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2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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9 Special Hearing Officer for the Labor Commissioner

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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

11 PARADIGM TALENT AGENCY, A
12 California General Partnership,

13 Petitioner,

14 vs.

15 CHARLES CARROLL, An Individual and
16 KAYENTA PRODUCTIONS, INC., A
17 California Corporation.

18 Respondents.

CASE NO.: TAC-12728

DETERMINATION ON PETITION
OF PARADIGM TALENT AGENCY

19 This proceeding arose under the provisions of the Talent Agencies Act (the
20 "Act"), Labor Code §§ 1700 – 1700.47¹. On March 24, 2009, petitioner Paradigm Talent
21 Agency ("Paradigm") filed a petition with the Labor Commissioner pursuant to §1700.44
22 seeking determination of an alleged controversy with respondents Charles Carroll and
23 Kayenta Productions, Inc. (Kayenta Productions, Inc., is the "loan out" company for
24 Charles Carroll, and both are hereinafter collectively referred to as "Carroll".) Carroll
25 filed an answer, and on June 23, 2010 a full evidentiary hearing was held before William
26 A. Reich, attorney for the Labor Commissioner assigned as a hearing officer. Due

27 ¹ Unless otherwise specified, all subsequent statutory references are to the Labor
28 Code.

1 consideration having been given to the testimony, documentary evidence, briefs, and
2 arguments submitted by the parties, the Labor Commissioner now renders the following
3 decision.

4 PROCEDURAL AND FACTUAL BACKGROUND

5 Paradigm is a talent agency; it represents artists throughout the United States in
6 connection with their employment or engagements in various aspects of the entertainment
7 industry including motion pictures, television, theater, music, and personal appearances.
8 Carroll is an artist whose occupation is that of a line producer.

9 At the heart of this controversy is the oral agency representation agreement that
10 Paradigm alleges it entered into with Carroll, in September, 2005, for the purpose of
11 representing Carroll in his search for employment as a line producer, or employment in a
12 comparable position. Paradigm claims that, under the agreement, Carroll agreed to pay
13 Paradigm a commission fee of 10% of the amount payable to Carroll as a result of any
14 employment obtained by Carroll through the representation provided by Paradigm.
15 Paradigm further claims that, although Carroll obtained a position as a line producer on a
16 television show pursuant to the efforts and activities of Paradigm as Carroll's agent,
17 Carroll has failed to pay Paradigm all of the commissions due under the terms of the
18 agency agreement. Specifically, Paradigm asserts that it was paid the commissions due
19 for the first two years of Carroll's employment, but not the commissions due for years
20 three and four. In short, Paradigm's claim is one for breach of the agreement and
21 damages.

22 For his part, Carroll concedes that the parties entered into an agency representation
23 agreement. Nevertheless, Carroll contends that his obligation to pay commissions was
24 contingent on Paradigm having procured Carroll's employment and that Carroll's
25 position as a line producer was not obtained through the representation efforts and
26 activities of Paradigm. Thus, according to Carroll, since the condition precedent to
27 Carroll's obligation was not performed, he owes no commissions under the

1 acknowledged agency agreement. Carroll asserts, however, that he subsequently entered
2 into two separate agreements with Paradigm in which he engaged Paradigm to negotiate
3 the terms of his compensation under the employment agreement for each of two
4 upcoming years. According to Carroll, the commissions were to be 10% of the amounts
5 paid to Carroll in each of the first two production years, and those commissions have
6 been remitted to Paradigm in full. Finally, Carroll contends that, even if Paradigm
7 performed the conditions precedent to his commission obligations under the original
8 agreement, the commission payments that Paradigm received for the first two years of
9 Carroll's employment as a line producer were all the commissions that Paradigm was
10 entitled to under the agreement. In sum, Carroll's position is that there was no breach of
11 the agreement—(a) because Paradigm never performed the condition precedent to
12 Carroll's obligation to pay commissions, and (b) because, in any event, Carroll fully paid
13 the commissions that were actually due under the agreement.

