I. INTRODUCTION

The above-captioned petition was filed on December 9, 2013, by AKA TALENT AGENCY, (hereinafter "Petitioner" or “AKA”), alleging that JAMISON R Reeves, (hereinafter “Respondent” or “Reeves”), failed to pay commissions to AKA for work allegedly negotiated by AKA on Reeves’ behalf. Petitioner seeks $2,244.21 in ascertainable unpaid commissions and interest and an accounting on unknown commissions owed.

Respondent failed to file an answer. A hearing was scheduled before the undersigned attorney, specially designated by the Labor Commissioner to hear this matter. The hearing commenced May 27, 2015 in Long Beach, California. Both parties appeared in pro se. Due
consideration having been given to the testimony, documentary evidence and arguments presented, the Labor Commissioner adopts the following determination of controversy.

II. STATEMENT OF FACTS

1. On March 7, 2007, the parties hereto entered into a written contract and operated under the terms of the contract up and until April 5, 2013. Under the contract, The Petitioner will represent the Respondent as his talent agent and shall use all reasonable efforts to procure engagements or employment on Respondent’s behalf. In return, Respondent is obligated to pay commissions to the Petitioner in a sum equal to ten percent (10%) of all monies received by Respondent, directly or indirectly, under contracts of employment entered into during its term for so long a period thereafter as the Respondent continues to receive monies.

2. On February 28, 2013, during the representation period, Petitioner procured and negotiated a national “Johnsonville Sausage” commercial for Respondent (the Johnsonville commercial). Although Respondent paid a 10% commission on a portion of his earnings for the Johnsonville commercial, he ceased paying commissions on or around April 5, 2013. The amount of unpaid commissions for the Johnsonville commercial totals $2,244.41.

3. On April 4, 2013, Respondent submitted Petitioner for a second national commercial for “Prestone Tires” (the Prestone commercial). The Petitioner was chosen for the Prestone commercial. The Petitioner failed to remit any commission to AKA for the Prestone commercial.

4. On April 5, 2013 Reeves terminated his relationship with Respondent in an e-mail to Pamela Porter, Mike Abrams and Doug Ely of AKA stating, “Hey Guys this is my letter of termination with AKA. Thanks for everything but I am leaving the agency.”

5. A dispute arose as to the unpaid commissions for both the Johnsonville and Prestone commercials. On July 12, 2013, Respondent acknowledged the unpaid commissions in an e-mail to Jeremey Jones of AKA and stated, “I will follow up with Johnsonville and Prestone at talent partners I’ll cut you a check”. That e-mail was followed up by another e-mail on July 15, 2013 whereby Respondent again acknowledged owed commissions and stated “If you
haven’t mailed the Samsung [check] take the commission for Prestone and johnsonville [sic] it probably will make it easier...”

6. The Petitioner acknowledged it was AKA who submitted him for both of these commercials. And it was undisputed that Reeves had not paid any other agency any commission on these earnings.

7. The parties’ contract as to how commissions are to be handled after termination stated the following:

I agree to pay you 10 (ten) percent of the gross compensation earned and received by me for, or in connection with, (i) any contracts for, or engagements of, my services ... entered into or negotiated for during the term ... If within four months after the end of the term hereof, I accept any offer on terms similar or reasonably comparable to any offer made to me during the term hereof ... from or through the same offeror ... the contract resulting therefrom shall be subject to all of the terms including the payment provision ... If I enter into any agreement which would have been otherwise covered by this General Services Agreement within four months after the termination hereof, with any person or business entity as to whom a submission has been made and/or negotiations on my behalf during the term of this Agreement then in said event any such employment contract entered into shall be deemed to have been entered during the term hereof.”

8. The Petitioner argued that he stopped paying commissions because he was not satisfied with the services provided by AKA. Specifically, Respondent was disappointed that AKA refused to represent him theatrically and moreover, failed to capitalize on a Saturday Night Live parody by Keenen Thompson referencing the Respondent as “the one black guy in every commercial.”

III. ARGUMENT

1. Labor Code §1700.4(b) includes “artists rendering professional services in television” in the definition of “artist” and petitioner is therefore an “artist” within the meaning of Labor Code §1700.4(b).

2. It was stipulated that AKA Talent Agency, is a California licensed talent agency.

3. Labor Code §1700.23 provides that the Labor Commissioner is vested with jurisdiction over “any controversy between the artist and the talent agency relating to the terms
of the contract,” and the Labor Commissioner’s jurisdiction has been held to include the
resolution of contract claims brought by artists or agents seeking damages for breach of a talent
Garson v. Div. Of Labor Law Enforcement Therefore the Labor Commissioner has jurisdiction
to determine this matter.

