

1 **STATE OF CALIFORNIA**
Department of Industrial Relations
2 Division of Labor Standards Enforcement
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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
10

11 CATHERINE BARKER, AN
12 INDIVIDUAL,

13 Petitioner,

14 vs.

16 LE PAWS,

17 Respondent.
18

CASE NO. TAC 14-06

**DETERMINATION OF
CONTROVERSY**

19 The above-captioned matter, a petition to determine controversy under Labor Code
20 §1700.44, came on regularly for hearing on March 8, 2007 in Los Angeles, California,
21 before the undersigned attorney for the Labor Commissioner assigned to hear this case.
22 Petitioner CATHERINE BARKER, (hereinafter, referred to as "Petitioner"), appeared in pro
23 per. Respondent LE PAWS, (hereinafter, referred to as "Respondent"), appeared through its
24 attorney Sally Frontman of Law Offices of Peter Goldstein and through its owner, Michelle
25 Zahn. Matt Barker appeared as a witness on behalf of Petitioner.

26 Based on the evidence presented at this hearing and on the other papers on file in this
27

1 matter, the Labor Commissioner hereby adopts the following decision.

2 ISSUE

3 Whether Petitioner is an "artist" within the meaning of the Talent Agencies Act.

4 FINDINGS OF FACT

5 1. By trade, Petitioner is an optometrist. However, for the purposes of this
6 proceeding, Petitioner argues that she is an "artist" as defined under the Talent Agencies Act
7 because she was to be trained by Respondent as an animal trainer for her dog on set.
8 Accordingly, she argues she was "rendering professional services in the entertainment
9 industry" as an animal trainer. On cross examination by Respondent, Petitioner admitted
10 that she has only trained her dog and has never received any money for training any other
11 dogs. Thus, she admits she is not a professional animal trainer.

12 2. Respondent is a pet talent agency.

13 3. Petitioner first learned about Respondent's business when she answered a
14 newspaper ad stating the following: "*Seeking Actors that Can Sit and Stay —Southern*
15 *California Dog Agency Accepting New Clients for TV*Movies*Commercials*Print*
16 *—“LePaws Offers Studio Training for Animals.”*

17 4. In support of her contention that she is an "artist," Petitioner provided a copy
18 of a document received from Respondent entitled "LePaws Founder History and
19 Information." Specifically, Petitioner argues that the following statement found on that
20 document, "*The owners of pet actors must be able to direct their animal on set and,*
21 *therefore, must know how to instruct their pet in these specialized areas,*" shows that the
22 owner is expected to be on set and act as the pet's animal trainer.

23 Respondent, however, pointed out that the following statement, which appears two
24 lines down from the preceding statement, "*LePaws hires top-notch professional Animal*
25 *Trainers to carry the message, to provide the types of studio set training, agility and story*
26 *board work that is required knowledge for any animal and pet owner working in TV, film*
27 *and commercials*" demonstrates that they don't represent animal trainers. Instead, they hire

1 professional animal trainers to work with their animals, when necessary. Additionally,
2 Respondent argues that the first page of the document states the following: "*LePaws offers*
3 *exclusive placement for our registry of pets.*" Likewise, the last paragraph of the document
4 states that "*LePaws works hard representing its animal actors and searching for those*
5 *special projects.*" Thus, Respondent argues that both sentences demonstrate that it is the pet
6 who is being represented by the agency, not the pet owner.

7 5. Petitioner also testified that when she met with Respondent's animal trainers in
8 early 2006, after evaluating her dog, they assigned her to talent agent, Aly Hartman.
9 However, before Ms. Hartman could represent Petitioner's dog, Petitioner was required to
10 pay \$1795 in program costs. The program costs included: Intermediate Studio Training, 8
11 classes, set work, studio trainers, hand signals, mark control, utilizing off-leash work
12 consistency, develop good foundation, reactions to calls, noise, animals, bicycles, crowds,
13 etc., professional photo shoot and registration/pet background. Petitioner also testified that
14 the money earned for work performed by her dog would be split 1/3 for Petitioner's work and
15 2/3 for the dog's work. However, if Petitioner or her husband were not available to take their
16 dog to the set, one of Respondent's dog trainers could take their dog to the set and they
17 would be entitled to 1/3 of the fee earned. This testimony was disputed by Respondent.
18 Moreover, Petitioner admitted that she never paid the \$1795 fee or any other fee.

19 6. Respondent Michelle Zahn testified that her company is a talent agency that
20 places dogs and not animal trainers to work on set. Respondent provided a copy of the
21 contract it uses with pet owners. The contract states "*I hereby employ you my talent agency*
22 *to represent my pet for a period of 2 years (not to exceed 7 years) from date hereof to*
23 *negotiate contracts for my pet's services as an artist, or otherwise in the fields of motion*
24 *pictures, live shows, television, print, advertising, commercials, and other fields of*
25 *entertainment.*" [Emphasis added]. Additionally, it provides, "*Subject to my availability,*
26 *you hereby agree to use all reasonable efforts to procure employment for my pet in the field*
27 *or fields of endeavor specified in the contract in which you represent me.*" [Emphasis

1 added]. Moreover, Respondent explained that the relationship with the pet owner is akin to
2 the relationship an agency that represents children has with a stage-parent. The pet owner,
3 like a stage-parent, is responsible for bringing the pet to the set. The pet owner, also like a
4 stage-parent, is not on the set to act or be part of the production, but is on the set to provide
5 support to the pet / child.