14 The following facts are pertinent to the resolution of the foregoing claims and
15 contentions.

16 In approximately May, 2005, Carroll came to Los Angeles, California with the
17 expectation that he would have the job of line producer on a new television show entitled
18 *Criminal Minds*, which was being produced under the umbrella of Touchstone Television
19 Productions, LLC ("Touchstone"). Carroll had a friend, Ed Benero, who was associated
20 with the production, and it was that connection to the show that generated Carroll's
21 expectation of employment. For reasons that are not clear, Carroll did not get the job of
22 line producer on *Criminal Minds*.

23 In August, 2005, Carroll relocated to Southern California. Carroll was desirous of
24 obtaining employment as a line producer, and, in that month, met with a representative of
25 Paradigm, Frank Balkin ("Balkin"), to discuss the possibility of hiring Paradigm to be
26 Carroll's agent. As confirmed by their words as well as their subsequent conduct, at the
27 meeting both parties had a clear understanding that being Carroll's agent would mean

1 that Paradigm would act on behalf of Carroll in trying to find him a job as a line
2 producer or a job performing comparable functions. The parties discussed compensation.
3 The commission fee to be paid would be calculated based on the industry standard of
4 10% of the income from the employment secured for Carroll. The fee would be due and
5 payable if employment was obtained during the period of the agency.

6 There is a dispute between the parties as to what role, if any, Paradigm had to play
7 in the process leading up to Carroll receiving the job in order to qualify for its
8 commissions. Balkin testified that he told Carroll that Paradigm would be entitled to the
9 10% compensation regardless of whether the employment accepted by Carroll was
10 procured by Paradigm, a third party, or Carroll himself. Balkin testified that he was
11 certain he made this statement because it was his standard practice based on his training.
12 Carroll testified that his recollection of the conversation with Balkin was different and
13 that Balkin never said anything about Paradigm being entitled to commissions if the
14 employment was procured not by Paradigm but by a third party or Carroll himself.

15 Around September 15, 2005, Carroll advised Balkin that he wanted Paradigm to
16 represent him. Thereafter, Paradigm undertook numerous efforts to try to find
17 employment for Carroll, including making calls, submitting resumes, and pitching him in
18 person to various prospective entertainment industry employers. On December 13, 2005,
19 at a staffing meeting at Touchstone, Paradigm, with Carroll's knowledge, made an
20 in-person pitch of Carroll to Touchstone's representatives. On four subsequent
21 occasions, Paradigm submitted Carroll's resume to Touchstone's representatives.

22 At some point in March, 2006, Carroll received a call from Ed Benero, his friend
23 on the *Criminal Minds* show, who advised him that the current line producer was gone
24 and that Carroll would get the job. Balkin testified that around this time he received a
25 call from Carroll telling him that Ed Benero and Touchstone were interested in Carroll
26 for the job of line producer on *Criminal Minds*. Both Balkin and Carroll testified that
27 Carroll asked Paradigm to negotiate the compensation provisions of the contract between

1 Carroll and Touchstone. Both Balkin and Carroll received calls from Touchstone
2 representatives expressing Touchstone's desire to hire Carroll as the line producer on
3 *Criminal Minds*.

4 On March 22, 2006, Paradigm sent Carroll a proposed written agreement the
5 subject matter of which was Paradigm's employment as Carroll's agent. Carroll had his
6 brother, who is a lawyer, look it over. Carroll testified that he found certain parts of the
7 agreement unacceptable and not understandable and that for these reasons he did not sign
8 the agreement. Carroll never raised any objections to the agreement with Paradigm, and
9 never discussed the terms of the agreement with Paradigm at all.

10 Paradigm, acting through Balkin, proceeded to negotiate with Touchstone
11 regarding the compensation to be paid to Carroll if he were to be employed as the line
12 producer on *Criminal Minds*, and also regarding the credits Carroll would receive if so
13 employed. An agreement between Carroll and Touchstone was reached and entered into
14 as of May 2, 2006; after five revisions, a final version of the agreement was executed by
15 the parties on or after August 1, 2006.