4. The sole issue is whether the alleged acts and omissions by AKA as argued
by Reeves, constitute a material breach of the implied covenant of good faith and fair
dealing in the agency relationship thereby rendering any commissions owed to AKA on
the Prestone and Johnsonville commercials null and void. We conclude the actions of
AKA do not constitute a material breach.

5. In general, the wrongful act, the unjustified or unexcused, failure to perform
on a contract, is the breach. (See Rest.2d Contracts §235(2).) Ordinarily, a breach is the
result of an intentional act, but negligent performance may also constitute a breach,
giving rise to alternative contract and tort actions. (See Witkin 10th Ed. Contracts §847
citing Cal.Proc.4th, Actions §§ 158, 159). Any breach, total or partial, that causes a
measurable injury, gives the injured party a right to damages as compensation thereof.
(See Borgonovo v. Henderson (1960) 182 C.A.2d 220, 231, quoting Rest.2d Contracts
§236; Corbin §948). The important question, however is whether a particular breach will
also give the injured party the right to refuse further performance on his or her own part,
i.e., to terminate the contract. The test is whether the breach is material; and a total or
complete breach is, of course, material and grounds for termination by the injured party.
(See Witkin 10th ed. Contracts § 852.)

6. When determining whether a breach is material we must look closely at the
facts as presented. Here, utilizing this standard it is clear AKA provided considerable
performance which did not breach or affect the root of the contract and thus does not
justify termination. The law is well settled in this state that a person is not entitled to
rescind or abandon a contract for an alleged breach of that contract when the breach does
not go to the root of the consideration (See Karz v. Department of Professional
Blocks Co., 181 Cal. 773, 186 P. 356; 13 C.J. 614, § 664.) Here, the decision of AKA not
to represent Reeves theatrically nor capitalize on a Saturday Night Live parody about
Reeves do not rise to the level of a material breach excusing performance by Reeves.

7. Moreover, Mr. Reeves acknowledged his responsibility to pay commissions and
expressly conceded he owed commission in the two e-mails sent to AKA on July 12 and Jul 15,

8. In short, Reeves reaped the benefits for the work performed by AKA, but
unilaterally determined he didn’t want to pay commissions anymore because he was unsatisfied
with AKA’s performance. Courts have long held, “he who shakes the tree is the one to gather
the fruit.” Willison v. Turner 89 Cal.App.2d 589 (1949). Certainly, Reeves may terminate a
personal services agreement if he feels that his agent is not providing the services contracted for.
But he may not unilaterally determine that he has no further obligation to pay for work already
performed.

9. Further, California Code of Regulations Title 8 § 12001 (b) states, “[t]o be
entitled to the payment of compensation after termination of the contract between the artist and
the talent agency, the talent agency shall be obligated to serve the artist and perform obligations
with respect to any employment contract or to extensions or renewals of said employment
contract or to any employment requiring the services of the artist on which such compensation is
based.” It was clear through testimony and documentary evidence that AKA was willing and
able to conduct services on behalf of Reeves.

10. In conclusion, AKA did not act with disloyalty or bad faith; did not breach the
contract and consequently, Petitioner’s request is granted. The Petitioner is entitled to their
commissions earned for the Johnsonville and Prestone commercials.
ORDER

For the above-stated reasons, IT IS HEREBY ORDERED Petitioner AKA TALENT AGENCY is entitled to 10% commission for earnings connected with the Johnsonville commercial valued at $2,244.21 and interest calculated at 10% per annum through the date of satisfaction of the award; and 10% commission for earnings connected with the Prestone commercial and interest calculated at 10% per annum through the date of satisfaction of the award.

Further, the Respondent JAMISON REEVES, an individual, shall provide an accounting to the Petitioner of all earnings in connection with the Prestone commercial through September 18, 2015, within 30 days of receipt of this Determination.

JAMISON REEVES is required to remit 10% commission plus interest within 30 days of the accounting for all unpaid commissions on the Prestone commercial and $2,244.21 plus interest through the date of satisfaction of the award for the Johnsonville commercial consistent with this Order.

Dated: September 18, 2015

Respectfully submitted,

By: [Signature]

DAVID L. GURLEY
Attorney for the State Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: October 1, 2015

By: [Signature]

JULIE A. SU
California State Labor Commissioner
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 and not a party to the within action; my business address is: 300 Oceangate, Suite 850, Long Beach, CA 90802.

On October 1, 2015, I served the foregoing document described as: DETERMINATION OF CONTROVERSY, on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jerome Jones  Jamison Reeves
Director of Business Affairs  840 S. Fairfax Avenue
c/o AKA Talent Agency  Los Angeles, CA 90036
6310 San Vicente Boulevard, Suite 200  Los Angeles, CA 90048

(By Certified 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 Overnight Delivery) I served the foregoing document(s) by FedEx, an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

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

Executed this 1st day of October, 2015, at Long Beach, California.

Tina Provencio  
Declarant