

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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9
10 BEFORE THE LABOR COMMISSIONER
11 OF THE STATE OF CALIFORNIA
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16 TENTH HOUSE, INC.,)	TAC 19-00
)	
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20)	
21 vs.)	DETERMINATION OF
)	CONTROVERSY
22 JULIE BENNETT,)	
)	
23)	
24)	
25)	
26 Respondent.)	
27)	

28 INTRODUCTION

29 The above-captioned petition was filed on June 26, 2000,
30 by TENTH HOUSE, INC. (hereinafter "Petitioner"), alleging that
31 JULIE BENNETT (hereinafter "Respondent"), failed to pay petitioner
32 commissions after the petitioner negotiated and procured work for
33 the respondent as a costume designer in the television and motion
34 picture industries. Petitioner seeks commissions on respondent's
35 earnings for five projects.

36 Respondent filed her answer on October 11, 2000, alleging
37 the petitioner failed to fulfill the requirements under the
38 contract, and consequently is not entitled to commissions.

1 meeting, it was agreed that the relationship would continue. The
2 testimony of the parties conflicted significantly as to the terms
3 of the extension. Petitioner maintained the conditions of the
4 initial contract would continue and accordingly, petitioner was
5 still entitled to collect 5% of respondent's earning stemming from
6 respondent's pre-existing clients and 10% on any new clients
7 petitioner secured on behalf of the respondent.

8 3. The respondent testified that she no longer agreed to
9 pay the petitioner 5% on her established clientele and would only
10 commission the petitioner 10% on new jobs. Respondent credibly
11 testified that she was no longer interested in continuing the
12 relationship if the petitioner could not obtain new clientele. The
13 respondent maintained and the evidence reflected that the only work
14 she completed during the term of the agreement was work emanating
15 from pre-existing relationships.

16 4. Between March of 1999 and October of 1999, the
17 respondent worked five different jobs in the entertainment
18 industry, all resulting from respondent's previous working
19 relationships with various production companies, except the
20 aforementioned client who requested respondent's services again.
21 During this time frame, the petitioner would request information
22 from the respondent as to where she was working and with whom. The
23 petitioner would then send boilerplate deal memos to those
24 production companies, ostensibly creating a paper trail to be used
25 in anticipation of litigation. In fact, petitioner entered a deal
26 memo (exhibit C) into the record dated July 8, 1999. Upon
27 examination of petitioner's exhibit, it was clear the original had

1 no signature from the production company. Petitioner attached a
2 faxed copy of the original deal memo as part of exhibit C that
3 appeared to be initialed by an employee of the production company.
4 Upon inspection of the transmission dates, it was clear that
5 petitioner faxed a copy of the blank deal memo on June 8, 2000 to
6 the production company. And it was returned that same day
7 accompanied by someone's initials, a mere eighteen (18) days prior
8 to the filing of this petition. The questionable authenticity of
9 petitioner's documents cast further doubt on the remainder of her
10 exhibits and testimony. Petitioners' exhibit E also contained an
11 August 27, 1999, blank deal memo, accompanied by a faxed copy of
12 the original that was also signed and initialed almost a year
13 later, coincidentally a few weeks prior to the filing of the
14 petition. Conversely, the respondent's testimony claiming the
15 intent of the extension was only to commission the petitioner 10%
16 on new jobs was believable, and these terms prevail.

17 5. Notably, in petitioners' original petition, she
18 requested 5% for all of the alleged outstanding claims. But on
19 the day of the hearing, petitioners amended her request to 10%.
20 Petitioners justified the increase by claiming that the one client
21 she procured for the respondent was used more than once thus
22 satisfying the incentive clause. The incentive clause specifically
23 states that the clause is satisfied if the petitioner accrues two
24 new clients, not as petitioner now contends, one new client twice.
25 Finally, the petitioner kept respondent's master reel of work that
26 the respondent depends on to display her skills in an effort to
27 secure new employment.

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CONCLUSIONS OF LAW

1. Petitioner is licensed by the State of California as a "talent agency" within the meaning of Labor Code §1700.4(a) under license No. TA-3520.

2. Respondent's status as an artist was not contested. Consequently, she is an "artist" within the meaning of Labor Code §1700.4(b).

3. Labor Code §1700.23 provides that the Labor Commissioner is vested with jurisdiction over "any controversy between the artist and the talent agency relating to the terms of the contract," and the Labor Commissioner's jurisdiction has been held to include the resolution of contract claims brought by artists or agents seeking damages for breach of a talent agency contract. Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861, Robinson v. Superior Court (1950) 35 Cal.2d 379. Thus, the Labor Commissioner has jurisdiction to determine this controversy pursuant to Labor Code §1700.44(a).

4. The petitioner has not met her burden of proof. The proper burden of proof is found at Evidence Code §115 which states, "[e]xcept as otherwise provided by law, the burden of proof requires proof by preponderance of the evidence." Further, McCoy v. Board of Retirement of the County of Los Angeles Employees Retirement Association (1986) 183 Cal.App.3d 1044 at 1051 states, "the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going

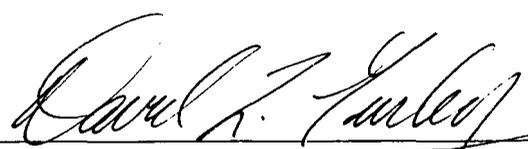
1 forward and the burden of persuasion by preponderance of the
2 evidence (cite omitted). "Preponderance of the evidence" standard
3 of proof requires the trier of fact to believe that the existence
4 of a fact is more probable than its nonexistence. In re Michael G.
5 74 Cal.Rptr.2d 642, 63 Cal.App.4th 700. Here, the petitioner has
6 not established by a preponderance of the evidence that she is
7 entitled to 5% of all respondent's earnings stemming from pre-
8 existing clients after the March 1999 contact modification, nor has
9 petitioner established that she satisfied the incentive clause
10 entitling her to 10% of respondent's earnings. As a result, the
11 petitioner is not entitled to a monetary recovery.

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14 ORDER

15 For the above-stated reasons, IT IS HEREBY ORDERED:
16 Tenth House Inc. ("Petitioner"), has no enforceable rights under
17 the contract and is not entitled to a monetary recovery. Moreover,
18 petitioner is ordered to immediately return respondent's master
19 reel.

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Dated: 4-18-01


DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: APR 18 2001


TOM GROGAN
Deputy Chief