16 Carroll was hired for thirteen (13) episodes for the 2006/2007 production year,
17 with Touchstone having the option to engage Carroll for additional episodes for that
18 production year. Under the agreement, Touchstone was given the option of engaging
19 Carroll for two additional production years: 2007/2008 and 2008/2009. The per episode
20 compensation was fixed as follows: \$21,500 for 2006/2007, \$22,575.05 for 2007/2008,
21 and \$23,703.75 for 2008/2009. Touchstone exercised its option for the 2006/2007 year
22 and completed 24 episodes with Carroll as line producer.

23 Carroll was very unhappy with the per episode compensation he received for the
24 first production year. He communicated this unhappiness to the representatives of
25 Touchstone, and they made it clear that they wanted to keep him. Carroll then contacted
26 Balkin and asked him to contact Touchstone and renegotiate the per episode
27 compensation. Balkin's efforts led to Touchstone offering \$24,500.00 for the 2007/2008

1 year. Carroll considered this unsatisfactory and became personally involved in the
2 negotiations. Through his individual efforts, Carroll was able to get Touchstone to agree
3 to pay \$26,500 per episode for the 2007/2008 production year. This amendment to the
4 original agreement provided Touchstone with the option of engaging Carroll for two
5 additional production years: 2008/2009 at \$27,129.00 per episode, and 2009/2010 at
6 \$28,485 per episode. Touchstone subsequently exercised its option for the 2008/2009
7 and 2009/2010 production years.

8 Paradigm received its 10% commissions on the compensation paid by Touchstone
9 to Carroll during the 2006/2007 and 2007/2008 production years. Sometime after April
10 22, 2008, and subsequent to Touchstone's exercise of its option for the 2008/2009
11 production year, Carroll terminated Paradigm's employment as his agent. At the hearing,
12 Carroll expressed the view that, in connection with the original agency agreement,
13 Paradigm had not procured Carroll's employment with Touchstone. He further testified
14 that when he asked Paradigm to negotiate the terms of the 2006/2007 and 2007/2008
15 production years, respectively, it was his belief that in each instance he was only hiring
16 Paradigm to negotiate the fees for the particular upcoming production year and that he
17 was only responsible for paying commissions on the compensation received for those
18 specific years—i.e., the years that were negotiated while the agency remained in effect.
19 Paradigm did not receive any commissions on the compensation paid to Carroll in the
20 2008/2009 and 2009/2010 productions years.

21 In the instant proceeding, Paradigm seeks to recover the commissions it claims are
22 due, calculated at 10% of the compensation paid by Touchstone to Carroll for the
23 production years 2008/2009 and 2009/2010. It also seeks to recover a claimed
24 underpayment of \$911.00 for the 2007/2008 production year. The total amount claimed
25 to be due is \$140,452.80.

1 (Rest. Agency, §448, com. a; *Wilson v. Turner Resilient Floors* (1949) 89 Cal.App.2d
2 589; see also *Wise v. Reeve Electronics, Inc.* (1960) 183 Cal.App.2d 4.)

3
4 Thus, the test is one of 'fairness,' and the question is one of fact for the [trier-of-
5 fact].

6 (*Wilson v. Turner Resilient Floors, supra*, 89 Cal.App.2d at p. 596.)

7
8 In this case, the evidence shows that Paradigm was an effective cause of Carroll
9 securing the position of line producer on Touchstone's television series entitled *Criminal*
10 *Minds*. Carroll had thought that position was his for the first year of the show, but
11 Touchstone did not give it to him and instead hired someone else. It was at that point that
12 Carroll hired Paradigm as his agent. Paradigm then proceeded to try to obtain a position
13 for Carroll with Touchstone. Paradigm's Balkin had a personal meeting with
14 Touchstone's representatives to promote Carroll and ascertain what employment
15 opportunities might be available for Carroll as a line producer. This meeting was
16 followed up with the subsequent submission of Carroll's resume to Touchstone on four
17 separate occasions. It was only after Paradigm had expended these efforts on Carroll's
18 behalf, and thereby apprised Touchstone of Carroll's interest and availability, that
19 Touchstone contacted Carroll and Paradigm to discuss bringing Carroll on board as the
20 line producer for its television series. It is thus evident that Paradigm's contact activities
21 were an important precipitating factor in the chain of events leading up to Carroll
22 obtaining the job on *Criminal Minds*.

