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

11 **CAITLIN DOUGHTY,**

12 **Petitioner,**

13 **v.**

14 **EVAN MICHAEL HESS, an**
Individual,

15 **Respondent.**
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Case No. TAC 39547

DETERMINATION OF CONTROVERSY

17 The above-captioned matter, a Petition to Determine Controversy under Labor Code
18 §1700.44, came on regularly for hearing in Los Angeles, California, before the undersigned attorney
19 for the Labor Commissioner assigned to hear this case. Petitioner CAITLIN DOUGHTY
20 (hereinafter Petitioner) appeared and was represented by Max J. Sprecher. Respondent EVAN
21 MICHAEL HESS (hereinafter Respondent) was represented by Alex Herrera.
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23 At the commencement of the hearing, Mr. Herrera stated that he was specially appearing for
24 Respondent to argue Respondent was not properly served with the Petition to Determine
25 Controversy. On June 25, 2015, Petitioner filed with the Labor Commissioner an Affidavit of
26 Reasonable Diligence, a Proof of Service, and a Proof of Service by Mail. California Code of Civil
27 Procedure §415.20(b) provides that service of a complaint in a civil action may be effected by
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1 substituted service upon a showing of reasonable diligence in attempts to serve the complaint.
2 When, following reasonably diligent attempts to serve the complaint, the server is not able to effect
3 personal service, the server may leave the complaint with a person at the defendant's residence or
4 place of business, with a person who appears to be at least eighteen years of age and appears to be in
5 charge. The statute also requires the server inform that person of the nature of the document, and the
6 complaint be mailed to Respondent at the address where the complaint was left. The Affidavit of
7 Reasonable Diligence sets forth five separate attempts to serve the petition at Respondent's
8 residence, and another five attempts to serve the petition at Respondent's place of business. Those
9 attempts show reasonable diligence by the registered process server to personally serve the petition
10 before performing the actions required for substitute service. Further, the Proof of Service
11 establishes compliance with the statutory requirements when the server left the document at the
12 place of business, and the Proof of Service by Mail shows a mailing to Respondent's business
13 address on the same day that the Petition and the Notice to Answer was left at his office. Together,
14 those three documents filed with the Labor Commissioner establish Respondent was properly served
15 with the Petition to Determine Controversy and the Notice to Answer.
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18 At the conclusion of the hearing, the matter was taken under submission.

19 Based upon the evidence presented at the hearing and on the other papers on file in this
20 matter, the Labor Commissioner adopts the following determination of controversy.
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22 **FINDINGS OF FACT**

23 1. Petitioner, Caitlin Doughty is a licensed funeral home director, an author, actor and
24 internet personality who, among other things, produces original written and video content for the
25 website OrderOfTheGoodDeath.com. Petitioner is an artist as that term is defined in the Talent
26 Agency Act at Labor Code §1700.4(b).

27 2. Respondent, Evan Michael Hess is a California-licensed attorney and a talent
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1 manager. Respondent is not licensed as a talent agent.

2 3. In December of 2011, Respondent negotiated the terms of a contract with Eyeboogie,
3 Inc., a production company interested in developing a digital and television series to be called "*Dead*
4 *on Arrival*". The contract provided not only for the production company to obtain the rights to the
5 series concept from Petitioner, but also provided for Petitioner to render services to the company on
6 a "work for hire" basis.
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8 4. In January, 2012, Respondent negotiated on Petitioner's behalf, a possible
9 engagement for several potential television projects tentatively named "*All Things Death*", "*The Joy*
10 *of Death*" and "*Ask the Mortician*". In that same month, Respondent agreed to "reach out" to the
11 Vice-President of Development for Superfine Films regarding issues of potential appearances as on-
12 screen talent in television productions and with the National Geographic Channel regarding a
13 documentary series with Petitioner as a character.
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15 5. Petitioner and Respondent entered into a written agreement on February 1, 2012
16 providing that Respondent would render personal management services to Petitioner in exchange for
17 commissions on "gross yearly earnings and receipts" at rates varying between fifteen and twenty
18 percent. The agreement specifically stated Respondent was not a licensed talent agent, and would
19 not attempt to "seek, procure or obtain employment or engagements" for Petitioner.
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21 6. In the month of February 2012, Respondent represented Petitioner in discussions with
22 the "the Anderson Cooper people", with Bunim Murray production company to set up a meeting to
23 discuss "her show", and in further discussions with the National Geographic Channel.

