

1 STATE OF CALIFORNIA
Department of Industrial Relations
2 Division of Labor Standards Enforcement
2031 Howe Avenue, Suite 100
3 Sacramento, California 95825
Telephone: (916) 263-2918
4 Fax: (916) 263-2920

5 JAMES E. OSTERDAY, State Bar No. 189404
Attorney for the Labor Commissioner
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8 **BEFORE THE LABOR COMMISSIONER**

9 **STATE OF CALIFORNIA**

10	MARIE BROOKES, as guardian ad litem for)	NO. TAC 08-07
11	ISAIAH BROOKES, a minor)	
12	Petitioners,)	DETERMINATION OF
13	vs.)	CONTROVERSY
14	UNIQUE ARTISTS;)	
15	KAREN SEWELL;)	
16	KARE' N MANAGEMENT,)	
	Respondent.)	

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18 The above-captioned matter, a Petition to Determine Controversy under Labor Code section
19 1700.44, came on regularly for hearing on September 26, 2007 in Los Angeles, California, before the
20 undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner, MARIE
21 BROOKES, as guardian ad litem for ISAIAH BROOKES, a minor, (hereinafter, "Petitioners"),
22 appeared in propria persona. UNIQUE ARTISTS; KAREN SEWELL; KARE' N MANAGEMENT,
23 (hereinafter, "Respondent"), who was properly served with the Petition and Notice of Hearing, failed
24 to answer said Petition and failed to appear at this Hearing.

25 Petitioners allege that Respondent acted in the capacity of a talent agency without being
26 licensed as required by the laws of the State of California. Petitioners also allege that Respondent
27 unlawfully withheld funds generated by employment services rendered by Petitioner, ISAIAH
28 BROOKES. Petitioners seek Determination of the California Labor Codes and California Code of

1 Regulations that were violated, if any, by Respondent and payment of sums owed, plus interest and
2 expenses.

3 Based on the evidence presented, the Labor Commissioner hereby adopts the following
4 decision.

5 **FINDINGS OF FACT**

6 1. Petitioner, ISAIAH BROOKES, is an actor who performed in commercials that
7 generated payments from third parties in 2006.

8 2. The Division of Labor Standards Enforcement's Licensing & Registration Unit shows
9 that Respondent was not licensed as a talent agent with the State of California for a period of the time
10 out of which this dispute arises. At all times relevant, Respondent has been a resident of the State of
11 California.

12 3. The parties entered into a personal management agreement, (hereinafter,
13 "Agreement"), on February 9, 2004 for a period of one year. A provision of the Agreement stated,
14 "This Agreement shall automatically renewed for each year thereafter for one year, unless one of the
15 parties provides written notice to the contrary within thirty days prior to the anniversary date of
16 renewal." Pursuant to the Agreement, Respondent agreed to provide the following services: manage,
17 guide, advise, direct, and promote the professional career of the client. The Agreement authorized
18 Respondent to process client's compensation by, but not limited to, receiving, endorsing, and
19 depositing all payments and deducting a sum equal to fifteen percent and forwarding the remainder
20 to client.

21 4. Further, in exchange for Respondent's agreement to provide the aforementioned
22 services, Petitioner agreed to pay Respondent a fee in the sum equal to fifteen percent of all things of
23 value received by the client directly or indirectly as compensation for the client's professional services
24 rendered during the term of this contract, and any extensions, renewals, modifications, or substitutions
25 thereof.

26 5. In approximately August 2006, Petitioners received information that Respondent had
27 received several payments for work performed by Petitioner, ISAIAH BROOKES. Although this was,
28 in part, consistent with the Agreement which allowed the Respondent to receive such payments and

1 deduct a sum equal to fifteen percent, to date the Respondent has failed to forward the remainder to
 2 the Petitioners, except monies earned for the first three appearances. The Petitioners were not aware
 3 of the exact amount Respondent retained until approximately December of 2006 when they received
 4 an accounting from an independent source. The documentation substantiates that the Respondent has
 5 been in possession of twelve payments or checks since approximately September 15, 2006 and has
 6 failed, to date, to forward these payments to the Petitioners (except a, b, and c). The payments in
 7 question arise out of Petitioner's work performed in commercials for Kraft and are as follows:

THIRD PARTY	DATE OF PAYMENT FROM THIRD PARTY	PAYMENT FROM THIRD PARTY
a. Kraft	5/25/06	\$112.54 ¹
b. Kraft	6/28/06	\$285.22 ¹
c. Kraft	7/5/06	\$14.41 ¹
d. Kraft	7/5/06	\$1,749.16
e. Kraft	7/20/06	\$1,068.13
f. Kraft	8/3/06	\$194.37
g. Kraft	8/3/06	\$194.36
h. Kraft	8/7/06	\$343.47
i. Kraft	8/25/06	\$129.56
j. Kraft	8/25/06	\$129.59
k. Kraft	9/5/06	\$93.14
l. Kraft	9/5/06	\$108.66
	TOTAL	\$4,422.61

1 The figure represents 15% commission withheld by Respondent, noted for purposes of disgorgement. All other funds associated with the payment has been received by Petitioners.

1 3. Labor Code section 1700.4(a) defines a “talent agency” as any person or corporation
2 “who engages in the occupation of procuring, offering, promising, or attempting to procure
3 employment or engagements for an artist.” In *Brad Waisbren vs. Peppercorn Productions, Inc., et*
4 *al*, 41 Cal.App.4th 246, the Court stated, “The Talent Agencies Act (Labor Code sections 1700-
5 1700.47), is entirely consistent with the process of dual occupations, i.e., being a personal manager
6 and a talent agent, and a license was required even though Plaintiff spent only an incidental part of
7 his time procuring employment for Defendant.” In the instant case Respondent sent an email to the
8 Petitioners which establishes that the Respondent procured or attempted to procure modeling
9 employment for the Petitioner.

10 “The Talent Agency Act is a remedial statute that must be liberally construed to promote its
11 general objective, the protection of artists seeking professional employment.” *Buchwald v. Superior*
12 *Court* (1967) 254 Cal.App.2d 347, 354. “The weight of authority is that even the incidental or
13 occasional provision of such services requires licensure.” *Styne v. Stevens* (2001) 26 Cal.4th 42; *Park*
14 *v. Deftones* (1999) 71 Cal.App.4th 1465; *Waisbren, supra*, 41 Cal.App.4th 246; *Wachs v. Curry*
15 (1993) 13 Cal.App.4th 616. The evidence leads to the conclusion that Respondent attempted to
16 procure and did procure employment for the Petitioner with third parties.

17 The Petitioners alleged and subsequently met Petitioner’s burden establishing that Respondent
18 violated the Talent Agency Act by procuring or attempting to procure employment with a third party,
19 thereby acting as a “talent agency” without the requisite license.

20 4. “An agreement that violates the licensing requirement of the Talent Agency Act is
21 illegal and unenforceable. . .” *Waisbren, supra*. “Since the clear object of the act is to prevent
22 improper persons from becoming [talent agents] and to regulate such activity for the protection of
23 the [artist], a contract between an unlicensed [agent] and [an] artist is void.” *Buchwald, supra*.
24 Having determined that a person or business entity procured, promised or attempted to procure
25 employment for an artist without the requisite talent agency license, “the [Labor] Commissioner may
26 declare the contract [between the unlicensed agent and artist] void and unenforceable as involving
27 the services of an unlicensed person in violation of the Act.” *Styne, supra*. Moreover, the artist that
28 is party to such an agreement may seek disgorgement of amounts paid pursuant to the agreement, and

1 "may . . . [be] entitle[d] . . . to restitution of all fees paid the agent." *Wachs, supra* . Under the facts
2 of this case, the finding is that the Agreement is void *ab initio*, became void once Respondent
3 procured or attempted to procure employment for Petitioner, and is void as to all prior and subsequent
4 commissions paid, subject to the one year statute of limitations. Disgorgement of all amounts within
5 the one year statute of limitations, as outlined on Page 3, is an appropriate remedy.