23 Carroll argues that Paradigm played no role in Touchstone becoming interested in
24 Carroll for the line producer position, and that the job opening was presented to him
25 solely because of his connection to Ed Benero, his friend on *Criminal Minds*. This
26 argument is wholly unpersuasive. First, Carroll's connection to Ed Benero had not been
27 sufficient to secure Carroll the line producer position for the first year of the

1 show—despite Carroll’s strong belief that it would be. Second, on the facts presented
2 here, it is impossible to conclude that Paradigm’s repeated communications to
3 Touchstone that they had a capable, interested, and available line producer had no
4 significant impact on the mental processes of Touchstone’s representatives in seeking out
5 a replacement for the current line producer, who for some reason was not working out.
6 Indeed, the only reasonable inference is that these communications played an important
7 role in directing Touchstone’s attention toward Carroll.

8 Furthermore, Carroll’s conduct at the time of these events is corroborative of the
9 foregoing conclusion and inconsistent with the arguments he makes now. At the hearing,
10 Carroll took the position that the agency representation agreement was inoperative
11 because Carroll himself, alone, had been responsible for obtaining the new employment.
12 Carroll claimed that at that point in time he entered into a new agreement with Paradigm,
13 pursuant to which Paradigm was hired solely to negotiate the compensation for the
14 upcoming production year and would be paid a commission limited to 10% of the
15 amounts received by Carroll for that year. However, nothing testified to by Carroll, or
16 anyone else, supports this version of events.

17 After Touchstone contacted Carroll and Paradigm regarding the line producer
18 position, Carroll said absolutely nothing to Paradigm regarding the agency representation
19 agreement or the need to enter into a new agreement. In other words, there were no
20 communications from Carroll to the effect that the agency representation agreement had
21 become inoperative and that he now wanted to enter into a new agreement confined to
22 Paradigm negotiating his compensation for the upcoming year. On the contrary, when
23 Carroll asked Paradigm to negotiate the terms of his employment with Touchstone—
24 without saying anything else—he essentially acknowledged that Paradigm had
25 effectively performed the threshold condition of contributing to the identification of an
26 interested employer, and that what Paradigm was being asked to do now was complete
27 the process by finalizing the specific terms of the employment. Thus, Carroll’s conduct

1 confirmed that Paradigm had been the effective cause of securing the employment with
2 Touchstone.

3 Apart from its efforts at eliciting Touchstone's interest, Paradigm also acted on
4 behalf of Carroll in negotiating with Touchstone regarding the terms of Carroll's
5 compensation and the credits he would receive. These negotiation activities, in and of
6 themselves, were a substantial and important factor in bringing about Carroll's
7 employment with Touchstone.

8 Even though Touchstone may have been inclined to hire Carroll as a line
9 producer, until the terms of the employment agreement were satisfactorily negotiated,
10 and the agreement signed, there was no employment of Carroll. Thus, effective
11 negotiation was a critical factor in assuring that the final result would be the employment
12 of Carroll by Touchstone. In other words, the negotiation efforts were vitally important
13 to accomplishing the desired result and hence, independently, were an effective cause of
14 Carroll's employment by Touchstone.

15 The foregoing discussion is also dispositive of Carroll's argument that the oral
16 agency agreement is unenforceable by virtue of California Code of Regulations, title 8,
17 section 1002, which provides in relevant part as follows:

18 A talent agency shall be entitled to recover a fee, commission or
19 compensation under an oral contract between a talent agency and an artist
20 as long as the particular employment for which such fee, commission or
21 compensation is sought to be charged shall have been procured directly
22 through the efforts or services of such talent agency[.]

23 Carroll contends that Paradigm did not procure Carroll's employment with
24 Touchstone. This contention obviously lacks merit. As the analysis set forth above
25 makes clear, here it has been determined that Paradigm was the effective cause of
26 Touchstone's employment of Carroll, and that determination likewise establishes that
27 Carroll's employment was "procured directly through the efforts or services of"
28 Paradigm, as contemplated by section 1002. Accordingly, the oral agreement is
enforceable.

