”
R.T. 176:6-11.

16 Furthermore, he did not recall ever talking to a talent agent about the meeting, which he
17 admits was set up by Respondent.
18

19 **Desperate Housewives**

20 Petitioner was informed about the Desperate Housewives pilot from the Don
21 Buchwald Agency. She initially went in and auditioned for the role of “Bree” now
22 played by Marcia Cross. However, she received a guest role as “Edie.” After the pilot
23 was picked up as a series by the network, she was then offered a regular recurring role
24 on the series as “Edie.” Initially she was offered \$12,000 an episode for the first season.
25 This offer was communicated to both Respondent and the Don Buchwald Agency talent
26 agent handling the negotiations, Peter Young. The offer came in on a Thursday or Friday
27
28

1 right before the up-fronts for the 2004 television season, which were scheduled to take
2 place in New York the following Tuesday.³ As such, it was imperative that whatever
3 negotiations needed to take place on behalf of Petitioner with ABC and Touchstone
4 Pictures, were completed by Sunday so that Petitioner could fly to New York on Monday.
5 Petitioner testified that at some point during the negotiations, she became extremely
6 frustrated with the numbers her agent Mr. Young was negotiating for her as a salary. As
7 such, she turned to Respondent who had informed her that he had a relationship with
8 Michael Edelstein, the Executive Producer of Desperate Housewives and Mark Pedowitz,
9 President of Touchstone Television. Per Petitioner, Respondent was responsible for
10 raising her salary up to \$25,000 an episode even though it was Mr. Young who closed the
11 deal with Francisco Arias, the attorney for ABC business affairs.
12
13
14

15
16 Mr. Young testified that he negotiated Petitioner's salary on the pilot of Desperate
17 Housewives and again on the series after it was picked up. He also testified that the
18 negotiations on the series were done only with Mr. Arias and that he was in constant
19 communication with both Petitioner and Respondent throughout the negotiations.
20

21 Michael Edelstein, Executive Producer of Desperate Housewives testified that it
22 was deemed necessary that Petitioner's deal get finalized before the up-fronts in order to
23 announce her as being part of the cast. Furthermore, Mr. Edelstein testified that he had
24 direct negotiations with Respondent regarding the financial terms for Petitioner. Notably,
25 he testified that prior to the weekend, the parties had not reached an agreement to pay
26
27
28

³ The up-fronts are when the shows that are on the fall schedules are presented to advertisers.

1 Petitioner \$25,000 per episode but that Respondent worked very aggressively on
2 Petitioner's behalf to get her the job at this rate of pay. Mr. Edelstein also explained that
3 Mr. Arias was the business affairs executive responsible for closing the deals for
4 Touchstone Television and that he understood that Petitioner's talent agent was working
5 with Mr. Arias to close the deal. Mr. Edelstein explained what occurred that weekend
6 before the up-fronts:
7

8
9 "During that time, because it was a weekend, I spoke with
10 her representatives and was the conduit to the studio. And
11 it sort of went above Francisco's head. And I went directly
12 with the head of business affairs. I went to Mark Pedowitz,
13 who was the head of the studio. So it was sort of me acting
14 as the negotiator for the show leaving Francisco to dot the i's
15 and cross the t's." (R.T. 126:8-16)

16 When asked which representatives of Petitioner's he spoke with during that weekend, Mr.
17 Edelstein testified that in addition to speaking with Respondent, he believed he also
18 spoke to an agent, (R.T. 127:2-10), but then admitted on cross examination that he did
19 not have a specific recollection as to having had discussions with Peter Young that
20 weekend. (R.T. 128:6-13).

21 Julia Buchwald testified that her agency informed Petitioner about the role and
22 assumed negotiations on the pilot and regular season. Per Ms. Buchwald, Peter Young
23 was the agent handling the negotiations for the agency.
24

25 **Promise To Procure Employment**

26 Petitioner also argues that Respondent promised to procure employment for her as
27 evidenced in a letter dated November 17, 2004 in which he states, "I have been
28 contacting top notch feature and television producers and talking about you endlessly."

1 However, Respondent testified that while this statement was true, it was done in
2 conjunction with the Buchwald agency.
3

4 Legal Analysis

5 1. Petitioner, an actress, is an artist as defined in Labor Code §1700.4(b).