6 5. The Respondent must disgorge to Petitioner all amounts any third party paid to the
7 Respondent within the one year statute of limitations for services rendered by Petitioner; the
8 Respondent is not entitled to retain any part as a fee or commission; and, in accordance with
9 California Civil Code sections 3287 and 3289 and Labor Code section 1700.25², the Petitioner is
10 entitled to interest on the funds at the rate of ten percent (10%) per annum from the date the funds
11 were received by the Respondent.

12 6. Therefore, Respondent must pay Petitioner \$4,422.61 plus interest as of March 5, 2008
13 in the amount of \$722.09 based on a rate of ten percent (10%) per annum. Further, Respondent is
14 liable for interest at a daily rate of \$1.40 accruing from March 6, 2008.

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22 ² Labor Code section 1700.25. (a) A licensee who receives any payment of funds on behalf of an artist shall immediately deposit that
23 amount in a trust fund account maintained by him or her in a bank or other recognized depository. The funds, less the licensee's
24 commission, shall be disbursed to the artist within 30 days after receipt. However, notwithstanding the preceding sentence, the licensee
25 may retain the funds beyond 30 days of receipt in either of the following circumstances: (1) To the extent necessary to offset an
26 obligation of the artist to the talent agency that is then due and owing. (2) When the funds are the subject of a controversy pending
27 before the Labor Commissioner under Section 1700.44 concerning a fee alleged to be owed by the artist to the licensee. (b) A separate
28 record shall be maintained of all funds received on behalf of an artist and the record shall further indicate the disposition of the funds.
(c) If disputed by the artist and the dispute is referred to the Labor Commissioner, the failure of a licensee to disburse funds to an artist
within 30 days of receipt shall constitute a "controversy" within the meaning of Section 1700.44. (d) Any funds specified in subdivision
(a) that are the subject of a controversy pending before the Labor Commissioner under Section 1700.44 shall be retained in the trust
fund account specified in subdivision (a) and shall not be used by the licensee for any purpose until the controversy is determined by
the Labor Commissioner or settled by the parties. (e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that
the licensee's failure to disburse funds to an artist within the time required by subdivision (a) was a willful violation, the Labor
Commissioner may, in addition to other relief under Section 1700.44, order the following: (1) Award reasonable attorney's fees to the
prevailing artist. (2) Award interest to the prevailing artist on the funds wrongfully withheld at the rate of 10 percent per annum during
the period of the violation. (f) Nothing in subdivision (c), (d), or (e) shall be deemed to supersede Section 1700.45 or to affect the
enforceability of a contractual arbitration provision meeting the criteria of Section 1700.45.

1 **ORDER**

2 For the reasons set forth above, IT IS HEREBY ORDERED that:

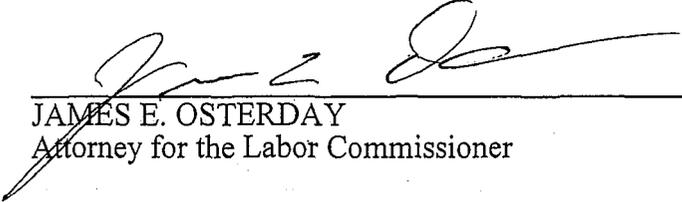
3 1. The Agreement entered into on February 9, 2004 between Petitioners and
4 Respondent is void *ab initio*, and Respondent has no enforceable right thereunder, and is not entitled
5 to any commissions or other amounts purportedly owed;

6 2. Petitioners are awarded all amounts withheld by Respondent subject to the statute of
7 limitations or \$4,422.61;

8 3. Respondent is ordered to pay interest in the amount of \$722.09; and

9 4. Respondent is additionally ordered to pay daily interest in the amount of \$1.40,
10 accruing from March 6, 2008.

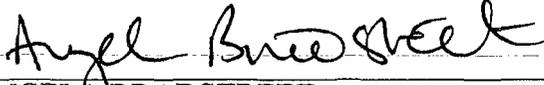
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12 Dated: 3/19/08



JAMES E. OSTERDAY
Attorney for the Labor Commissioner

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15 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

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17 Dated: 3/21/08



ANGELA BRADSTREET
State Labor Commissioner

