STATE OF CALIFORNIA Department of Industrial Relations DIVISION OF LABOR STANDARDS ENFORCEMENT 1

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

ANTHONY HEIDER, an individual,

Petitioner,

v.

BBA TALENT INC.,

Respondent.

### Case Nos.: TAC 52897

## **DETERMINATION OF CONTROVERSY**

### I. Introduction

The above captioned petition was filed on June 5, 2023 by Anthony Heider (Heider). Heider alleges that Respondent talent agency BBA Talent Inc. (BBA) received payment for jobs Heider performed in December 2022 and February 2023 but failed to disburse the funds to Heider within 30 days from receipt by the employer as required under Labor Code § 1700.25. Respondent did not file an answer.

A hearing occurred on February 26, 2024 via Zoom. Heider appeared 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

Heider is an artist who was represented by talent agency BBA during the relevant time periods. Renee Howard was the President of BBA.

In December 2022, Heider booked a voice-over performance for a movie trailer and a video game through Marc Graue Studios (Marc Graue). He informed his agent Mike O'Dell from BBA. Heider was

Determination of Controversy

promised \$125 per hour for two hours of work, for a total of \$250. In addition, Marc Graue promised to
pay an additional 10% (\$25) for the commission to BBA, for a total of \$275. Heider performed the work
on December 19, 2022. Samantha Morrison from Marc Graue confirmed to Heider on April 17, 2023 that
all checks for 2022 work had been paid to BBA.

In January 2023, Heider booked an on-camera performance for a National Football League Superbowl commercial. He informed his agent Mike O'Dell from BBA about the booking. Heider was promised \$1700 for the shoot, broken down as \$500 for the shoot date, \$1000 for usage, \$50 for time to take a COVID test, and an additional 10% of the \$1500 for the shoot and the usage as commission (\$150). Heider shot the commercial on January 21, 2023. Two separate checks later provided to Heider by the production company show payment of the checks to BBA on February 16, 2023.

In February 2023, Heider booked and performed two additional voice-over roles for a movie trailer at the rate of \$125 per hour plus a ten percent additional payment for commission to BBA. In total, he worked 3 hours (\$375) plus \$37.50 for BBA's commission, for a total of \$412.50. Samantha Morrison from Marc Graue confirmed to Heider on April 17, 2023 that these payments were paid to BBA on April 14, 2023.

Altogether, BBA received \$2,112.50 and never disbursed any of that amount to Heider.

On March 21, 2023, Heider first emailed Howard regarding the unpaid amounts. Howard stated that she was "covering for two people out on vacation" and needed to "get caught up processing" to let him know when he would be paid. We find it more likely than not Howard was lying to Heider that processing was the problem. Instead, given Howard's later behavior avoiding communications from Heider, we find it likely Howard knew BBA had received the funds but could not or did not disburse them.

In April and May 2023, Heider sent additional follow up emails to O'Dell and Howard. On April
5, 2023, Heider noted that he "really need[ed] the money" and asked for a status update. By May 2023,
Heider was sending an email entitled "Please help me," asking O'Dell and Howard if he could get paid.
O'Dell at least responded, stating he would "nudge" Howard. Howard did not reply.

BBA has not disbursed the payments as of the date of the hearing.

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#### 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 10% interest per annum on wrongfully withheld funds if the withholding is willful. Id. § 1700.25(e).

There is no dispute that Respondent violated this requirement. BBA had the payment for the NFL commercial on February 16, 2023, meaning it should have been disbursed to Heider by March 18, 2023. BBA Talent had the payment from Marc Graue by April 14, 2023, meaning that it should have been paid out by May 14, 2023. BBA has not disbursed these funds.

The violation was willful, as BBA Talent knew it had the funds and did not disburse them. Heider attempted to contact BBA on multiple occasions throughout March, April, and May 2023 to inquire about disbursal. As noted above, Howard replied only once, in a likely lie that the money would be disbursed once she had time to process it.

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). Heider is entitled to disgorgement of the commissions on the bookings described above.

Heider is therefore entitled to the unlawfully withheld amounts and disgorgement of any commissions plus 10% interest per annum, which as of March 8, 2024 totals \$2,326.07, broken down as follows:

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NFL Commercial: \$1700 + \$179.78 in interest, for a total of \$1,879.78

Marc Graue recordings: \$412.50 + \$33.79 in interest, for a total of \$446.29

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**Determination of Controversy** 

1	IV. Order
2 3 4 5 6 7 8 9 10 11	It is ordered as follows: <ol> <li>Respondent BBA Talent Inc. is to pay Petitioner Heider \$2,326.07, with 10% interest per annum continuing until payment; and</li> <li>Petitioner's contract with BBA Talent Inc. is void and unenforceable.</li> </ol> Dated: March 8, 2024           Casey L Raymond           Casey Raymond           Attorney for the Labor Commissioner
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13	ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER
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15	Dated: March <u>8</u> , 2024 By: LILIA GARCÍA-BROWER
16	California State Labor Commissioner
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