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7

8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**

11 **ANNA DOKOZA,**

12 **Petitioner,**

13 **v.**

14 **LENHOFF ENTERPRISES, INC., a**
15 **California Corporation dba:**
LENHOFF & LENHOFF,

16 **Respondent.**

Case No. TAC41756

DETERMINATION OF CONTROVERSY

18 The above-captioned matter, a Petition to Determine Controversy under Labor Code
19 §1700.44, came on regularly for hearing in Los Angeles, California, before the undersigned attorney
20 for the Labor Commissioner assigned to hear this case. Petitioner ANNA DOKOZA appeared and
21 was represented by David Marmostein, Esq. Respondent LENHOFF ENTERPRISES, INC. was
22 represented by John M. Kalajian, Esq. At the conclusion of the hearing, the matter was taken under
23 submission.
24

25 Based upon the evidence presented at the hearing and on the other papers on file in this
26 matter, the Labor Commissioner adopts the following decision.

27 ///

FINDINGS OF FACT

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2 1. Petitioner Anna Dokoza (hereafter, “Ms. Dokoza” or “Petitioner”), is an Executive
3 Producer and was engaged by Louie Zach Productions, Inc. to perform services for two of the
4 company’s television shows, “Brothers in Atlanta” and “Baskets.”

5
6 2. Respondent Lenhoff Enterprises, Inc., (hereafter, “Lenhoff” or “Respondent”) was,
7 during the time relevant to this action, a licensed talent agency in the state of California. Lenhoff
8 represented Ms. Dokoza as her talent agent between September 28, 2010 and November 4, 2010
9 under the terms of a verbal agreement. During the period of the representation, Lenhoff procured
10 employment for Ms. Dokoza with Louie Zach Productions, Inc. for work on the pilot episode of
11 “Baskets.”

12
13 3. Following termination of the verbal agreement, Ms. Dokoza entered into a second
14 contract with Louie Zach Productions for work on a full season of “Baskets,” as well as work on
15 another television series, “Brothers in Atlanta.”

16 4. Lenhoff asserts Ms. Dokoza owes the agency commissions on her compensation for
17 the second employment agreement with Louie Zach, and assigned their claim for those commissions
18 to a third party, Arden Silverman dba Capital Asset Protection (hereafter “CAP”). Following that
19 assignment, CAP filed suit against Petitioner in Los Angeles Superior Court as assignee of the
20 commissions Lenhoff claims it is owed. Petitioner then filed a cross-complaint for declaratory relief
21 that no commissions were owed.

22
23 5. Ms. Dokoza brings this action before the Labor Commissioner, asserting Lenhoff
24 received a payment of \$7,500.00 for her work on the “Baskets” series, and Lenhoff failed to tender
25 Ms. Dokoza her portion of that payment as required by Labor Code section 1700.25. In this action,
26 Ms. Dokoza seeks a determination she does not owe Lenhoff any commissions; that Lenhoff be
27 ordered to pay Petitioner her portion of the money it received for her work on “Baskets”; damages,
28

1 interest and attorney fees for the withholding of that payment; a determination by the Labor
2 Commissioner the parties' suit and counter-suit in Superior Court are barred by the Labor
3 Commissioner's original jurisdiction over enforcement of the Talent Agencies Act; and for an order
4 suspending or revoking Respondent's talent agency license.

5
6 6. In response to Ms. Dokoza's petition, Lenhoff brought a Motion to Dismiss, arguing
7 that as a producer, Ms. Dokoza is not an "artist" as defined by the Talent Agency Act, and as a result
8 her petition is not subject to the original jurisdiction of the Labor Commissioner.

9 LEGAL CONCLUSIONS

10 **The Petitioner is not an "artist" under the Talent Agencies Act.**

11 The Talent Agencies Act provides the Labor Commissioner exercises original jurisdiction
12 over controversies between "artists" and "agents." Labor Code §1700.44(a). Labor Code section
13 1700.4(b) defines "artists" as "actors and actresses rendering services on the legitimate stage and in
14 the production of motion pictures, radio artists, musical artists, musical organizations, directors of
15 legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers,
16 composers, lyricists, arrangers, models, and other artists and persons rendering professional services
17 in motion picture, theatrical, radio, television and other entertainment."
18

19 Prior decisions of the Labor Commissioner have addressed application of the term "artist" in
20 relation to controversies presented by producers or production companies. In examining that issue,
21 we have held:
22

23 Although Labor Code §1700.4(b) does not expressly list producers or production companies
24 as a category within the definition of 'artist,' the broadly worded definition includes 'other
25 artists and persons rendering professional services in . . .television and other entertainment
26 enterprises.' Despite this seemingly open-ended formulation, we believe the Legislature
27 intended to limit the term 'artists' to those individuals who perform creative services in
28 connection with an entertainment enterprise. Without such limitation, virtually every "person
rendering professional services" connected with an entertainment project -- including the
production company's accountants, lawyers and studio teachers....would fall within the
definition of 'artists.' We do not believe that the Legislature intended such a radically far-
reaching result.

