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

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

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

2.

FINDINGS OF FACT

Just prior to the Super Bowl of 2012, Anheuser Busch created a series of commercials, commemorating and celebrating the end of Prohibition thereby returning Budweiser to the American people on December 5, 1933. (Respondent’s Opening Brief at page 4; Petitioner’s Exhibits 13, G-J.)

Hoping to contribute to this endeavor, Debbie Harrison, the Sports & Specialty Coordinator for Petitioner, sent out a message to her contacts, including Denise Bella Vlasis of Tribute Productions Talent & Entertainment, searching for “1920’s style performers” to audition for the commercial. (Statement of Denise Bella Vlasis, at page 1.)

Ms. Vlasis sent out a mass email, encompassing over thirty “specialty performers,” including the members of the Hollywood Hotshots. (Id.) The Hollywood Hotshots “specialized in the preservation and education of Historical American Street Dance [sic]” and included Respondent, Brian Lee.

(Email Trail from Stefanie Klausmann to Denise-bella Vlasis [sic], dated November 14, 2011 Re: Stefanie Klausmann & Minn Vo and the Hollywood Hotshots.) Audition details, instructions and appearance schedules were released with the caveat that the artists, “Please sign in under Mavrick Artists Agency / 323.931.5555 (on the sign in sheet).” (Email Trail from Brian Lee

During all periods relevant here, Mavrick Artists Agency has been licensed by the State Labor Commissioner to engage in business as a talent agency.
(lindylizz@gmail.com) to Minn Vo (minnvo@hotmail.com), dated November 11, 2011 FW:

PLEASE CONFIRM Tomorrow’s audition; Budweiser.) Mr. Lee responded and reported to the audition under that instructional email. (Id. [“Confirmed! I’m in there, like swimwear! Yeah Boy!”]; see Standard Employment contract for Television Commercials, dated December 9, 2011 [payment to both Mr. Lee and c/o Mavrick Artists Agency].) On November 15, 2011, Brad Diffley, Petitioner’s booking agent and CEO, submitted a list of talent — “Here’s my 20’s type’s” (sic) — to the casting agent, including Mr. Lee as one of the Hollywood Hotshots and Ms. Vlasis’ Tribute Production. (Email Trail from Brad Diffley to Rosanna (crashcasting@mac.com), dated November 15, 2011 Re: Budweiser / 1920’s Role.)

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

[Y]ou have agreed to pay the agency a commission equal to twenty percent (20%) or all gross compensation paid under Print contracts for your services covered by this agreement and ten percent (10%) of all gross compensation, including but not limited to all session and residual payment, paid under all other contracts for your services covered by this agreement.
(Id.) Between the period of December 22, 2011 and March 1, 2012, Mr. Lee received several checks for his commercial work, as he ultimately requested direct delivery of all checks to himself. There is some indication Mr. Lee partially paid some commissions to Mavrick in the amount of $197.04. (Check No. 153 from Brian J. Lee to Mavrick Artists Agency, Inc., dated January 21, 2012 [Memo: Budweiser 10% Commission – Hopefully more $ Checks w/residuals!])

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

Mr. Lee terminated the parties’ agency agreement on March 2, 2012. (Respondent's Opening Brief, at p.6.) Mavrick’s continuing request for commissions owed were negatively received by Mr. Lee. (Petitioner’s Exhibit P.)
3.

LEGAL ANALYSIS

A.

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

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

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

B.

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

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

Mr. Lee and Mavrick’s agreement for talent agency representation within the entertainment industry was for a lawful purpose, and the oral and ultimate written agreement for Mavrick to negotiate appearances on behalf of Mr. Lee for a ten percent commission established sufficient consideration for both parties. Mr. Lee’s acceptance and the requisite “meeting of the minds” were established through his conduct. Mr. Lee took advantage of the booking opportunity known to Mavrick and permitted Mavrick to advance his qualifications on his behalf, originally permitted their representation for contractual notice and payment and provided partial payment of his own accord. Consequently, an implied oral contract, “one the existence and terms
of which are manifested by conduct,” was formed. (Civ. Code §1621.)

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

C.

Mavrick Should Be Properly Compensated for All Services Rendered

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

Mavrick had already agreed to the termination of its contract with Mr. Lee on March 5, 2012. It is of no import Mavrick did not secure Mr. Lee another “bona fide offer employment” during the few months of the parties’ contract. At Mr. Lee’s written request, Mavrick conceded to the end of the parties’ agency agreement. However, the termination did not lessen Mavrick’s entitlement to those commissions already secured by their past performance. Mavrick is entitled to its earned commissions in procuring the Anheuser Busch booking.
4.

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

DETERMINATION OF CONTROVERSY ON PETITION OF MAVRICK ARTISTS AGENCY, INC.
PROOF OF SERVICE

STATE OF CALIFORNIA   
COUNTY OF LOS ANGELES   

I, Tina Provencio, declare and state as follows:

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

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

- Brian Lee
  1299 Cordova Street
  Apartment 207
  Pasadena, CA 91106
- Brad Diffley, CEO
  Mavrick Artists Agency, Inc.
  6100 Wilshire Boulevard
  Suite 550
  Los Angeles, CA 90048

(By Mail) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in 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 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.

(By E-Mail Service) I caused such document(s) to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.

(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.

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

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

Tina Provencio
Declarant