6 2. At all times relevant herein, Respondent was not licensed as a talent
7 agency.
8

9 3. Labor Code §1700.5 provides that “no person shall engage in or carry on
10 the occupation of a talent agency without first procuring a license therefore from the
11 Labor Commissioner.” The term “talent agency” is defined at Labor Code §1700.4(a) as
12 a “person or corporation who engages in the occupation of procuring, offering, promising
13 or attempting to procure employment or engagements for an artist or artists, except that
14 the activities of procuring, offering or promising to procure recording contracts for an
15 artist or artists shall not of itself subject a person or corporation to regulation and
16 licensing.”
17
18

19 4. This case raises the issue of how far a manager can go in promoting his
20 client before violating the Act. In *Waisbren v. Peppercorn Productions, Inc.* (1995) 41
21 Cal.App.4th 246, the Court of Appeal discussed the role of a personal manager as
22 compared to a talent agent. In doing so, the court noted:
23

24 “Unlike a talent agent, a ‘personal manager’ is not covered by the Act or
25 any other statutory licensing scheme. ‘Artists typically engage personal
26 managers in addition to talent agents... [¶]...In essence, the primary
27 function of the personal manager is that of advising, counselling [sic],
28 directing and coordinating the artist in the development of the artist’s
career. The manager’s task encompasses matters of both business and
personal significance. As business advisors, they might attend to the

1 artist's finances, and they routinely organize the economic elements of the
2 artist's personal and creative life necessary to bring the client's product to
3 fruition. The personal manager frequently lends money to the neophyte
4 artist, thereby speculating on a return from the artist's anticipated future
5 earnings. The manager also serves as a liaison between the artist and other
6 personal representatives, arranging their interactions with, and transactions
7 on behalf of, the artist. On a more personal level, the manager often serves
8 as the artist's confidant and alter ego...By orchestrating and monitoring the
9 many aspects of the artist's personal and business life, the personal
10 manager gives the artist time to be an artist. That is, managers liberate
11 artists from burdensome yet essential business and logistical concerns so
12 that artists have the requisite freedom to discharge their artistic function
13 and to concentrate on their immediate creative task...In this regard, the
14 personal manager is an indispensable element of an artist's career."

15
16 As a practical matter, personal managers may occasionally find themselves
17 in situations where they would like to procure employment for their
18 clients."

19 The issue before the *Waisbren* court was whether a person needs to be licensed
20 under the Act if he occasionally procures employment for the artist. The court concluded
21 that a person procuring employment for an artist, even if incidental or occasional, must be
22 licensed as a talent agent. However, as the court noted, there is a very limited exception
23 to this rule found in Labor Code §1700.44(d) which provides that "it is not unlawful for a
24 person or corporation which is not licensed pursuant to this chapter to act in conjunction
25 with, and at the request of, a licensed talent agency in the negotiation of an employment
26 contract."

27 **Meetings Set Up with Eric Tannenbaum, Peter Traugott,**

28 **Hank Cohen and Peter Golden,**

5. Respondent first argues that the meetings he set up with entertainment

1 executives for Petitioner were well within his role as a spokesperson for Petitioner. By
2 setting up these meetings, he was networking for her and trying to get face time with his
3 client in front of people who at some future time may be able to present a role to
4 Petitioner. Moreover, he relies on *Buchwald, supra*, for the proposition that when
5 interpreting statutes, you have to give a reasonable and commonsense construction in
6 accordance with the apparent purpose and intention of the lawmakers, one that is
7 practical rather than technical, and that will lead to wise policy rather than to mischief or
8 absurdity. Thus, he argues that if the Labor Commissioner were to take the position that
9 any time a manager pumps up his client in front of someone else and talks about how
10 great they are, if that person is in the entertainment business it triggers a complete
11 forfeiture, would amount to a unreasonable interpretation of the Act. Additionally, he
12 argues that in none of the meetings he set up for Petitioner was there a role or did the
13 parties engage in discussions about compensation.

18 6. While we agree that we must give a reasonable and commonsense
19 interpretation of the Act, we find that in setting up most of the meetings with
20 entertainment executives, Respondent was acting outside his scope of a manager.
21 Respondent does not deny that these meetings were made for the purpose of obtaining
22 future work for Petitioner. After all, what other purpose would there be for Petitioner to
23 meet with producers to discuss appearing on their shows or potentially producing her
24 project, which she also planned on starring in? Eric Tannenbaum admitted that he
25 discussed Petitioner possibly acting in an arc on his show, "Two and a Half Men."
26 Furthermore, he testified that Petitioner pitched her project, "My Mother Myself" to him
27
28

1 at the meeting. Clearly this was done in attempts to work with Mr. Tannenbaum. As
2 such, we have held that initiating or attending meetings with executives in order to
3 advertise the artist's talent and make them aware of the artist's availability violates the
4 Act. *Sevano v. Artistic Productions, Inc.*, TAC 8-93, p.5. See also, *Anderson v. D'Avola*,
5 TAC 63-93, at p. 10 [discussions with producers or casting directors in an attempt to
6 obtain auditions for an artist violates the Talent Agencies Act] and *Baker v. BNB*
7 *Associates, Ltd.*, TAC 12-96 at 3,6 [manager secured "promotional" television
8 engagements for artist on, among other things, various awards shows].