1 *American First Run dba American First Run Studios, Max Keller, Micheline Keller v. Omni*
2 *Entertainment Group, Sheryl Hardy, Steven Maier, TAC 1995-32-1. See also James Mark Burnett,*
3 *an Individual; Mark Burnett Productions, Inc.; JMBP, Inc., DJB Inc.; and Jump In, Inc. v. Conrad*
4 *Riggs; and Cloudbreak Entertainment, Inc., TAC 10192.*

5 The Labor Commissioner has held when the services provided were primarily of a
6 managerial or business nature, as opposed to creative, the party supplying the services does not meet
7 the statutory definition of “artist” under the Talent Agencies Act. In determining to what extent a
8 producer provided the requisite level of creative services, we have held:

9
10 Virtually all line producers or production managers engage in de minimis levels of creativity.
11 There must be more than incidental creative input. The individual must be primarily engaged
12 in or make a significant showing of a creative contribution to the production to be afforded
the protection of the Act.

13 *Burt Bluestein, aka Burton Ira Bluestein v. Production Arts Management; Gary Marsh, Steven*
14 *Miley, Michael Wagner, TAC 1998-2.*

15 Clearly, the analysis set forth in *Bluestein* and *American First Run* requires application of the
16 facts specific to each case. While application of that test has led to findings that a given producer
17 was not an artist as that term is defined by the Talent Agency Act and our decisions interpreting the
18 act, the same analysis has produced determinations that a producer who makes a sufficient showing
19 of creative contribution to a production is properly classified as an artist. *See e.g. William Morris*
20 *Agency, LLC v. Dan O’Shannon and Atomic Television TAC 2006-05.*

21
22 Ms. Dokoza argues the services she provided in the production of “Baskets” and “Brothers in
23 Atlanta” involved significant creative contribution, and she defines herself as an “all-encompassing
24 producer” as opposed to a “line producer.” Petitioner testified she does not take jobs which do not
25 provide her the opportunity to be involved in the creative aspects of the production, and without the
26 creative aspect of the work, a project would not present a sufficient challenge to her. On direct
27 examination, Ms. Dokoza listed instances in which she provided creative contributions to the
28

1 production, including suggesting specific actions for talent and background to perform, participating
2 in the decision of placement of a flag to be used in a rodeo scene, and expressing her opinion
3 regarding a storyline involving a character's pregnancy. She also testified she would be present in
4 the writers' room during discussions and had "script involvement," discussed casting decisions with
5 those responsible for that aspect of the production, and brought the attention of a make-up artist to
6 the look of an actor's make-up. Ms. Dokoza also stated during the editing process, she was in the
7 editing room and participated in "editing choices." Petitioner also stated she would participate in
8 "discussion and feedback" regarding design aspects of the production, that creative meetings would
9 not take place without her, and those meetings would have to be rescheduled if she could not attend.
10 Ms. Dokoza also testified for two days of the production, she worked as the "B-unit" filming
11 director, making decisions regarding the filming of establishing shots. Ms. Dokoza stated she was
12 paid extra for her work as B-unit director.
13
14

15 In cross-examination, Ms. Dokoza was asked to assign a percentage to the amount of her
16 work in a creative capacity in comparison to her work as a regular line producer. Ms. Dokoza's
17 response was she could not provide an estimate because she could not separate the two activities,
18 since they were "entwined together."
19

20 As we previously stated in *Bluestein*, in order to establish a producer is an "artist" under the
21 Talent Agencies Act, the petitioner must show more than incidental creative input as part of the
22 production. Rather, the test is whether the petitioner is "primarily engaged in" or whether the
23 petitioner can make "a significant showing of a creative contribution to the production to be afforded
24 the protection of the Act."
25

26 In this case, Ms. Dokoza provided testimony she was involved to some extent in several
27 creative aspects of the production. However, the evidence presented does not support a finding the
28 Petitioner was primarily engaged in a creative role, or that her account of her activities supports a

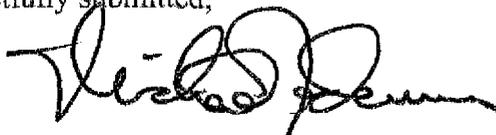
1 significant showing of a creative contribution to the production. Consequently, we cannot find
2 Ms. Dokoza to be an "artist" as that term is defined in the Talent Agency Act and our previous
3 decisions interpreting the use of that term.
4

5 **ORDER**

6 For the reasons set forth above, Respondent's Motion to Dismiss is granted. The Petition is
7 dismissed.

8 Dated: December 2, 2016

Respectfully submitted,

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10 

11 By

12 MICHAEL N. JACKMAN
Attorney for the Labor Commissioner

13 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER.
14

15
16 Dated: 12/06/2016

By:

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18 JULIE A. SU
California Labor Commissioner
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**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT**

**CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013A) OR CERTIFIED MAIL**

I, JUDITH A. ROJAS, do hereby certify that I am a resident of or employed in the County of San Diego, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: 7575 Metropolitan Drive, Suite 210, San Diego, CA 92108-4424

On December 8, 2016, I served the within **DETERMINATION OF CONTROVERSY** by placing a true copy thereof in an envelope addressed as follows:

Bryan J. Freedman, Esq.
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1901 Avenue of the Stars, Suite 500
Los Angeles, CA 90067

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Law Offices of John M. Kalajian
PO Box 1690
Simi Valley, CA 93062

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid, depositing it for pickup in this city by:

_____ Federal Express Overnight Mail

X Ordinary First Class Mail

I certify under penalty of perjury that the foregoing is true and correct.

Executed on December 8, 2016, at San Diego, California.



JUDITH A. ROJAS

Case No. TAC-41756

PROOF OF SERVICE