1 As part of its case, Paradigm also made the argument that under the oral agency
2 representation agreement Paradigm would have a right to the 10% commissions even if it
3 were to be determined that the employment was procured solely by Carroll himself and
4 not through the efforts of Paradigm. The argument was premised on two contentions.
5 First, that based on the conversation between Balkin and Carroll, the agreement included
6 a provision that commissions were payable to Paradigm regardless of whether the
7 employment was obtained by Paradigm, a third party, or Carroll himself. Second, that an
8 equivalent provision regarding the payment of commissions was embedded in the
9 proposed written agreement sent by Paradigm to Carroll, and that the terms of this written
10 agreement, which was never signed, became part of and were incorporated into the
11 parties' oral agreement. However, because it has been determined that Paradigm was the
12 efficient cause of Carroll's employment and therefore is entitled to the commissions due
13 under the agency agreement, it is unnecessary to address these additional arguments in
14 this case.

15 2. Paradigm is entitled to a 10% commission on all the income that Carroll
16 was entitled to be, and was, paid for the performance that he was required
17 to, and did, render under the terms of the 2006 employment agreement and
18 2007 amendment thereto negotiated by Paradigm. Carroll must therefore
19 pay Paradigm the commissions due for the 2008/2009 and 2009/2010
20 production years.

21 Under the oral agency representation agreement, the parties agreed that Carroll
22 would pay Paradigm a commission fee calculated at 10% of the compensation that would
23 become payable to Carroll by virtue of the employment obtained for Carroll through
24 Paradigm's efforts. Although there was little discussion of what exactly was to be
25 included in the commissionable compensation, it was necessarily within the
26 contemplation and expectation of both parties that the commissions would be calculated
27 based on the terms of the employment contract and, more particularly, the compensation

1 the contract would require the employer to pay to Carroll in exchange for the
2 performance the contract would require Carroll to render in order to receive the
3 compensation. In other words, the calculation of commissions was to be governed by the
4 actual obligations under the contract – what services was Carroll required to render and
5 what remuneration was the employer required to pay for those services. Indeed, this is
6 the only reasonable construction that can be placed on the agency agreement in the
7 circumstances of this case.

8 Thus, by way of illustration, if Paradigm’s efforts had resulted in the procurement
9 of a contract whereby Carroll was provided and committed himself to employment for a
10 period of three years at a specified compensation per episode, there is no question that
11 Carroll would have been required to pay a 10% commission fee on the per-episode
12 compensation to be received during the three-year contract period. Plainly, there simply
13 would be no rational or legitimate basis for concluding that the parties intended the
14 commissions period to be something less than three years – whether one year, two years,
15 or any other period. Paradigm was engaged to obtain an employment contract for
16 Carroll. Having obtained a three year contract that Carroll found acceptable, Paradigm
17 would be entitled to commissions on the compensation for the entire three year period.
18 In these circumstances, Carroll could not reasonably expect to pay commissions for a
19 period shorter than the employment period set out in the contract.

20 The present case involves a scenario which is essentially the same as the one
21 discussed above. Paradigm’s efforts secured Carroll an employment contract with
22 Touchstone which encompassed a period of three years. Although it was not required
23 that the contract of employment continue for a full three years, any curtailment in the
24 duration of the employment was strictly at the option of Touchstone. While Touchstone
25 could decide not to make more than 13 episodes in the first year, or not to proceed with
26 the second or third seasons, Carroll was contractually obligated to work for three years if
27 Touchstone elected to continue Carroll’s employment as the line producer on the series.

1 Since under the 2006 contract Carroll was required to work for three years, for which he
2 would be compensated at a specified per episode amount, Paradigm was entitled to a 10%
3 commission on all the compensation to be paid to Carroll under the terms of the contract
4 for the full three years.

