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

AVA MONAE GOUGIS, an individual,

Petitioner,

v.

BBA TALENT INC.,

Respondent.

Case Nos.: TAC 52904

DETERMINATION OF CONTROVERSY

I. Introduction

The above captioned petition was filed on July 12, 2023 by Nicole Gougis (N. Gougis) on behalf of her minor daughter, Ava Monae Gougis (Petitioner or Gougis). Gougis alleges that Respondent talent agency BBA Talent Inc. (BBA) received payment for a job Gougis performed in November 2022 but failed to disburse the funds to Gougis within 30 days from the receipt of funds from the employer as required under Labor Code § 1700.25. Respondent did not file an answer.

A hearing occurred on February 26, 2024 via Zoom. Nicole Gougis appeared on behalf of Petitioner and submitted evidence. Although properly served, Respondent did not attend the hearing.

Based on the testimony and evidence presented at the hearing, the Labor Commissioner hereby adopts the following decision.

II. Findings of Fact

Gougis is a minor artist who was represented by talent agency BBA Talent from 2021 to mid-2023. Renee Howard (Howard) was the President of BBA Talent.

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In November 2022, Gougis booked a commercial to promote Hasbro's Transformers Earthspark toys. Denise Barrett, an agent from BBA, helped procure the commercial. The commercial paid \$3000 allin, inclusive of any commission. Of the \$3000, \$450 was to be deposited in Gougis' Coogan account, \$600 was to be paid to the agency as commission, and the remaining \$1950 would be paid to BBA to be held in trust and disbursed to Gougis. In addition, the production company agreed to book the travel to Minnesota to film the commercial, pay a per diem of \$60 per day per person (minor and adult), and pay for transportation when in Minnesota.

Gougis and her mother traveled to Minnesota on November 17, 2022, did her fitting that day, and performed the commercial shoot on November 18, 2022. The travel was booked and paid by the production company. The production company gave N. Gougis the per diem in cash when Gougis and N. Gougis arrived in Minnesota. Gougis incurred \$147.63 in transportation expenses during the trip, including rides to and from the airport.

In late February 2023, the production company informed N. Gougis and Barrett that it was having some processing issues depositing money into Gougis' Coogan account. N. Gougis followed up the same day with the correct direct deposit form. N. Gougis and Barrett then followed up in early March with the production company.

On March 15, 2023, the production company informed Barrett and N. Gougis that the check for the commercial (minus the \$450 to be deposited directly in the Coogan account) was in the mail. The check would have been for \$2,697.63--\$600 for the commission, \$147.63 for the transportation reimbursement, and \$1950 remaining for Gougis. On March 17, 2023, \$450 was deposited into Gougis' Coogan account directly by the production company.

On April 3, 2023, N. Gougis emailed Barrett asking whether BBA received the check from the production company. Barrett stated that N. Gougis would have to ask Howard about the payment. Howard stated that day that the check may have gone to an old address. Howard did not follow up for two weeks. On April 18, 2023, N. Gougis emailed Howard and Barrett again asking for an update. Howard responded that the check had been reissued and should be arriving anytime.

¹ Under Labor Code
§ 1308.9, "Coogan" trust accounts must be set up for certain minor employees working in the entertainment industry.

Following Howard's representation in April 2023 that the check would be arriving soon, she did not respond to multiple email follow-ups from N. Gougis. N. Gougis also tried calling on multiple occasions. On May 17, 2023, Howard answered the phone. Howard admitted that BBA received the check and stated that she did not know why the payment had not been sent to N. Gougis. Howard also stated that the amount owed to N. Gougis was \$1700, which was below the actual amount owed.

On May 22, 2023, N. Gougis emailed Barrett about the payment. Barrett responded that the "entire process of payment has been so messed up" and that she does not "have any control of the accounting and very little information to access about it." Barrett wrote that she would reach out to Howard.

On June 7, 2023, N. Gougis emailed BBA to terminate her contract for failure to obtain employment or a bona fide offer as well as their breach of contract for failure to provide payment. In response, a generic company email responded, "We understand. We have cut all expenses so we can pay your overdue payment of \$1,747.63."

III. Legal Analysis

The sole issue is whether Respondent violated Labor Code § 1700.25. Under this section, an agent must disburse money being held on behalf of an artist within 30 days, subject to narrow exceptions not at issue here. Labor Code § 1700.25(a). An agent must pay interest on wrongfully withheld funds if the withholding is willful. *Id.* § 1700.25(e).

There is no dispute that Respondent violated this requirement. We find it more likely than not that BBA received the original check sent by the production company on March 15, 2023, meaning it should have been disbursed to Gougis by April 14, 2023. Even assuming that Respondent first received a reissued check from the production company for Gougis' work in April 2023, they have not disbursed the funds to Gougis.

The violation was willful, as BBA knew it had the funds and did not disburse them. N. Gougis attempted to contact BBA on multiple occasions throughout March, April, May, and June 2023 to inquire about disbursal. As noted above, we find Howard's representation that the firm never received the check in March unlikely; her claim that the money would be coming to Gougis in May 2023 appears deceitful. Indeed, Howard never responded to N. Gougis after May 2023; instead, a generic email address in June

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2023 informed N. Gougis that BBA knew it owed her daughter money (albeit stating the incorrect amount) and that they would try to pay it. BBA has still yet to disburse the payments.

In light of the "utter fabrication and blatant misrepresentation intended to deceive petitioner[]", the contract between Petitioner and Respondent is void ab initio. See Pope et al. v. Mitchell Agency, Inc. et al., TAC 2-01 (2001), at 8, 22 (voiding contract ab initio when agent withheld disbursement of checks from production company and lied to artists about whether the production companies had paid). Gougis is entitled to disgorgement of the commissions on the booking described above.

Gougis is therefore entitled to \$2,097.63 in willfully withheld funds and \$600 in disgorged commissions, for a total of \$2,697.63, plus 10% interest per annum from April 15, 2023 onward. As of March 8, 2024, the interest is \$242.42 for a total of \$2,940.05.

IV. Order

It is ordered as follows:

- 1. Respondent BBA Talent Inc. is to pay Petitioner Gougis \$2,940.05, with 10% interest per annum continuing until payment; and
- 2. Petitioner's contract with BBA Talent Inc. is void and unenforceable.

Casey L. Raymond Dated: March 8, 2024

> Casey Raymond Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: March <u>8</u>, 2024 By: LILIA GARCÍA-BROWER California State Labor Commissioner