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8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA  
10

11 ENRIQUE RENALDO,

12 Petitioner,

13 vs.  
14

15 BARON ENTERTAINMENT, INC, a  
16 California Corporation,

17 Respondent.

CASE NO. TAC 9248

**DETERMINATION OF CONTROVERSY**

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19  
20 The above-captioned matter, a Petition to Determine Controversy under Labor  
21 Code §1700.44, came on regularly for hearing on March 25, 2010, in Long Beach, California,  
22 before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner  
23 ENRIQUE RENALDO (hereinafter, "Petitioner") appeared in pro per. Respondent BARON  
24 ENTERTAINMENT, INC., a California Corporation (hereinafter, "Respondent"), appeared  
25 through his attorney, Allen B. Grodsky of Grodsky & Olecki LLP. The parties submitted their  
26 posttrial briefs on May 3, 2010 and the matter was taken under submission. Based on the  
27 evidence presented at this hearing and on the other papers on file in this matter, the Labor  
28 Commissioner hereby adopts the following decision.

1 FINDINGS OF FACT

2 1. Around December 1999, the Respondent filed with the Labor Commissioner's  
3 office an application to be licensed as a California Talent Agent. As required under California  
4 law, the Respondent filed with the Labor Commissioner both a contract to be used with artists  
5 (Labor Code §1700.23), and a schedule of fees which sets the maximum amount of commissions  
6 the Respondent may charge artists (Labor Code §1700.24). The contract and the schedule of fees  
7 were approved by the Labor Commissioner and provided the respondent may charge artists a  
8 maximum 10% commission rate<sup>1</sup>. Consequently, the Respondent became a licensed California  
9 Talent Agency in 1999.

10 2. Petitioner, an actor and model, met the Respondent around 2004 and sought  
11 representation in the entertainment industry. In 2004, the Respondent began to represent the  
12 Petitioner and submit Petitioner for various entertainment engagements. According to the parties,  
13 Respondent was to earn 10% commission on all Petitioner's earnings for television motion  
14 pictures and television commercials.

15 3. On or about April 11, 2007, Respondent obtained a nonunion photo shoot or print  
16 job for the Petitioner. The advertising client, Sprint-Nextel, promised payment of \$3,000.00 for  
17 the days work. The evidence reflected the petitioner agreed to pay the Respondent a 20%  
18 commission rate for this project, which is a standard percentage for this type of entertainment  
19 engagement.

20 4. On April 11, 2007, the day of the photo shoot, the Petitioner was provided a  
21 "Model Release" (hereinafter Release) which contained the following language:

22  
23 "The SESSION and initial agreed usage is for collateral material in North America  
24 ... and may be reproduced as either color or black and white illustrations for  
25 \$3,000 + 20% agency fee  
26

27 <sup>1</sup> The Hearing Officer takes administrative notice of the contract and schedule of fees filed and approved with the  
28 with the Labor Commissioner's office on 12-9-99.

1           5.       The meaning of the language contained in the Release is the primary subject of  
2 this dispute. The Petitioner believed he was entitled to the full payment of \$3,000.00 and that  
3 according to the express language of the Release, the Respondent would be compensated solely  
4 by the 20% agency fee, thus satisfying any commission payment required of the Petitioner. The  
5 Petitioner believing he would receive \$3,000.00 for the job, signed the release and completed the  
6 work.

7           6.       On April 12, 2007, the Respondent invoiced Design Continuum Inc., the  
8 subcontractor contracted by Spring Nextel to conduct the photo shoot. The invoice sought  
9 \$3,000.00 + 20% for a total of \$3,600.00. On May 21, 2007, Design Continuum Inc., requested a  
10 \$3,600.00 payment from the accounting department through a purchase order which was issued  
11 on June 1, 2008.

12           7.       On June 1, 2007, Design Continuum, Inc., issued a check to the Respondent made  
13 payable to Baron Entertainment for \$3,600.00. On June 8, 2007, Respondent issued Petitioner a  
14 check in the amount of \$2,400.00 for the photo-shoot, ostensibly keeping 20% off the top or  
15 \$600.00 of the \$3,600.00 total payment as an "Agency Fee". Respondent argues the 20%  
16 "Agency Fee" referenced in the Release is a separately negotiated fee which is separate and apart  
17 from the promised earnings of the model. Moreover, the Respondent argues this is a standard and  
18 customary practice in the industry. According to the Respondent, he then deducted his agreed  
19 upon commission rate of 20% from the \$3,000.00 earnings of the Petitioner. To summarize,  
20 Respondent argues he is entitled to the separately negotiated 20% Agency Fee and 20% of the  
21 \$3,000.00 earnings promised to the Petitioner, leaving a final payment to the Petitioner in the  
22 amount of \$2,400.00.

