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2 Division of Labor Standards Enforcement
3 Department of Industrial Relations
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11
12 **BEFORE THE LABOR COMMISSIONER**

13 **STATE OF CALIFORNIA**

14 VICKI ROBERTS AND ARTHUR
15 ANDELSON, dba: KISMET
16 TALENT AGENCY,

17 Petitioner,

18 v.

19 ENGELBERT HUMPERDINCK aka
20 ARNOLD GEORGE DORSEY aka
21 GERRY DORSEY, EH
22 PRODUCTIONS, INC.,

23 Respondents.

24 NO. TAC-22074

25 **DETERMINATION OF CONTROVERSY**

26 This matter, a Petition to Determine Controversy under Labor Code §1700.44, came
27 regularly for hearing in Los Angeles, California, before the undersigned attorney for the Labor
28 Commissioner assigned to hear the case. Petitioners VICKI ROBERTS and ARTHUR ANDELSON
doing business as KISMET TALENT AGENCY, appeared and were represented by Vicki Roberts,
Esq. The respondents ENGLEBERT HUMPERDINCK, also known as both ARNOLD GEORGE
DORSEY and GERRY DORSEY, and respondent EH PRODUCTIONS, INC. appeared and were
represented by Mark L. Levinson, Esq.

In this action, the petitioners seek commissions of ten percent of all income received by the
respondents since the beginning of their contractual relationship. This relationship commenced with

1 a written contract which the parties entered into on February 22, 2010. Under the terms of the
2 contract, the petitioners agreed to provide services as the respondents' talent agency for a one-year
3 period in exchange for a commission of ten percent of the artist's compensation, as defined in the
4 contract.

5
6 The contract, marked in this proceeding as Exhibit 1, is a pre-printed form issued and
7 approved by the Labor Commissioner for the optional use of artists and talent agents to memorialize
8 their representation agreements. The dispute between the parties deals with the question of whether
9 the services rendered by the petitioners are compensable under the contract or whether, as
10 respondents assert, they fall outside of the terms of the agreement.

11 Since resolution of the dispute turns on how the contract language should be properly
12 interpreted, substantial portions of the contract are set forth below.

13
14 The form is entitled "NON-EXCLUSIVE CONTRACT BETWEEN ARTIST AND
15 TALENT AGENCY" and is a one-page form consisting of ten numbered paragraphs. In Paragraph
16 1, the parties have filled in a blank to indicate the one-year term of the contract, and have edited the
17 pre-printed language to limit the activities subject to the contract, and to add the word
18 "commercials" to the list of fields in which the agency would negotiate contracts on behalf of the
19 artist. Paragraph 1 reads, in full:

20 I hereby employ you as my non-exclusive talent agency to a period of 1 year(s) (not to
21 exceed seven years) from the date hereof to negotiate contracts for the rendition of my
22 professional services as an artist, or otherwise, in the fields of motion pictures, legitimate
23 stage, radio broadcasting, television, and ~~other fields of entertainment~~ commercials.

24
25 Paragraph 2 provides that the artist agrees that the agency "may advise, counsel, or direct me
26 in the development and/or advancement of my professional career".

27
28 Paragraph 3 of the agreement sets the terms of compensation for the agency's services and

1 reads, in full:

2 As compensation for your said services to be rendered hereunder, I hereby agree to pay you
3 a sum equal to ten percent (10%), not to exceed maximum rate shown on fee schedule of all
4 monies or things of value as and when received by me directly or indirectly, as compensation
5 for my professional services rendered or agreed to be rendered during the term hereof under
6 contracts, or any extensions, renewals, modifications, or substitutions thereof, entered into or
7 negotiated during the term hereof and to pay the same to you thereafter for so long a time as I
8 receive compensation on any such contracts, extensions, option, or renewals of said
9 contracts, and for so long as you remain licensed. It is expressly understood that to be
10 entitled to continue to receive the payment compensation on the aforementioned contracts,
11 after the termination of this agreement, you shall remain obligated to serve me and perform
12 obligations with respect to said employment contracts or to extensions or renewals of said
13 contracts or to any employment requiring my services on which such compensation is based.

14
15
16 Petitioners assert that while they did not procure employment for the respondents, they did
17 nevertheless, render services for the artist in the carrying out of employment procured by others, and
18 that under theories of implied contract and quasi-contract, as well as the equitable doctrine of
19 *quantum meruit*, the respondents are liable for payment of a ten percent commission of all the
20 respondents' "direct and indirect" earnings from the commencement of their agreement.