24 7. In October 2012, Respondent represented Petitioner in talks with Pilgrim Studios and
25 Pangolin Pictures on projects Petitioner would potentially appear in an on-screen capacity in either a
26 "basic follow docu-series" showing Petitioner's daily life as a working mortician, or a "docu-based
27 series on death cultures around the world."
28

1 8. Respondent continued to represent Petitioner in January of 2013 in discussions with
2 several other production companies regarding the possibility of engagements for Petitioner in other
3 television projects.

4 9. In July 2013, Respondent represented Petitioner with Studio D&A regarding that
5 company's exercise of the extension of its first option period for "the hosting and other services of
6 Caitlin Doughty".

7 10. In September 2013, Respondent represented Petitioner for a possible engagement for
8 an interview to be used in a documentary for BBC London.

9 11. In May of 2014, Respondent continued to represent Petitioner in negotiations with
10 Studio D&A for potential on-screen work as a host of a television series, and with The Seeing
11 Machine for an appearance in a proposed news documentary. On May 15, 2014, Respondent sent an
12 email to a representative of the Smithsonian Channel in which he stated: "Usually, when negotiating
13 compensation, it works easiest if we know what the general show budget is . . . so that right off the
14 bat, nobody is making overly aggressive offers." On May 20, 2014, Petitioner emailed a
15 representative in which he negotiated specific writing fees, and fees for on-screen and voice-over
16 work, offering to accept lower fees for her work to "ensure a tight budget and a quality product."
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18 12. In June of 2014, Respondent continued negotiating with Studio D&A, making
19 specific demands for daily fee amounts for Petitioner's work.
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21 13. Petitioner terminated the management agreement in 2014.
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23 14. In March of 2015, Respondent filed suit in Los Angeles Superior Court, seeking
24 unpaid commissions pursuant to the management agreement.

25 15. On May 15, 2015, Petitioner filed the Petition to Determine Controversy in this case,
26 arguing the management agreement should be void *ab initio*; that the Labor Commissioner make a
27 finding Petitioner has no obligations under the management agreement and that "the Labor
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1 Commissioner find that each of the causes of action alleged in the L.A. Superior Court arises from,
2 or is otherwise related to, respondent's violations of the Talent Agencies Act and based thereon,
3 determine that such claims are barred in their entirety".

4 16. Respondent argues Petitioner is obligated to pay under an attorney's fees agreement
5 and that Petitioner is trying to escape liability under the attorney fee agreement simply because the
6 attorney and the manager are the same person. Further, Respondent argues he negotiated the
7 employments or engagements "with a talent agency", although Respondent failed to present
8 testimony from any witness on this issue.
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10 LEGAL ANALYSIS

11 1. The Labor Commissioner has original and exclusive jurisdiction over issues arising
12 under the Talent Agencies Act (Labor Code §1700.44). *Marathon Entm't, Inc. v. Blasi*, 42 Cal. 4th
13 974, 174 P.3d 741 (2008).

14 2. Labor Code §1700.4(a) defines "Talent Agency" as "a person or corporation who
15 engages in the occupation of procuring, offering, promising, or attempting to procure employment or
16 engagements for an artist or artists ... Talent agencies may, in addition, counsel or direct artists in
17 the development of their professional careers." Labor Code §1700.5 provides that "no person shall
18 engage in or carryon the occupation of a talent agency without first procuring a license from the
19 Labor Commissioner."
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1 3. The Labor Commissioner has previously held, in interpreting the meaning of "procure":

2 The term "procure," 'as used in Labor Code §1700.4(a),
3 means "to get possession of: obtain, acquire, to cause to
4 happen or be done: bring about." *Wachs v. Curry*
5 (1993) 13 Cal.App.4th 15 616, 628. Thus; "procuring
6 employment" under the Talent Agencies Act is not
7 limited to initiating discussions with potential
8 purchasers of the artist's professional services or
9 otherwise soliciting employment; rather, "procurement"
10 includes any active participation in a communication
11 with a potential purchaser of the artist's services aimed
12 at obtaining employment for the artist, regardless of
13 who initiated the communication. *Hall v. X 22*
14 *Management* (TAC No. 19-90, pp. 29-31.) The Labor
15 Commissioner has long held that "procurement"
16 includes the process of negotiating an agreement for an
17 artist's services. *Pryor v. Franklin* (TAC 17 MP, 114).