9
10
11
12 7. Respondent next argues that if his meeting with Mr. Tannenbaum is
13 considered an attempt to procure employment for Petitioner, he is still not in violation of
14 the Act since he acted in conjunction with Julia Buchwald when setting up this and all
15 other meetings.

16
17 We have consistently held that to qualify under the express provisions of Labor
18 Code §1700.44(d), the manager must prove that he or she acted both "at the request of"
19 and "in conjunction with" a licensed talent agent. While Respondent and Julia Buchwald
20 may have communicated several times a week with regard to Petitioner and thus worked
21 in conjunction with each other, no proof was submitted that Ms. Buchwald requested that
22 Respondent set up the meeting with Mr. Tannenbaum. In fact, Ms. Buchwald testified
23 that it was not her idea to set up this meeting and that she could not remember if she was
24 told about it before or after the meeting. Thus, Respondent has not met his burden in
25 establishing that such meeting was done *at the request* of Ms. Buchwald.

26
27
28 8. Likewise, Respondent did not meet his burden in establishing that the

1 meeting set up with Peter Traugott of Brillstein-Grey Productions at the Polo Lounge
2 where Petitioner pitched her project, "My Mother Myself," was done *at the request of*
3 anyone from the Don Buchwald Agency. While Respondent testified that the agency
4 knew what he was doing and that the agency would be involved if an engagement or
5 opportunity was presented to Petitioner, Ms. Buchwald testified that she had no
6 knowledge that her agency tried to set up *any* potential employment for Petitioner on
7 Petitioner's "My Mother Myself" project and significantly, that she had not suggested
8 setting up this meeting with Mr. Traugott.
9

10
11 9. In regards to the Hank Cohen meeting, we do find that Mr. Cohen
12 requested Respondent, in his consulting capacity, to set up a meeting with Petitioner.
13 Mr. Cohen testified that he did not know that Respondent was also serving as Petitioner's
14 personal manager at the time. However, we find it troublesome that Respondent didn't
15 mention his managerial role to Mr. Cohen. We also find that by not referring Mr. Cohen
16 to the Don Buchwald Agency, Respondent did not separate his two roles as consultant
17 and manager. We think Respondent could have fulfilled his role as a consultant by
18 discussing with Mr. Cohen what his thoughts were about Petitioner in the Stargate
19 Atlantis role and at the same time, protected himself from potentially violating the Act by
20 disclosing that he was Petitioner's manager and referring Mr. Cohen to Petitioner's
21 agents to set up a meeting. Because he didn't separate the two roles, we find that he was
22 also acting as Petitioner's manager when he set up the meeting for the purpose of
23 determining whether Petitioner should play a role in Stargate Atlantis. As with the
24 meetings set up with Mr. Tannenbaum and Mr. Traugott, Respondent did not meet his
25
26
27
28

1 burden in proving that he set up this meeting *at the request of* the Don Buchwald Agency.

2 This is supported by Ms. Buchwald's testimony that she never suggested Respondent set
3 up a meeting with Mr. Cohen.
4

5 10. Petitioner also testified about a meeting set up with Peter Golden who was
6 in charge of casting for CBA television projects. Petitioner testified that Respondent set
7 up this meeting for her with Mr. Golden to discuss what projects he had that she could be
8 right for. She also claims that, to her knowledge, no agent was present. Because
9 Respondent could not even recall this meeting and Mr. Golden did not testify at this
10 hearing, we find that we simply do not have enough evidence before us to make a ruling
11 one way or the other as to this specific meeting.
12
13

14 11. Petitioner argues that the aforementioned meetings set up by Respondent
15 for Petitioner with entertainment executives do not fall under Labor Code §1700.44(d)
16 because the exception under that section is limited to *negotiation of employment*
17 *contracts*. We have ruled that the definition of *negotiation* includes "the process of
18 submission and consideration of offers until acceptable offer is made and accepted; the
19 deliberation, discussion, or conference upon the terms of a proposed agreement; and the
20 act of settling or arranging the terms and conditions of a bargain, sale or other business
21 transaction." *Blasi v. Marathon Entertainment*, TAC 15-03. Thus, because we find that
22 Respondent submitted Petitioner for a specific role when he set up the meeting with
23 Mr. Tannenbaum and Mr. Traugott on Petitioner's project, "My Mother Myself," in that
24 she would be playing herself (or possibly her mother), if Respondent had met his burden
25 of showing that such meeting/ submission was set up *at the request of and in conjunction*
26
27
28

1 with the Don Buchwald Agency, we would have found that such meeting would be
2 protected under Labor Code §1700.44(d). Likewise, since Respondent submitted
3
4 Petitioner for a specific role on Stargate Atlantis when he met with Mr. Cohen, such
5 meeting / submission would have been protected under Labor Code §1700.44(d), had
6 Respondent been able to show this meeting was also set up *at the request of and in*
7
8 *conjunction with* a licensed talent agent.