21
22 The petitioners argue that the respondents breached the contract by engaging others to
23 represent Mr. Humperdinck in seeking employment, and by removing the petitioners' name and
24 business information from Mr. Humperdinck's own website and from his listing on the Internet
25 Movie Database website.

26 The respondents did not deny, either at the hearing or in post-hearing briefing that the
27 petitioners devoted time and effort to the furtherance of the Mr. Humperdinck's career. However,
28

1 the respondents argue that subject to the terms of the written agreement, the petitioners were
2 engaged to procure employment, and that they did not do so. Accordingly, the respondents argue, no
3 commissions are due.

4 **FINDINGS OF FACT**

5 Englebert Humperdinck is an artist, as that term is defined in Labor Code Section 1700.4,
6 and the corporate respondent EH Productions, Inc. is an entity which has as its purpose the "loaning
7 out" of Mr. Humperdinck's personal services as an artist.

8
9 Vicki Roberts and Arthur Andelson were at the times relevant to this action, talent agents
10 within the definition set forth in Labor Code Section 1700.4 and were properly licensed under
11 California law.

12 It is clear from extensive testimony and documentary evidence presented at the hearing that
13 the petitioners were actively engaged in the respondents' business transactions which took place in
14 furtherance of Mr. Humperdinck's business and performances. During part of the time at issue, Mr.
15 Humperdinck's business activities were managed by his son Scott Dorsey. The testimony of both
16 Ms. Roberts and Mr. Dorsey show that there were continued and extensive communications between
17 the parties regarding business matters having to do with the management of Mr. Humperdinck's fan
18 club, publicity initiatives, and issues of the proper licensing of recordings which were sold and
19 distributed on the internet.
20

21 It is also clear that in spite of their best efforts and extensive negotiations, the petitioners
22 were not successful in procuring employment for Mr. Humperdinck. The evidence shows that the
23 respondents were attempting to negotiate a contract for Mr. Humperdinck to perform in Egypt, but
24 that following civil unrest and political changes in that country, the plans for his performance there
25 did not come to fruition.
26
27
28

1 make a ten-percent partner of each talent agent the artist may engage to procure employment and did
2 not do so. Such a result defies logic and the reasonable expectation that in common business
3 transactions, a product or service is bargained for in exchange for money. Here, the only service the
4 contract requires to avoid breach is the procurement of employment.

5
6 The petitioners argue several tort causes of action, including fraud and interference with
7 prospective business relations, but claims of that type are not within the ambit of this proceeding.
8 Further, the petitioner's claims for equitable relief and for liability under doctrines of contract
9 formation in absence of an explicit agreement cannot be asserted when the parties did, in fact, have
10 an explicit written agreement which sets forth the rights and obligations of the parties as artist and
11 agent.

12 CONCLUSION

13
14 The Labor Commissioner finds that the petitioners have not shown that commissions are due
15 to them for any activity other than the procurement of employment. Since the petitioners were not
16 successful in procuring employment for Mr. Humperdinck, they are not due any commissions under
17 the talent agency agreement.

18
19 Dated: February 10, 2015

20
21 Respectfully submitted

22 By: 

MICHAEL N. JACKMAN

Attorney for the State Labor Commissioner

23
24 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSONER

25
26 Dated: 2/10/2015

27 By: 

JULIE A. SU

Labor Commissioner, State of California

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

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013A) OR CERTIFIED MAIL

I, JUDITH A. ROJAS, do hereby certify that I am a resident of or employed in the County of San Diego, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: 7575 Metropolitan Drive, Suite 210, San Diego, CA 92108-4421

On February 10, 2015, I served the within **DETERMINATION OF CONTROVERSY** by placing a true copy thereof in an envelope addressed as follows:

Mark L. Levinson, Esq.
14724 Ventura Blvd., Penthouse Suite
Sherman Oaks, CA 91403

Vicki Roberts, Esq.
3435 Ocean Park Blvd., Suite 107
Santa Monica, CA 90405

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid, depositing it for pickup in this city by:

_____ Federal Express Overnight Mail

 X Ordinary First Class Mail.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on February 10, 2015, at San Diego, California.


JUDITH A. ROJAS

Case No. TAC-22074

PROOF OF SERVICE