18 *Danielewski v. Agon Investment Company* (Cal. Labor Com., October 28, 2005) TAC No. 41-03,
19 pages 15-16.

20 4. The evidence presented at the hearing very clearly shows extensive email
21 communications by Respondent with several television networks and production companies
22 attempting to procure employment or engagements on behalf of Petitioner. Those communications
23 span from 2011, predating the management agreement, to at least late 2014.

24 5. Respondent argued he qualified for an exemption from the licensure requirement
25 because he negotiated the engagements "with a talent agency", although Respondent failed to
26 present any evidence to support that assertion¹.

27 6. Respondent's licensure as an attorney also does not provide an exemption from the
28 Talent Agency Act's requirement that a person who procures or attempts to procure employment for
29 an artist be licensed as a talent agent. The applicable scope of the Talent Agencies Act has been
30 delineated by the Supreme Court:

¹ Labor Code §1700.44(d) states, "it is not unlawful for a person or corporation which is not licensed pursuant to this chapter to act in conjunction with and at the request of a licensed talent agency in the negotiation of an employment contract."

1 The Act establishes its scope through a functional, not a
2 titular, definition. It regulates *conduct*, not labels; it is
3 the act of procuring (or soliciting), not the title of one's
4 business, that qualifies one as a talent agency and
5 subjects one to the Act's licensure and related
6 requirements. (§ 1700.4, subd. (a).) Any person who
7 procures employment—any individual, any corporation,
8 any manager—is a talent agency subject to regulation.
9 (§§ 1700, 1700.4, subd. (a).)

10 *Marathon Entm't, Inc. v. Blasi*, 42 Cal. 4th 974, 986, 174 P.3d 741 (2008). As the foregoing makes
11 perfectly clear, anyone who procures or solicits engagement for an artist is carrying on the
12 occupation of a talent agency must be license. As we have previously ruled:

13 It is evident that the functional scope of the TAA
14 admits of no exceptions and encompasses the
15 procurement activities of respondent, even though he is
16 an attorney. In this regard, it is of no moment that some
17 of the skills respondent may have brought to the
18 negotiations on behalf of petitioner are the result of
19 skills for which he been licensed as an attorney. As
20 Labor Code section 1700.44 makes unequivocally clear,
21 when someone who is not licensed under the TAA
22 wishes to bring such skills to bear on the negotiation of
23 an artist's contract, he must do so "in conjunction with,
24 and at the request of, a licensed talent agency." *Solis v.*
25 *Blancarte* (TAC-27089 p.8)

26 7. Accordingly, Respondent's license to practice law does not exempt him from the Talent
27 Agency Act's requirement that he be licensed as a talent agent to lawfully procure or attempt to
28 procure employment or engagements for Petitioner. As a consequence the services he performed are
in violation of the Act. The management agreement between Respondent Evan Michael Hess
entered into with Petitioner Caitlin Doughty is void *ab initio*.

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ORDER

For the reasons set forth above, IT IS HEREBY ORDERED:

The contract between Petitioner and Respondent is declared to be illegal, void and unenforceable, and respondent is barred from enforcing or seeking to enforce the contract against the petitioner in any manner.

Dated: April 4, 2017


MICHAEL N. JACKMAN
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER.

Dated: 4/4/2017


JULIE A. SU
California Labor Commissioner

**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 April 5, 2017, I served the within **DETERMINATION OF CONTROVERSY** by placing a true copy thereof in an envelope addressed as follows:

Alex H. Herrera, Esq.
Hess, Hess & Herrera
233 Wilshire Blvd., 7th Floor
Santa Monica, CA 90401

Max J. Sprecher, Esq.
Law Offices of Max J. Sprecher
5850 Canoga Ave., 4th Floor
Woodland Hills, CA 91367

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 April 5, 2017, at San Diego, California.


JUDITH A. ROJAS

Case No. TAC- 39547

PROOF OF SERVICE