23           8.       On May 13, 2008, Petitioner filed this Petition to Determine Controversy arguing  
24 that Respondent was only entitled to \$600.00. Petitioner argues that Respondent unlawfully kept  
25 an additional 20% of Petitioner's \$3,000.00 earnings to which he is not entitled. As such,  
26 Petitioner seeks \$600.00 from Respondent.<sup>2</sup>

27 <sup>2</sup>       The petitioner spent a considerable amount of time and provided a significant number of documents in an  
28 effort to argue the respondent engaged in activities which breached Respondent's fiduciary duty toward the petitioner  
and engaged in outside business ventures that created a conflict of interest. Those allegations will not be discussed as

1 LEGAL ANALYSIS

2 The issues presented include:

- 3 1) Is the Respondent entitled to the 20% Agency Fee?
- 4 2) Can the Respondent collect 20% commission on the artist's earnings,
- 5 notwithstanding the fact that a maximum 10% commission rate was approved
- 6 by the Labor Commissioner?

7  
8 1. Petitioner, an actor and model is an "artist" within the meaning Labor Code  
9 §1700.4(b).

10 2. At all times relevant, Respondent was a licensed talent agency.

11 3. Labor Code §1700.44(a) provides in relevant part: "In cases of  
12 controversy arising under this chapter, the parties involved shall refer the matters in dispute to the  
13 Labor Commissioner...." Consequently, the Labor Commissioner has jurisdiction to hear this  
14 case.

15 Agency Fee

16 4. The DLSE historical application of this issue and the evidence in this case established  
17 that Agency Fees, such as the one paid to Respondent, are commonly provided to talent agents by  
18 production companies and are typically contained in contracts between agents and production  
19 companies for print work. The Labor Commissioner has previously held, "[s]o long as said fees  
20 are not 'registration fees' or fees charged for services expressly listed in Labor Code §1700.40(b)  
21 (or similar services), and are not intended to be part of the artist's compensation (even though  
22 they may be based on a percentage of the artist's total earnings), those fees are between the talent  
23 agency and the third party companies and the Labor Commissioner has no jurisdiction over such  
24 fee arrangements. The evidence, however, must clearly establish that the Agency Fee is separate  
25 and apart from the fees the production company pays to the artist. There must be no question that  
26 the fees are intended for the agency and are not meant for the artist." (*Harriell v. Chase TAC*

27  
28 the evidence established that those alleged conflicts occurred subsequent to the termination of the relationship and are thus deemed irrelevant for purposes of this Determination of Controversy.

2 5. Here, the term "Agency Fee" was expressly stated on the Release and all other  
3 evidence taken in totality pointed to the conclusion that only \$3,000.00 was intended as earnings  
4 for the artist. There is no dispute that Respondent did not explain this practice to Petitioner or  
5 explain the Release and Agency Fee to him. Notwithstanding, the evidence supports a finding that  
6 the Agency Fee is in addition to the artist's compensation and was not intended for the Petitioner.

7  
8 Schedule of Fees

9 6. Labor Code §1700.24 states,

10  
11 Every talent agency shall file with the Labor Commissioner  
12 a schedule of fees to be charged (to the artist) and collected  
13 in the conduct of that occupation, and shall keep a copy of  
14 the schedule posted in a conspicuous place in the office of  
15 the talent agency..."

16 The Respondent filed his schedule of fees with the Labor Commission on December 9, 1999.

17 Respondent's schedule of fees contained the following provision.

18 ~~"The maximum rate of fees due this talent agency for services rendered to the artist is ten  
19 percent (10%) of the total earnings paid to the artist managed by the talent agency. NO  
20 FEES COLLECTED SHALL BE IN EXCESS OF THE FEE SCHEDULE HEREON."~~

21 7. As discussed, Respondent charged 20% which is double their posted schedule  
22 of fees. This is a violation of the Talent Agencies Act which prohibits an agency from  
23 charging their clients more than the pre-approved percentage filed with the Labor  
24 Commissioner and established a breach of respondent's fiduciary duty toward his client.

25 The California Code of Regulation Title 8 §12003.2 provides that,

26 "No form of contract which incorporates substantial changes in the  
27 form of the contract previously approved shall be produced again  
28 unless the same shall be submitted to the Labor Commissioner for  
approval..."

