

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

MAVRICK ARTISTS AGENCY, INC., a
California Corporation,

Petitioner,

vs.

BRIAN LEE, an Individual,

Respondent.

CASE NO.: TAC-29525

**DETERMINATION OF CONTROVERSY
ON PETITION OF MAVRICK ARTISTS
AGENCY, INC.**

1.

INTRODUCTION

Arising from the filing of a *Petition to Determine Controversy* pursuant to *Labor Code* section 1700.44, all parties here seek a determination of their respective rights under contract: Petitioner MAVRICK ARTISTS AGENCY, INC., a California Corporation (“Mavrick”), alleges Respondent BRIAN LEE, an individual, breached the terms of a contract by failing to pay commissions due to it as Mr. Lee’s talent agency. Further, Mavrick seeks an order requiring Mr. Lee pay all commissions owed pursuant to the parties’ contract. Mr. Lee, however, argues he was not bound by any agreement, not having executed any contract with Mavrick before a relevant booking; and he seeks the return of a portion of the commissions paid because

1 Mavrick’s “contractual obligations were never met.” (Respondent’s *Opening Brief*, at page 1.)¹

2 An adjudicative, evidentiary hearing was held in Los Angeles, California, before the
3 undersigned counsel, specially designated by the Labor Commissioner to determine this
4 controversy.

5 Petitioner appeared via its president, Eric Negri, Debbie Harrison, Sports & Specialty
6 Coordinator, and Brad Diffley, CEO/Booking Agent. Respondent Brian Lee appeared on his
7 own behalf. Due consideration having been given to the testimony, documentary evidence and
8 arguments presented, the Labor Commissioner adopts the following determination of
9 controversy.

10 **2.**

11 **FINDINGS OF FACT**

12 Just prior to the Super Bowl of 2012, Anheuser Busch created a series of commercials,
13 commemorating and celebrating the end of Prohibition thereby returning Budweiser to the
14 American people on December 5, 1933. (Respondent’s *Opening Brief* at page 4; *Petitioner’s*
15 *Exhibits* 13, G-J.) Hoping to contribute to this endeavor, Debbie Harrison, the Sports &
16 Specialty Coordinator for Petitioner, sent out a message to her contacts, including Denise Bella
17 Vlasis of Tribute Productions Talent & Entertainment, searching for “1920’s style performers” to
18 audition for the commercial. (*Statement of Denise Bella Vlasis*, at page 1.) Ms. Vlasis sent out a
19 mass email, encompassing over thirty “specialty performers,” including the members of the
20 *Hollywood Hotshots*. (*Id.*) The *Hollywood Hotshots* “specialized in the preservation and
21 education of Historical American Street Dance [sic]” and included Respondent, Brian Lee.
22 (*Email Trail from Stefanie Klausmann to Denise-bella Vlasis* [sic], dated November 14, 2011
23 *Re: Stefanie Klausmann & Minn Vo and the Hollywood Hotshots*.) Audition details, instructions
24 and appearance schedules were released with the caveat that the artists, “Please sign in under
25 Mavrick Artists Agency / 323.931.5555 (on the sign in sheet).” (*Email Trail from Brian Lee*
26

27 ¹ During all periods relevant here, Mavrick Artists Agency has been licensed by
28 the State Labor Commissioner to engage in business as a talent agency.

1 (lindyfizz@gmail.com) to Minn Vo (minervo@hotmail.com), dated November 11, 2011 *FW:*
2 *PLEASE CONFIRM Tomorrow's audition; Budweiser.*) Mr. Lee responded and reported to the
3 audition under that instructional email. (*Id.* ["Confirmed! I'm in there, like swimwear! Yeah
4 Boy!"]); see *Standard Employment contract for Television Commercials*, dated December 9, 2011
5 [payment to both Mr. Lee and c/o Mavrick Artists Agency].) On November 15, 2011, Brad
6 Diffley, Petitioner's booking agent and CEO, submitted a list of talent – "Here's my 20's type's"
7 [sic] – to the casting agent, including Mr. Lee as one of the *Hollywood Hotshots* and Ms. Vlasis'
8 Tribute Production. (*Email Trail from Brad Diffley to Rosanna (crashcasting@mac.com)*, dated
9 November 15, 2011 *Re: Budweiser / 1920's Role.*)

