

1 PATRICK W. HENNING  
2 STATE LABOR COMMISSIONER  
3 By: Carl G. Joseph  
4 107 South Broadway, Room 5015  
5 Los Angeles, CA 90012  
6 213/620-2500  
7

8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA  
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11 BOBBY D. WOMACK,	)	Case No. TAC 22-82
12                   Petitioner,	)	DETERMINATION
13 vs.	)	
14 OTIS SMITH, an individual, OTIS	)	
15 SMITH, doing business as BEVERLY	)	
16 GLEN MUSIC and BEVERLY GLEN MUSIC,	)	
17 INC., an entity,	)	
Respondents.	)	

18                   The above-entitled controversy came on regularly for  
19 hearing before the Labor Commissioner, Division of Labor Stan-  
20 dards Enforcement, Department of Industrial Relations, State of  
21 California, by Carl G. Joseph, Attorney for the Division of  
22 Labor Standards Enforcement, serving as Special Hearing Officer  
23 under the provisions of Section 1700.44 of the Labor Code of the  
24 State of California, Petitioner, BOBBY D. WOMACK, appearing by  
25 the Law Office of BARRY G. WEST, JAMES E. HORNSTEIN, of GREEN-  
26 BERG, GLUSKER, FIELDS, CLAMAN & MACHTINGER, and Respondent, OTIS  
27 SMITH, individually and doing business as BEVERLY GLEN MUSIC and

1 BEVERLY GLEN MUSIC, INC., appearing by the Law Offices of RONALD  
2 E. SWEENEY, by RONALD E. SWEENEY and HAROLD C. HART-NIBBRIG.  
3 Evidence, both oral and documentary having been introduced, and  
4 the matter having been briefed and submitted for decision, the  
5 following determination is made:

6 It is the determination of the Labor Commissioner:

- 7 1. That during the time in question, respondent did not  
8 act as a talent agent as that term is defined in Labor Code  
9 § 1700.4.
- 10 2. That the record agreement entered into between peti-  
11 tioner and respondent in 1981 is fully enforceable with all pri-  
12 vileges and rights thereunder.

13 I

14 INTRODUCTION

15 On April 23, 1982, petitioner BOEPPY WOMACK (hereinafter  
16 sometimes Womack or petitioner) filed a Petition to Determine  
17 Controversy pursuant to Labor Code § 1700.44 with the Labor Com-  
18 missioner of the State of California, against respondent OTIS  
19 SMITH, individually and doing business as BEVERLY GLEN MUSIC and  
20 BEVERLY GLEN MUSIC, INC. (hereinafter sometimes respondent or  
21 Smith). The Petition alleged that respondent acted as an un-  
22 licensed artists' manager and talent agent in the State of Cali-  
23 fornia during his representation of petitioner.

24 Respondent filed an Answer to the allegations in the  
25 Petition to Determine Controversy and denied that he negotiated  
26 on behalf of petitioner and further denied the material allega-  
27 tions of the Petition regarding the claimed violations of the

1 Artists' Managers Act and Talent Agency Act.

2 After several continuances, the hearing commenced.

3 After petitioners presented their case and rested,  
4 respondent made a motion for a judgment pursuant to Code of Civil  
5 Procedure Section 631.8. The Motion for a judgment or determina-  
6 tion in respondent's favor was denied. The hearing continued and  
7 respondent put on his evidence. After the conclusion of the  
8 hearing, a complete transcript was prepared, briefs were submit-  
9 ted by petitioners and respondents and the matter was submitted  
10 to the Special Hearing Officer for a determination.

11 II

12 ISSUES

13 The issues presented are two-fold:

- 14 1. Did respondent function as an artists' manager and  
15 talent agent as those terms are defined in the Labor Code without  
16 a license?
- 17 2. Whether the Labor Commissioner has jurisdiction to  
18 determine all of petitioner's claims. If so, what relief, if  
19 any, should be granted to either party?

20 III

21 APPLICABLE LAW

22 The law which will determine the outcome of the claims  
23 asserted by petitioners is contained in Labor Code, Sections  
24 1700-1700.47, which was known as the Talent Agency Act.

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1 Section 1700.5 of the Artists' Managers Act<sup>1</sup> prohibits  
2 anyone from engaging in the occupation of an artists' manager or  
3 talent agent without having obtained a license from the Califor-  
4 nia Labor Commissioner. Respondent has admitted that he never  
5 sought or obtained such a license during the period that he re-  
6 presented petitioner.

