

1 DAVID L. GURLEY, ESQ. (SBN 194298)
2 STATE OF CALIFORNIA
3 DEPARTMENT OF INDUSTRIAL RELATIONS
4 DIVISION OF LABOR STANDARDS ENFORCEMENT
5 300 Oceangate, Suite 850
6 Long Beach, California 90802
7 Telephone: (562) 590-5461
8 Facsimile: (562) 499-6438

9 Attorney for the Labor Commissioner

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

11 MICHAEL LESSA,

12 Petitioner,

13 vs.

14 FILMTRIX, INC., A California
15 Corporation dba THE FILMTRIX
16 AGENCY,

17 Respondent.

CASE NO.: TAC 27707

DETERMINATION OF
CONTROVERSY

18 The above-captioned petition was filed on June 26, 2012, by MICHAEL LESSA
19 (hereinafter "Petitioner"), alleging that FILMTRIX, INC., A California Corporation dba
20 THE FILMTRIX AGENCY (hereinafter "Respondent"), provided a talent agency
21 contract to the Petitioner that failed to comply with the California Labor Code and the
22 supporting Regulations governing licensed California talent agents. Additionally,
23 Petitioner alleges the Respondent failed to procure the work for which the Respondent
24 was seeking unpaid commissions, as the work was procured solely by the Petitioner's
25 efforts. And finally, the type of work obtained fell outside the scope of the agreement
26 between the parties. By this petition, Petitioner seeks the contract be deemed void *ab*
27 *ignition* and requests reimbursement for all commissions paid to respondent during the life
28 of the contractual relationship.

1 The Respondent was a licensed California talent agent during all applicable time
2 periods. Respondent through their attorney argued that Respondent complied with all
3 rules and regulations governing California talent agents, including the validity of the
4 contract which had been approved by the California Labor Commissioner. Respondent
5 argues he is entitled to full commissions stemming from Petitioner's employment. A
6 hearing was held before the undersigned attorney for the Labor Commissioner. Petitioner
7 appeared through his counsel Jeffrey Spitz of the law firm of Lerman, Pointer & Spitz,
8 LLP. Respondent, FILMTRIX, INC., A California Corporation dba THE FILMTRIX
9 AGENCY, appeared through counsel Ryan M. Lapine. Based upon the testimony and
10 evidence presented at this hearing, the Labor Commissioner adopts the following
11 Determination of Controversy.

12 13 FINDINGS OF FACT

14 1. On or about May 5, 2011, the parties entered into a written contract
15 entitled "General Services Agreement" (the "Agreement") for one year in which the
16 Respondent was to use reasonable efforts to procure employment for the Petitioner.

17 2. The Agreement provided that Petitioner would engage the Respondent as his
18 exclusive talent agent with respect to Petitioner's "services as VFX Supervisor/Producer
19 in the technical, supervisory and production branches of the entertainment industries and
20 all related fields throughout the world." Moreover, Petitioner agreed to pay the
21 Respondent 10% of all earnings paid to Petitioner in connection with every employment
22 entered into during the term of the Agreement whether or not procured by the Respondent.

23 3. On November 21, 2011, the Petitioner, without the assistance of
24 Respondent, obtained employment with RGH Studios Inc., (hereinafter RGH) as a
25 producer of an animation film.

26 4. Petitioner's duties and responsibilities as a producer of an animated feature
27 film included hiring the creative people to make the film, including the writers, and
28 storyboard artists. The petitioner was responsible for reading other writers' scripts,

1 conducting interviews and negotiating salaries all designed to keep the production within
2 a predetermined budget.

3 5. Petitioner's creative responsibilities were a significant interest to the hearing
4 officer who indicated the Labor Commissioner can only assert jurisdiction if the
5 controversy at issue is between an artist and a talent agent. When pressed whether
6 petitioner took any part in the creative process during his employment with RGH, the
7 Petitioner testified that "I find the people." When asked the requirements of the job, the
8 Petitioner testified, "they basically threw anything that needed budgeting or production at
9 me for an animated TV series ... I was interviewing and hiring directors, and the
10 storyboard guy?" When asked whether this explanation of his job functions continued
11 throughout the employment with RGH the Petitioner answered, "Yes."

12 6. When asked whether the Petitioner missed the creative aspects of the job, he
13 stated, "sometimes yeah as I started out as a character animator ... I literally cannot draw
14 anymore and I am in envy of people who can still draw." The Petitioner testified that his
15 responsibilities throughout the duration of his employment with RGH remained the same.