10 By December 2, 2011, Mr. Lee was named as one of four audition call backs – all coming
11 from Tribute Productions, but the sole *Hollywood Hotshot* chosen. But more than just an on-
12 going cattle call, these call backs were identified for specific roles and were "hand chosen by
13 casting and pitched by the owner of Mavrick!" (*Email Trail from Debbie Harrison to Tribute*
14 *Productions*, dated December 2, 2011 *Re: Call backs.*) At this point, Petitioner began to process
15 documentation for their agency relationship with Mr. Lee. (*Email from Debbie Harrison to*
16 *Claire Wilson*, dated December 6, 2011.) Ultimately selected, Mr. Lee attends wardrobe fitting
17 and shoots the commercial on December 9th, December 13th and December 14, 2011. (*Standard*
18 *Employment Contract for Television Commercials, supra.*) While dated December 14, 2011, Mr.
19 Lee does not sign Mavrick's *Consent to Representation Letter* until January 3, 2012.
20 (*Respondent's Opening Brief*, at p. 5.) The representation contract sets forth the following
21 commission arrangement:

22 [Y]ou have agreed to pay the agency a commission equal to twenty
23 percent (20%) or all gross compensation paid under Print contracts
24 for your services covered by this agreement and ten percent (10%)
25 of all gross compensation, including but not limited to all session
26 and residual payment, paid under all other contracts for your
27 services covered by this agreement.

1 (Id.) Between the period of December 22, 2011 and March 1, 2012, Mr. Lee received several
2 checks for his commercial work, as he ultimately requested direct delivery of all checks to
3 himself. There is some indication Mr. Lee partially paid some commissions to Mavrick in the
4 amount of \$197.04. (Check No. 153 from Brian J. Lee to Mavrick Artists Agency, Inc., dated
5 January 21, 2012 [Memo: Budweiser 10% Commission – Hopefully more \$ Checks w/
6 residuals!])

7 Contrary to current assertions, Mr. Lee acknowledged the assistance of Mavrick and Ms.
8 Vlasis in booking the Budweiser audition and job on at least two occasions. (Email Trail from
9 Brian Lee to Debbie Harrison, dated February 3, 2012 Re: Thank You [“Thank you for helping
10 me book the bud [sic] job.”]; Email Trail from Debbie Harrison to Eric Negri, dated April 4,
11 2012 [Facebook Posting of Mr. Lee, dated February 8, 2012: “Thanks to my amazing friends
12 Minn Vo and Stefanie Klausmann along with Tribute Productions Talent & Entertainment and
13 Denise Bella Vlasis for the Budweiser audition and helping me book the job!”])

14 Mr. Lee terminated the parties’ agency agreement on March 2, 2012. (Respondent’s
15 Opening Brief, at p.6.) Mavrick’s continuing request for commissions owed were negatively
16 received by Mr. Lee. (Petitioner’s Exhibit P.)

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1 3.

2 LEGAL ANALYSIS

3 A.

4 **The Labor Commissioner May Properly Determine This Controversy**
5 **Under the *Talent Agencies Act***

6 There is no dispute here that Petitioner is a “talent agency” within the meaning of *Labor*
7 *Code* section 1700.4(a) and Respondent is an “artist” under *Labor Code* section 1700.4(b).

8 Further, *Labor Code* section 1700.23 grants the Labor Commissioner jurisdiction over
9 “any controversy between the artist and talent agency relating to the terms of the contract,”
10 thereby extending his inquiry to include the resolution of contract claims brought by artists or
11 agents seeking damages for the breach of a talent agency contract. (*Garson v. Div. of Labor Law*
12 *Enforcement* (1949) 33 Cal.2d 861, 865 [206 P.2d 368]; *Robinson v. Superior Court* (1950) 35
13 Cal.2d 379, 387-388 [218 P.2d 10].) The Labor Commissioner, thus, enjoys the jurisdiction to
14 hear and determine this controversy pursuant to *Labor Code* sections 1700.23 and 1700.44(a).

15 B.

16 **Mr. Lee Was Subject to the Terms of an Oral and Written Contract with Mavrick**

17 The essential elements of contract formation were present here: Parties capable of
18 contracting who consented with a lawful object and sufficient consideration. (*Civ. Code* &
19 1550.)

20 Mr. Lee and Mavrick’s agreement for talent agency representation within the
21 entertainment industry was for a lawful purpose, and the oral and ultimate written agreement for
22 Mavrick to negotiate appearances on behalf of Mr. Lee for a ten percent commission established
23 sufficient consideration for both parties. Mr. Lee’s acceptance and the requisite “meeting of the
24 minds” were established through his conduct. Mr. Lee took advantage of the booking
25 opportunity known to Mavrick and permitted Mavrick to advance his qualifications on his behalf,
26 originally permitted their representation for contractual notice and payment and provided partial
27 payment of his own accord. Consequently, an implied oral contract, “one the existence and terms

1 of which are manifested by conduct,” was formed. (*Civ. Code* §1621.)