7 One of the critical issues which will be discussed  
8 hereinbelow is whether respondent performed services of a talent  
9 agent on petitioner's behalf. An artists' manager is defined in  
10 Section 1700.4 as:

11 A person who engages in the occupation of  
12 advising, counseling, or directing artists  
13 in the development or advancement of their  
14 professional careers and who procures,  
15 offers, promises or attempts to procure  
16 employment or engagements for an artist  
17 only in connection with and as a part of  
18 the duties and obligations of such person  
19 under a contract with such artist by which  
20 such person contracts to render services  
21 of the nature above mentioned to such  
22 artist.<sup>2</sup>

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20 <sup>1</sup>All statutory citations will be to the California  
21 Labor Code unless otherwise specified.

22 <sup>2</sup>Effective January 1, 1979, Section 1700.4 was amended  
23 to read as follows:

24 "A talent agency is hereby defined to be a person  
25 or corporation who engages in the occupation of procur-  
26 ing, offering, promising or attempting to procure em-  
27 ployment or engagements for an artist or artists.  
Talent agencies may, in addition, counsel or direct  
artists in the development of their professional  
careers."

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1 IV

2 DISCUSSION AND FINDINGS

3 One major issue to be determined is whether respondents  
4 acted as an artists' manager or talent agent in rendering  
5 services for Womack or whether the services were rendered in a  
6 capacity, or capacities, other than that of an artists' manager/  
7 talent agent. We will first consider that portion of the defini-  
8 tion of artists' managers in Section 1700.4 which deals with  
9 promises, representations, and the process of entering into an  
10 agreement concerning prohibited services. The preponderance of  
11 the evidence does not establish nor support a finding that re-  
12 spondent promised petitioner that he would procure or otherwise  
13 obtain employment for petitioner. There was no evidence that  
14 respondent had ever referred to himself as Womack's "agent" or  
15 that he resisted attempts by other agents to establish an agency  
16 relationship with Womack. In fact, according to petitioner's own  
17 testimony, respondent was very much indifferent to others shop-  
18 ping for a deal for petitioner, namely, one Angelo DiFrenza.<sup>3</sup>

19 Now we will turn to the question as to whether respon-  
20 dents' actual conduct or activity (as contrasted with any promis-  
21 es and representations that may have been made) constituted pro-  
22 curement and attempted procurement of employment. Other than  
23 petitioner's own testimony, the only evidence submitted by peti-  
24 tioner was that of affidavits which for the most part were cate-  
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26 <sup>3</sup>Owner and proprietor of recording studio "Magic Wand."

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1 cial condition coupled with the respondent's refusal to make a  
2 loan to petitioner in the amount of \$11,000 unless petitioner  
3 signed the contract, he signed the agreement. Petitioner contends  
4 that Womack was controlled and manipulated into signing the re-  
5 cording agreement. We find the evidence to be insubstantial to  
6 establish this conclusion or to support a finding of this fact.  
7 However, we do find that the recording contract terms and agree-  
8 ment are adequate and fair and negotiated and entered at arms  
9 length.

10 We find and determine that all terms of the recording  
11 agreement are fully enforceable, including the provision for  
12 attorneys' fees, and accordingly award the respondent reasonable  
13 fees.

14 The Petition to Determine Controversy is dismissed and  
15 the relief requested therein is denied.

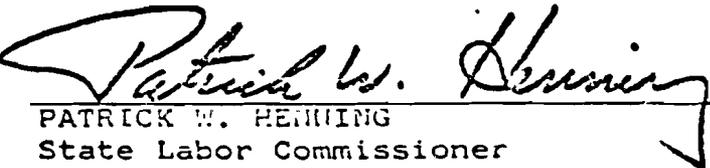
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18 PATRICK W. HENNING  
19 STATE LABOR COMMISSIONER  
20 DIVISION OF LABOR STANDARDS ENFORCEMENT  
21 Department of Industrial Relations  
22 State of California

23 DATED: Nov. 18, 1982

  
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CARL G. JOSEPH  
Special Hearing Officer

24 ADOPTED:

25 DATED: Nov 18, 1982

  
\_\_\_\_\_  
PATRICK W. HENNING  
State Labor Commissioner

1 ALBERT J. REYFF, Deputy Chief  
2 DIVISION OF LABOR STANDARDS ENFORCEMENT  
3 By: Carl G. Joseph  
4 107 South Broadway, Room 5015  
5 Los Angeles, CA 90012  
6 213/620-2500

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8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA

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11 BOBBY D. WOMACK,

12 Petitioner,

13 vs.