9 **Employment Negotiations for Desperate Housewives Role**

10 12. We find that Respondent played a major role in negotiating the series
11 contract for Petitioner to appear as a regular character on "Desperate Housewives." The
12 testimony and evidence supports a finding that Respondent was responsible for
13 negotiating Petitioner's salary to \$25,000 per episode. However, unlike the meetings set
14 up with entertainment executives, we find that all negotiations for the Desperate
15 Housewives role were done *at the request of and in conjunction with* Peter Young,
16
17 Petitioner's agent at the Don Buchwald Agency. Both Mr. Young and Ms. Buchwald
18 testified that the Buchwald Agency informed Petitioner of the role of "Bree" on the pilot.
19 After Petitioner read for the role of "Bree," the producers decided they preferred her to
20 play the role of "Edie" and accordingly, offered her the role for the pilot. The role for the
21 pilot was admittedly, negotiated by Mr. Young. Once the pilot was picked up as a
22 regular series, Petitioner was offered the role of "Edie" as a regular, reoccurring role.
23
24 However, due to the short amount of time between the pilot being picked up as a series
25 (Wednesday or Thursday) to the up-fronts, (the following Tuesday), Petitioner's contract
26
27 had to be negotiated on the Friday and Saturday before the up-fronts in order for her to
28

1 appear in New York with the remainder of the cast. Petitioner testified that she was
2 frustrated with Mr. Young's performance (or lack of) on such negotiations and agreed to
3 let Respondent, who had contacts with Michael Edelstein, the Executive Producer of
4 Desperate Housewives and Mark Pedowitz, President of Touchstone Television, take
5 over the negotiations. Mr. Edelstein admitted that he spoke mainly to Respondent during
6 the couple of days of intense negotiation but also admitted that the deal was eventually
7 closed by Francisco Arias, the attorney for ABC Business Affairs and Mr. Young. Mr.
8 Young testified that he was the person primarily responsible for these negotiations and
9 that his agency was communicating both with Petitioner and Respondent throughout the
10 negotiations. It's logical to conclude that Mr. Young must have requested Respondent's
11 assistance at some point during the negotiations.
12

13
14
15
16 13. Thus, because we find that Respondent was *acting at the request of and in*
17 *conjunction with* the Don Buchwald Agency on these negotiations, no violation of the
18 Act has occurred with respect to this employment.
19

20 **Promise to Procure**

21 14. Petitioner also argues that in a letter dated November 17, 2004, Respondent
22 promised to procure employment for her by stating, "I have been contacting top notch
23 feature and television producers and talking about you endlessly." While this statement
24 appears to be a promise to procure work, we simply do not have enough facts before us to
25 make a determination one way or another. For instance, we don't know if Respondent
26 contacted top notch feature and television producers other than those we have already
27 discussed and ruled on in this determination. If there are others, we cannot determine if
28

1 this was done *at the request of and in conjunction with* the Don Buchwald Agency.

2 Therefore, we cannot make a ruling one way or another as to whether Respondent
3
4 promised to procure employment for Petitioner in making this statement.

5 15. In sum, having found that Respondent violated the Act by attempting to
6 procure employment for Petitioner on the meetings he set up for her with the various
7 entertainment executives discussed, (although we don't find a violation on the negotiation
8 of the Desperate Housewives employment), we find that the oral agreement between the
9 parties is void *ab initio*.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

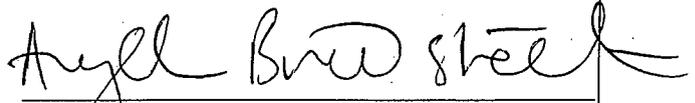
For all the reasons set forth above, IT IS HEREBY ORDERED that the oral Personal Management Agreement between Petitioners NICOLLETTE SHERIDAN, An Individual; and STARLIKE ENTERPRISES, INC., A California Corporation and Respondents YOCHES, INC., A California Corporation dba BAYONNE ENTERTAINMENT; and ROB LEE, An Individual, is void from its inception, in its entirety, and that Respondents YOCHES, INC., A California Corporation dba BAYONNE ENTERTAINMENT; and ROB LEE, An Individual, have no enforceable rights thereunder.

Dated: September 4, 2007


EDNA GARCIA EARLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER.

Dated: September 4, 2007


ANGELA BRADSTREET
State Labor Commissioner