2 Mavrick will not be required to disgorge the commission sums already tendered by Mr.
3 Lee.

4 C.

5 **Mavrick Should Be Properly Compensated for All Services Rendered**

6 Ultimately, both parties agree Mavrick procured the Anheuser Busch booking on behalf
7 of Mr. Lee. And logistically, Mr. Lee would have not had access to the audition but for his
8 contact with Mavrick through Tribute Productions. Under the terms of the parties’ own contract,
9 this would entitle Mavrick to 20% of all gross print compensation and ten percent “of all gross
10 compensation, including but not limited to all session and residual payments. ...” (*Contract,*
11 *supra*, at ¶2.) A key legal issue, therefore, is whether Mavrick’s alleged failures to fully perform
12 its contractual obligations excuse Mr. Lee from further payment of commissions, both during the
13 agreement’s term and following its termination. In support of his contention that no further
14 commissions are owed, Mr. Lee secondarily argues Mavrick’s alleged inadequate performance
15 constitutes a “material” breach of the contract. (*See Respondent’s Opening Brief, supra.*) A
16 material breach, however, is a “substantial” or “total” breach of contract that excuses the other
17 party from further performance under the contract. While every instance of non-compliance with
18 a contract’s terms constitutes a breach, not every breach, is “material;” that is, not every breach
19 justifies complete termination of the other party’s contractual obligations. (*Superior Motels, Inc.*
20 *v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1051 [241 Cal.Rptr. 487].)

21 Mavrick had already agreed to the termination of its contract with Mr. Lee on March 5,
22 2012. It is of no import Mavrick did not secure Mr. Lee another “bona fide offer employment”
23 during the few months of the parties’ contract. At Mr. Lee’s written request, Mavrick conceded
24 to the end of the parties’ agency agreement. However, the termination did not lessen Mavrick’s
25 entitlement to those commissions already secured by their past performance. Mavrick is entitled
26 to its earned commissions in procuring the Anheuser Busch booking.

ORDER


Accordingly, it is hereby determined and declared under the provisions of the *Talent Agencies Act*:

1. Petitioner MAVRICK ARTISTS, INC., a California Corporation is entitled to ten percent (10%) commission for all earnings by Respondent BRIAN LEE connected with the December 9, 2011 *Standard Employment Contract for Television Commercials between Brian Lee and Chloe Productions, Inc., acting on behalf of Anheuser Busch*, and interest calculated at ten percent (10%) per annum through the date of satisfaction of the award. Mr. Lee shall provide an accounting to Mavrick for all earnings, including benefits and bonuses, within 30 days of receipt of this determination. Further, Mr. Lee shall remit payment of those commissions within 20 days after that accounting has been provided.

2. Any claims raised by Respondent BRIAN LEE within his *Opening Brief* or during the pendency of this action are dismissed.

Date: May 19, 2017

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

By: 
Johanna Y. Hsu
Attorney for the State Labor Commissioner

**THE ABOVE DETERMINATION IS ADOPTED IN ITS ENTIRETY
BY THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA**

DATED: 6/7/2017 By: 
JULIE A. SU
California State Labor Commissioner

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**)
3 **COUNTY OF LOS ANGELES**) S.S.

4 I, Tina Provencio, declare and state as follows:

5 I am employed in the State of California, County of Los Angeles. I am over the age of
6 eighteen years old and not a party to the within action; my business address is: 300 Oceangate,
Suite 850, Long Beach, CA 90802.

7 On June 12, 2017, I served the foregoing document described as: **DETERMINATION**
8 **OF CONTROVERSY ON PETITION OF MAVRICK ARTISTS AGENCY, INC.** on all
9 interested parties in this action by placing a true copy thereof enclosed in a sealed envelope
addressed as follows:

10 **Brian Lee**
11 **1299 Cordova Street**
Apartment 207
Pasadena, CA 91106

Brad Diffley, CEO
Mavrick Artists Agency, Inc.
6100 Wilshire Boulevard
Suite 550
Los Angeles, CA 90048

12 (BY MAIL) I am readily familiar with the business practice for collection and processing
13 of correspondence for mailing with the United States Postal Service. This
14 correspondence shall be deposited with the United States Postal Service this same day in
15 the ordinary course of business at our office address in Long Beach, California. Service
made pursuant to this paragraph, upon motion of a party served, shall be presumed
16 invalid if the postal cancellation date of postage meter date on the envelope is more than
one day after the date of deposit for mailing contained in this affidavit.

17 (BY E-MAIL SERVICE) I caused such document(s) to be delivered electronically via e-
18 mail to the e-mail address of the addressee(s) set forth in the attached service list.

19 (BY FACSIMILE) I caused the above-referenced document to be transmitted to the
interested parties via facsimile transmission to the fax number(s) as stated on the attached
service list.

20 (STATE) I declare under penalty of perjury, under the laws of the State of
21 California that the above is true and correct.

22 Executed this 12th day of June, 2017, at Long Beach, California.

23 
24 Tina Provencio
25 Declarant