5 The foregoing conclusion applies with equal force to the 2007 amendment to the
6 2006 contract, which amendment was negotiated by Paradigm. The 2007 amendment
7 increased the per episode compensation for the second and third seasons covered under
8 the original 2006 contract – that is to say, for the 2007/2008 and 2008/2009 production
9 years. It also added an additional optional season, the 2009/2010 production year, and
10 set the highest per episode compensation for that season. Under the terms of the
11 amended contract, Carroll was now required to work three additional years. As
12 compensation for the services he was required to perform under the contract, Carroll was
13 entitled to be paid the contractually specified per episode rate. Accordingly, all of the per
14 episode compensation payable and paid to Carroll for the three production years covered
15 by the amended contract were subject to the 10% commission fee that Paradigm was
16 entitled to collect pursuant to the agency representation agreement.

17 Carroll advances a number of contentions in support of his position that he should
18 not be found contractually liable for talent agency commissions on the amounts he was
19 paid for the 2008/2009 and 2009/2010 production years. None of these contentions is
20 persuasive.

21 First, Carroll argues that the original agency representation agreement was never
22 performed by Paradigm because it never procured employment for Carroll, and that in
23 2006 and 2007 Carroll and Paradigm entered into new and different oral agency
24 agreements, whereby Paradigm was hired solely to negotiate the compensation to be paid
25 for the upcoming 2006 and 2007 years, respectively, and would be entitled to
26 commissions only on the compensation received for those years. This argument,
27 however, has already been rejected. The original agency agreement was in fact

1 performed by Paradigm, and, as noted, there was no evidence that a new and different
2 agreement was entered into either in 2006 or in 2007. In other words, the only operative
3 agency agreement was the one entered into in 2005, and it is that agreement that governs
4 the parties' dispute.

5 Second, Carroll argues that construing the parties' agency agreement to
6 encompass commissions for the 2008/2009 and 2009/2010 production years is
7 unreasonable, not within the parties' expectations, and tantamount to effecting unfair
8 surprise. As set out in the above discussion, it has already been determined that the
9 objected to construction is reasonable and was in fact within the parties' reasonable
10 expectations. Under the 2006 contract with Touchstone, Carroll agreed to work three
11 years, and then, pursuant to the negotiated 2007 amendment, an additional year. He
12 agreed to perform that work for the compensation specified in the contract, and Paradigm
13 was entitled to a 10% commission fee on all the compensation payable and paid under the
14 contract. There is simply no rational or reasonable basis for arguing that because the
15 third and fourth production years were to be worked at the sole option of Touchstone
16 they should be excluded from the commissionable compensation. It should be noted that
17 Carroll was guaranteed only 13 episodes for the first season, and that the other 11
18 episodes produced that season were worked solely at the option of Touchstone. Carroll
19 never contended that these optional episodes should have been excluded from the agency
20 commissions; on the contrary, he approved payment of the commissions on those
21 episodes unhesitatingly and without question. Thus, Carroll's conduct reveals that he
22 himself considered the option component of the contract an immaterial consideration.

23 In addition, it should be noted that the evidence in this case establishes that Carroll
24 was an individual with above-average sophistication, who had a fairly good
25 understanding of the common industry practice regarding the compensation of talent
26 agents by artists. Carroll received and reviewed the written talent agency agreement
27 proposed by Paradigm—and also had his brother review it—before he instructed

1 Paradigm to negotiate a contract with Touchstone on his behalf. Carroll necessarily
2 knew that the written agreement contained a provision, paragraph 3, that specified that
3 commissions were payable for all years worked under the Touchstone contract, including
4 the option years. As a result, Carroll also knew or had reason to know that Paradigm
5 believed that under the parties' agency representation agreement all four years under the
6 Touchstone contract were commissionable. Thus, in addition to what has already been
7 said, this knowledge on Carroll's part belies any suggestion that Carroll would be
8 surprised—much less unfairly surprised—by the recognition that under the talent agency
9 agreement he was obligated to pay commissions on the income he earned during the third
10 and fourth season of *Criminal Minds*.

11 Third, Carroll contends that he should be excused from paying commissions for
12 the third and fourth production years on the ground that Paradigm failed to perform its
13 obligations under the agency representation agreement. Specifically, Carroll asserts there
14 was a failure of performance when Paradigm's 2007 renegotiation of the Touchstone
15 contract resulted in a lower per episode compensation rate than Carroll was able to obtain
16 when he personally stepped into the negotiations. This argument is without force.
17 Paradigm's 2007 negotiations resulted in Touchstone agreeing to pay a higher per
18 episode rate; the fact that Carroll's collaborative personal involvement elicited an even
19 higher rate in no way establishes a material failure by Paradigm to perform its contractual
20 obligations. There was no such failure.