16 7. The parties were instructed the creative aspects of petitioner's duties could
17 be dispositive of the Labor Commissioner's jurisdiction. When the Petitioner was invited
18 to discuss his creative contributions to the projects under his supervision, Petitioner added,
19 "if a director is going off on a tangent that we can't afford I will assist." It was clear that
20 petitioner's responsibility and input toward the creation of the production was minimal at
21 best and his responsibilities fell within the ambit of maintaining the financial structure of
22 the project.

23 8. On April 13, 2012, the Petitioner severed the relationship, by indicating he
24 revoked all authorization, canceled the power of attorney and expressly stated the week of
25 May 4, 2012 will be the last week for which payments will be made to the agency with
26 respect to the Petitioner's earnings from RGH Entertainment. Petitioner filed the instant
27 petition to determine controversy with the Labor Commissioner, pursuant to Labor Code
28 §1700.44, seeking a determination that respondent's violated the Labor Code as the

1 Agreement did not comply with various technical requirements under the Code and
2 supporting Regulations. As a consequence of the alleged violations of the Talent
3 Agencies Act, petitioner seeks the parties agreement is void *ab initio* and that respondent
4 has no rights thereunder.

5 CONCLUSIONS OF LAW

6 1. Labor Code §1700.44 vests the Labor Commissioner with exclusive and
7 primary jurisdiction in cases arising under the Talent Agencies Act. The Act governs the
8 relationship between artists and talent agencies.

9 2. The issue at bar is whether petitioner's job responsibilities as a producer of
10 animation performed during the life of the Agreement fall within the definition of
11 "artist" found at Labor Code §1700.4(b).

12 3. Labor Code §1700.4(a) defines "talent agency" in pertinent part as: "a person or
13 corporation who engages in the occupation of procuring, offering, promising, or
14 attempting to procure employment or engagements **for an artist or artists...**" Therefore,
15 if petitioner does not fall within the definition of "artist", it follows that respondents could
16 not have acted as a talent agency, which divests the Labor Commissioner of jurisdiction to
17 hear this matter.

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

19 actors and actresses rendering services on the legitimate
20 stage and in the production of motion pictures, radio
21 artists, musical artists, musical organization, directors
22 of legitimate stage, motion pictures and radio
23 productions, musical directors, writers,
24 cinematographers, composers, lyricists, arrangers,
25 models, and other artists rendering professional
26 services in the motion picture, theatrical, radio,
27 television and other entertainment enterprises."

28 4. Although Labor Code §1700.4(b) does not expressly cover the term "animation
film producer" or "production manager" within the definition of "artist", the broadly
worded definition does leave room for interpretation. The statute ends with the phrase,

1 **"and other artists and persons rendering professional services in... other**
2 **entertainment enterprises."** This open ended phrase indicates the Legislature's
3 anticipation of occupations which may not be expressly listed but warrant protection
4 under the Act, or industry developments not contemplated at the time of drafting.

5 5. The Labor Commissioner has historically taken the following position with
6 respect to this phrase. As discussed in a 1996 Certification of Lack of Controversy, the
7 special hearing officer held, "[d]espite this seemingly open ended formulation, we believe
8 the Legislature intended to limit the term 'artists' to those individuals who perform
9 creative services in connection with an entertainment enterprise. Without such a
10 limitation, virtually every 'person rendering professional services' connected with an
11 entertainment project - - would fall within the definition of "artists". We do not believe
12 the Legislature intended such a radically far reaching result." *American First Run*
13 *Studios v. Omni Entertainment Group No. TAC 32-95, pg. 4-5.*

14 6. This is not to imply that animation film producers can never be considered
15 "artists" within the meaning of 1700.4(b), only there must be a significant showing that
16 the producer's services were creative in nature as opposed to services of an exclusively
17 managerial or business nature. Here, petitioner testified he did not occupy such a role and
18 conversely testified the bulk of his responsibility was hiring the creative people,
19 negotiating salaries and maintaining the budget. Occasionally assisting a "director going
20 off on a tangent that we can't afford" further demonstrates the job was to maintain costs of
21 production and does not rise to the creative level required of an "artist" as intended by the
22 drafters. Virtually all producers or production managers engage in de minimis levels of
23 creativity. There must be more than incidental creative input. The individual must be
24 primarily engaged in or make a significant showing of a creative contribution to the
25 production to be afforded the protection of the Act. We do not feel budget management
26 falls within these parameters.

