

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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7 BEFORE THE LABOR COMMISSIONER
8 OF THE STATE OF CALIFORNIA

10 JAMES HALL,)	No. TAC 14-95
)	
11	Petitioner,)
)	
12 vs.)	DISMISSAL OF PETITION
)	TO DETERMINE CONTROVERSY
13 SHERRY ROBB, dba ANDREWS and ROBB)	
14 and AFH,)	
)	
15 Respondents.)	

16 The above-captioned petition to determine controversy
17 pursuant to Labor Code §1700.44 was filed with the Labor
18 Commissioner on July 26, 1995, and was served on respondent on
19 September 29, 1995. The petition alleges, inter alia, that on or
20 about May 1, 1986, the parties entered into an oral agency
21 agreement; that on February 9, 1987 respondent negotiated a
22 written contract between a book publishing company and the
23 petitioner for publication of a book co-authored by the
24 petitioner; and that from 1990 to the present, respondent has
25 received royalties from the publisher on behalf of the petitioner,
26 but has failed to pay these royalties to the petitioner in
27 violation of Labor Code §1700.25.

28 Under Labor Code §1700.44, the Labor Commissioner has

1 exclusive primary jurisdiction over controversies arising under
2 the Talent Agencies Act (Labor Code §§1700-1700.47). A
3 controversy under the Talent Agencies Act is a controversy between
4 an "artist" and an "agent", as those terms are defined at Labor
5 Code §1700.4.

6 Labor Code §1700.4(b) defines "artists" as:

7 "actors and actresses rendering services on the
8 legitimate stage and in the production of motion
9 pictures, radio artists, musical artists, musical
10 organizations, directors of legitimate stage, motion
11 picture and radio productions, musical directors,
12 writers, cinematographers, composers, lyricists,
13 arrangers, models, and other artists and persons
14 rendering professional services in motion picture,
15 theatrical, radio, television, and other entertainment
16 enterprises."

17 Reading the statute as a whole, it is apparent that it is
18 only those writers who render "professional services in motion
19 picture, theatrical, radio, television and other entertainment
20 enterprises" who fall within the statutory definition of
21 "artists". A Hollywood studio screenwriter obviously falls within
22 this statutory definition; a law school text book author does not.

23 Between these two extremes, we have writers like the
24 petitioner - - authors of works of biography, autobiography, or
25 other non-fiction (as here) or works of poetry, novels or other
26 fiction. Some books may be read purely for their "entertainment
27 value"; while some may have no "entertainment value" and are read
28 solely to increase one's knowledge or skills. The motivations and
interests of the individual reader play a significant role in
determining whether a given book is read for entertainment or
otherwise. Obviously, it would be impossible (and most likely
unconstitutional) to make the book's content the determining

1 factor in whether the book is part of an "entertainment
2 enterprise" or not. Moreover, the legislature's use of the word
3 "enterprise" tells us that the focus must be on the book
4 publishing industry as a whole, and not on any individual
5 published book. And the book publishing industry, unlike the
6 movie industry, the television industry, or the music industry,
7 cannot be said to be an "entertainment enterprise". Historically,
8 the Labor Commissioner has interpreted the phrase "entertainment
9 enterprise" to exclude the book publishing industry, and thus,
10 writers of published books are not deemed to be "artists" within
11 the meaning of Labor Code §1700.4(b).

12 Here, based on the allegations set forth in the petition, it
13 does not appear that petitioner is an "artist" within the meaning
14 of Labor Code §1700.4(b). Consequently, the Labor Commissioner is
15 without jurisdiction to hear and determine this dispute under
16 Labor Code §1700.44. Although the petitioner may have a valid
17 claim against the respondent for breach of contract, this claim
18 belongs in court and not before the Labor Commissioner.

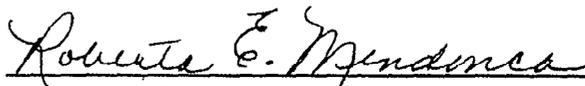
19 For the reasons set forth above, this petition to determine
20 controversy under Labor Code §1700.44 is hereby DISMISSED.

21 DATED: 7/29/96

22 
23 MILES E. LOCKER
24 Attorney for the Labor Commissioner

25 The above determination of controversy is hereby adopted in
26 its entirety.

27 DATED: July 31, 1996

28 
ROBERTA E. MENDONCA
STATE LABOR COMMISSIONER