21 Carroll also asserts that once Paradigm's agency was terminated in 2008,
22 Paradigm no longer performed any obligations on behalf of Carroll with respect to the
23 Touchstone contract. It is claimed that this violated California Code of Regulations, title
24 8, section 12001, subdivision (b). The evidence in this case shows that once Paradigm's
25 agency was terminated, Carroll made no further requests to Paradigm that it perform
26 obligations in connection with the Touchstone contract. While an agent must stand ready
27 to perform required obligations even after the agency is terminated, it is well established

1 that there is no violation of section 12001, subdivision (b) if after termination of the
2 agency the artist requires no further performance on the part of the agent. (See *Beyeler v.*
3 *William Morris Agency, Inc.* (Cal.Lab.Com., Sept. 5, 2001) TAC No. 32-00 ; *The Stein*
4 *Agency v. Tripp-Haith* (Cal.Lab.Com., Oct. 30, 2006) TAC No. 46-05.)

5 As part of its case, Paradigm also made the argument that the proposed written
6 agreement that it sent to Carroll, though never signed, was incorporated into the parties'
7 oral agreement, and that under the provisions of the incorporated agreement Paradigm
8 was entitled to be paid the applicable commission fee for the third and fourth production
9 years. Because it has been determined that the commissions for the third and fourth years
10 were recoverable based on the original terms of the oral agency representation agreement,
11 this argument is not addressed.

12
13 3. Paradigm is entitled to recover \$136,050.90 in unpaid commissions.

14
15 Paradigm is entitled to unpaid commissions for the 26 episodes shot during the
16 2008/2009 production year and for the 23 episodes shot during the 2009/2010 production
17 year. Under the contract as modified in 2007, Carroll was paid \$27,129.00 per episode in
18 2008/2009; based on a total payment of \$705,354.00 for that production year, Paradigm
19 is due a 10% commission fee of \$70,535.40. For 2009/2010, the per episode rate was
20 \$28,485.00; based on a total payment of \$655,155 for that production year, Paradigm is
21 due a 10% commission fee of \$65,515.50. The combined amount due for both years is
22 \$136,050.90.

23 In its claim, Paradigm seeks to recover an additional \$3,490.90 for the third and
24 fourth production years. This additional claim is inconsistent with the terms of the
25 Carroll-Touchstone contract and with Paradigm's letter to Carroll demanding payment.
26 Moreover, there is no showing made to establish a basis for this claimed additional
27 entitlement. Accordingly, it is rejected.

1 Paradigm also seeks to recover a \$911.00 shortfall for the 2007/2008 production
2 year. Given that it was Paradigm that withheld 10% from Carroll's payments during that
3 production year, it was incumbent on Paradigm to explain how the shortfall occurred.
4 Since no explanation was provided, this claim is also rejected.

5 In sum, Paradigm is entitled to recover \$136,050.90 in unpaid commissions.
6

7 DISPOSITION
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9 Accordingly, for the reasons set forth above,
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11 **IT IS HEREBY ORDERED** that respondents CHARLES CARROLL and
12 KAYENTA PRODUCTIONS, INC. shall pay to petitioner PARADIGM TALENT
13 AGENCY the sum of \$136,050.90, together with interest thereon, at 10% per annum, as
14 provided by law.

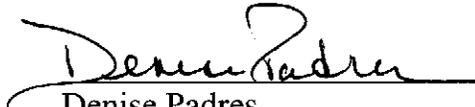
15 Dated: MARCH 1, 2011



16 William A. Reich
17 Attorney and Special Hearing Officer
18 for the Labor Commissioner
19

20 The above determination is adopted in its entirety by the Deputy Chief Labor
21 Commissioner.

22 Dated: March 4, 2011



23 Denise Padres
24 Deputy Chief Labor Commissioner
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