14 OTIS SMITH, an individual,  
15 OTIS SMITH, dba BEVERLY GLEN  
16 MUSIC, INC., an entity,

17 Respondents.

) Case No. TAC 22-82

) DETERMINATION REGARDING AWARD  
) OF ATTORNEYS' FEES TO  
) RESPONDENTS

18 Petitioner's motion to tax costs came on regularly for  
19 hearing on January 17, 1983, having been continued from January 11,  
20 1983, before the Labor Commissioner, Division of Labor Standards  
21 Enforcement, Department of Industrial Relations, State of  
22 California, by CARL G. JOSEPH, Attorney for the Division of Labor  
23 Standards Enforcement, serving as Special Hearing Officer under  
24 the provisions of Section 1700.44 of the Labor Code of the State  
25 of California. Petitioner BOBBY D. WOMACK appeared by his  
26 attorneys GREENBERG, GLUSKER, FIELDS, CLAMAN & MACHTINGER by  
27 BARRY G. WEST. Respondents OTIS SMITH, individually and dba

1 BEVERLY GLEN MUSIC, and BEVERLY GLEN MUSIC, INC. appeared by  
2 their attorneys LOEB and LOEB by DEBORAH R. CLARK. Oral and  
3 documentary evidence having been presented and post-hearing briefs  
4 having been submitted by petitioner and respondents, respectively,  
5 and the Labor Commissioner having duly considered all evidence  
6 presented and briefs submitted, and the cause having been  
7 submitted for decision, the Determination of the Labor  
8 Commissioner with respect to the Award of Attorneys' Fees to  
9 respondents is as follows:

10 1. The attorneys' fee provisions set forth in  
11 Paragraph 18 of the Recording Contract dated May 14, 1981 and in  
12 Paragraph 14 of the Personal Management Agreement dated November  
13 10, 1980, are applicable to these proceedings.

14 2. On November 29, 1982, the Labor Commissioner issued  
15 a Determination resolving the issues raised by the pleadings in  
16 these proceedings. Said Determination resolved all issues in  
17 favor of respondents and awarded respondents reasonable  
18 attorneys' fees.

19 3. Pursuant to the provisions of Paragraph 18 of the  
20 Recording Contract and Paragraph 14 of the Personal Management  
21 Agreement, respondents are entitled to recover attorneys' fees  
22 incurred herein. During these proceedings the said Personal  
23 Management Agreement and Recording Contract were introduced in  
24 evidence, the contractual attorneys' fee provisions therein were  
25 admitted by petitioner, and the issue of awarding attorneys' fees  
26 was fully argued and briefed by counsel for the respective  
27 parties. Accordingly, all prerequisites and pleading requirements

1 appropriate and necessary under applicable California authority  
2 as a precondition to the recovery of attorneys' fees have been  
3 satisfied.<sup>1</sup>

4 4. In addition to respondents' contractual right to  
5 recover attorneys' fees, respondents have a statutory right to  
6 recover attorneys' fees pursuant to California Code of Civil  
7 Procedure Section 1717. Respondents' submission of a memorandum  
8 of costs and disbursements and declarations in the support of  
9 their request for attorneys' fees satisfied the procedural  
10 requirements recognized by California authority respecting the  
11 statutory right to recover attorneys' fees under Code of Civil  
12 Procedure Section 1717.<sup>2</sup>

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21 <sup>1</sup>Genis v. Krasne, 47 Cal.2d 241, 302 P.2d 289 (1920);  
22 San Luis Obispo Bay Properties Inc. v. Pacific Gas and  
23 Electric Co., 28 Cal.App.3d 556, 104 Cal.Rptr. 733  
(1972); Citizens Suburban Co. v. Rosemont Dev. Co.,  
Inc., 244 Cal.App.2d 666, 53 Cal.Rptr. 551 (1966).

24 <sup>2</sup>Babcock v. Antis, 94 Cal.App.3d 823, 156 Cal.Rptr. 673  
25 (1979); Beneficial Standard Properties, Inc., v.  
26 Scharps, 67 Cal.App.3d 227, 136 Cal.Rptr. 549 (1977);  
T.E.D. Bearing Co. v. Walter E. Heller & Co., 38 Cal.  
27 App.3d 59, 112 Cal. Rptr. 910 (1974).

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5. The amount of the reasonable attorneys' fees incurred by respondents herein is found to be \$45,000.00. Accordingly, it is determined that respondents shall have and recover from petitioner \$45,000.00. for their attorneys' fees.

ALBERT J. REYFF, Deputy Chief  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
State of California

DATED: 4/18/93

  
CARL G. JOSEPH  
Special Hearing Officer

ADOPTED:  
DATED: \_\_\_\_\_

ALBERT J. REYFF  
Deputy Chief