6 7. Petitioner's witness, Mark Barker, who is also her husband, testified that he
7 was present at the second meeting petitioner and her dog had with Respondent. He testified
8 that he and his wife were both asked if they had enough time to accompany their dog on the
9 set. He stated that because he was self employed, he could take time off of work in order to
10 accompany their dog to the set, if Petitioner was unavailable.

11 8. Petitioner seeks a determination that Respondent is not a duly licensed talent
12 agent and therefore, should cease operations.

13 CONCLUSIONS OF LAW

14 1. Labor Code §1700.4(b) defines "artists" as:

15 "Actors or actresses rendering services on the legitimate stage
16 and in the production of motion pictures, radio artists, musical
17 artists, musical organizations, directors of legitimate stage,
18 motion pictures, and radio productions, musical directors,
19 writers, cinematographers, composers, lyricists, arrangers,
20 models, and other artists and persons rendering professional
21 services in motion picture, theatrical, radio, television and other
22 entertainment."

23 2. Petitioner, herein, argues that she is an "artist" under the Talent Agencies Act,
24 ("Act"), because she was to render professional services as an animal trainer, to her dog, on
25 set.

26 3. A review of our past interpretations compels a conclusion that "dog
27 trainers" are not covered by the Act. In *American First Run dba American First Run Studios,*
28 *Max Keller, Micheline Keller v. OMNI Entertainment Group, A Corporation; Sheryl Hardy,*
Steven Maier (TAC 32-95), we discussed the meaning of the term "artists" under the Act. In
deciding whether a "producer" came under this definition we explained that:

1 "[a]lthough Labor Code §1700.4(b) does not expressly list
2 producers or production companies as a category within the
3 definition of 'artists,' the broadly worded definition includes
4 'other artists and persons rendering professional services in ...
5 television and other entertainment enterprises.' Despite this
6 seemingly open ended formulation, we believe the Legislature
7 intended to limit the term 'artists' to those individuals who
8 perform creative services in connection with an entertainment
9 enterprise. Without such a limitation, virtually every "person
10 rendering professional services" connected with an entertainment
11 project- - including the production company's accountant's,
12 lawyers and studio teachers - - would fall within the definition
13 of 'artists.' We do not believe the Legislature intended such a
14 radically far reaching result....[I]n order to qualify as an 'artist,'
15 there must be some showing that the producer's services are
16 artistic or creative in nature, as opposed to services of an
17 exclusively business or managerial nature."

18 *American Run* at pp. 4-5.

19 See also *Burt Bluestein, aka Burton Ira Bluestein v. Production Arts Management;*
20 *Gary Marsh; Steven Miley; Michael Wagner, TAC 14-98, Hyperion Animation Co., Inc. v.*
21 *Toltect Artists, Inc., TAC 07-99.*

22 Thus, consistent with this reasoning, we do not believe the legislature intended to
23 include "dog trainers" in its definition of artists simply because they may train their dogs on
24 set. It is also unclear what creative services are involved in training a dog to act a certain
25 way on set. No testimony was provided on this issue by Petitioner.

26 4. Moreover, even if "dog trainers" were covered under the Act, we find
27 that Respondent never agreed to represent Petitioner as an "animal trainer." The credible
28 and logical evidence supports a conclusion that Respondent only represents pets and not
their owners. All of the documents provided by the parties supports this conclusion. For
instance, the document entitled "LePaws Founder History and Information" clearly states
that Respondent offers exclusive placement for registry of pets, not their owners. Similarly,
the contract submitted states that the client is hiring Respondent as a talent agent to represent
"my pet," not to represent the owner. Petitioner argues that the wording of some of the
sentences included in the contract and other documents implies that the talent agency is
representing the owners, in addition to representing the pets. For example, Petitioner argues
that the contract states "*I hereby employ you my talent agency to represent my pet...*"

1 indicates that the agency is also representing the owner by the use of the word "my." We
2 find this argument unpersuasive. Given that a pet cannot enter into a contract, the owner is
3 inevitably going to be the person hiring the talent agency and that is presumably the reason
4 for the use of the word "my" in the sentence. Additionally, the words following "my" (i.e.,
5 talent agency to represent my pet..") clearly indicate that the agency is representing the pet
6 and not the owner. In any case, Petitioner never even paid the \$1795 fee and thus, never
7 became one of Respondent's clients.

8 **ORDER**

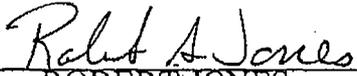
9 For the reasons set forth above, IT IS HEREBY DETERMINED that the Petition to
10 Determine Controversy filed by Petitioner is denied.

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12
13 Dated: May 4, 2007


EDNA GARCIA EARLEY
Special Hearing Officer

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16 **Adopted:**

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19 Dated: May 4, 2007


ROBERT JONES
Acting State Labor Commissioner