27 7. Who did the Legislature intend to include in the protected class? In determining
28 legislative intent, one looks at both legislative history and the statutory scheme within

1 which this statute is to be interpreted.

2 **LEGISLATIVE HISTORY**

3 8. In 1913 the "Employment Agencies Act" regulated a select few industries,
4 including California's entertainment industries, namely circuses, vaudeville and theater.
5 Protection focused on exhibitors and performers.

6 9. In 1937 the California Labor Code was established. The Legislature added "the
7 motion picture employment agency" as an industry that required regulatory controls.

8 10. By 1959 the Labor Code included regulation of four categories of agents:
9 employment agents; theatrical employment agents; motion picture employment agent; and
10 the so-called "artists' manager." While the other categories were either repealed or moved
11 to a different body of law and placed under the jurisdiction of other regulatory agencies,
12 regulation of "artists' managers" remained in the Labor Code and under the jurisdiction of
13 the Labor Commissioner. In 1978, the Act was renamed the Talent Agencies Act (1978,
14 Stats. Ch. 1382) and "artists' managers" became "talent agents" and remains this way
15 today. Throughout, the definition of "artist" always expressly included only the creative
16 forces behind the entertainment industry.

17 11. In 1982, AB 997 established the California Entertainment Commission. Labor
18 Code §1702 directed the Commission to report to the Governor and the Legislature as
19 follows: The Commission shall study the laws and practices of this state,...relating to the
20 licensing of agents, and representatives of artists in the entertainment industry in general,
21 ... so as to enable the commission to recommend to the Legislature a model bill regarding
22 this licensing.

23 12. Pursuant to statutory mandate the Commission studied and analyzed the Talent
24 Agencies Act in minute detail. The Commission concluded that the, "Talent Agencies
25 Act of California is a sound and workable statute and that the recommendation contained
26 in this report will, if enacted by the California Legislature, transform that statute into a
27 model statute of its kind in the United States." (Report pg. 5) All recommendations were
28 reported to the Governor, accepted and subsequently signed into law.

1 13. This is not to say the Legislature has never expanded on the term "artist". A
2 very significant change made by the Commission was to add the occupation of "models"
3 to the definition of artist as defined by Labor Code §1700.4(b). The Commission
4 reasoned that, "as persons who function as an integral and significant part of the
5 entertainment industry, models should be included within the definition of artist." (Report
6 p. 33-34) I am not advocating that production managers in animation are not an integral
7 and significant part of the entertainment industry, I am simply stating that if the
8 Commission, who by statutory mandate analyzed the Act in minute detail, thought that
9 production managers and/or line producers required express protection under the Act, they
10 could have made this recommendation to the Legislature. This was certainly the forum do
11 make such a recommendation. Production managers are not new occupations in the
12 entertainment industry resulting from industry evolution *i.e.*, interactive media and digital
13 animation. These are well established industry occupations. The Commission's utter
14 silence with respect to production managers and line producers can only be interpreted,
15 that the Labor Commissioner's jurisdiction is invoked if in the discretion of the hearing
16 officer, a significant showing of creative contribution is made.

17 14. The Division concludes that Petitioner is not an artist within the meaning of
18 Labor Code 1700.4(b), not engaged in the performing arts and hence, not a member of the
19 protected class.

20 15. Once it is determined that Petitioner was not an "artist", it follows that
21 respondent did not act as a "talent agent" in this particular relationship, as a talent agency
22 is defined as procuring employment for "artists".

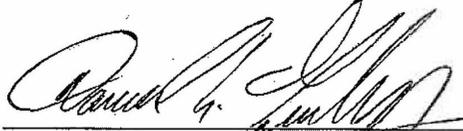
23 16. We therefore find the parties agreement does not fall within the provisions of
24 the Talent Agencies Act. Consequently, there are no grounds under the Act to declare the
25 parties agreement void. The Labor Commissioner is without jurisdiction to hear or decide
26 the merits of this case.

ORDER

For the above-state reasons, **IT IS HEREBY ORDERED** that this petition is denied and dismissed on motion by the undersigned hearing officer.

Dated: July 30, 2014

Respectfully submitted,

By: 

DAVID L. GURLEY
Attorney for the California State
Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER.

Dated: 8-1-2014

By: 
JULIE A. SU
California State Labor Commissioner

