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BEFORE THE STATE LABOR COMMISSIONER
DIVISION OF LABOR STANDARDS ENFORCEMENT
STATE OF CALIFORNIA

| | | |
|---------------------------------------|---|---------------------|
| ROSEANNE ARNOLD, formerly |) | CASE NO. TAC 40-91 |
| professionally known as Roseanne |) | |
| Barr, an individual, FULL MOON |) | ORDER OF THE LABOR |
| & HIGH TIDE, INC., a California |) | COMMISSIONER ON |
| corporation, BABY ARNOLD PRODUCTIONS, |) | APPLICATION OF |
| INC., formerly known as BARR |) | TRIAD ARTISTS, INC. |
| SPECIALTIES, INC. a California |) | TO DISMISS PETITION |
| corporation, |) | TO DETERMINE |
| |) | CONTROVERSY AND |
| Petitioners, |) | CLAIMS FOR |
| |) | REVOICATION OF |
| v. |) | LICENSE |
| |) | |
| TRIAD ARTISTS, INC., a |) | |
| California corporation, |) | |
| |) | |
| Respondent. |) | |

I. INTRODUCTION

A. BACKGROUND

Petitioners, ARNOLD, FULL MOON and BABY ARNOLD filed a Petition with the State Labor Commissioner pursuant to the provisions of Labor Code §1700.44, on October 16, 1991. On November 6, 1991, Respondent, TRIAD, filed an application to dismiss the Petition or, in the alternative, for a stay of proceedings pending arbitration of the issues. On January 4,

1 1992, Petitioners filed an amended Petition. In addition to the
2 allegations contained in the original Petition, the amended
3 Petition contains a cause of action alleging that TRIAD was
4 engaged in a conspiracy to violate the Talent Agencies Act.¹

5 Aside from the cause of action regarding conspiracy, the
6 amended Petition is substantially the same as the original
7 Petition expect that, unlike the original Petition, the amended
8 Petition alleges that the "Series"² contract between ARNOLD and
9 CARSEY-WERNER, the production company with which ARNOLD was
10 employed, covered not only "acting and writing services" but
11 also involved "creative consulting" services.³

12
13 **B. UNCONTROVERTED FACTS**

14 In the Petitions and responses filed with the Labor
15 Commissioner, Petitioners assert that TRIAD is a talent agency
16 licensed by the State Labor Commissioner pursuant to the
17 provisions of Labor Code §§ 1700 et seq. Both parties agree
18 that TRIAD originally undertook to represent ARNOLD as her
19 talent agent under the terms of an "oral agreement" sometime in

20
21 ¹ Attached to the First Amended Petition is an Accusation prepared by
22 the attorneys for Petitioners of the type usually issued by administrative
23 agencies. The accusation seeks to revoke, suspend or otherwise restrict
24 Respondent's Talent Agency license issued by the State Labor Commissioner.
Petitioners cite no legal basis for the adjudication of a license revocation
or suspension by an officer of the licensing agency. The accusation does not
comply with the requirements of the California Government Code and is not
properly before the Labor Commissioner.

25 ² The "Series" referred to is the Television production of "Roseanne".

26 ³ Arnold contends, in her first amended petition, that not only did the
27 series contract call for her to perform "creative consulting" but that
28 "[S]ubstantially more than fifty percent (50%) of the compensation received,
and to be received, by Roseanne pursuant to the Series Contract is
attributable to her rendition of consulting services."

1 1985. ARNOLD contends that talent agent agreements between the
2 parties subsequently entered into on May 14, 1987, were signed
3 under a form of duress. While it is uncontroverted that seven
4 documents were signed at the luncheon meeting of May 14, 1987,
5 it is not clear just exactly what agreements were signed. It is
6 undisputed that the agreements signed did include the "general
7 services agreement" which is the basic talent agency contract
8 used by TRIAD with all talent and the "Standard AFTRA Exclusive
9 Agency Contract". The AFTRA contract is required by union rules
10 and covers all work which is covered by the terms of an AFTRA
11 collective bargaining agreement.

12 In addition, the parties agree that any services rendered
13 by ARNOLD as a writer under the "Series" contract are subject to
14 the "Writers Guild of America Artists' Manager Basic Agreement
15 of 1976" which is required by union regulations. ARNOLD implic-
16 itly agrees that if the AFTRA contract is valid, all acting work
17 performed under the "Series" contract is subject to the terms of
18 that agreement.

19 The parties do not dispute the fact that ARNOLD is an
20 artist, as that term is defined at Labor Code §1700.4(b). The
21 parties do not dispute that FULL MOON and BABY ARNOLD are both
22 California corporations which engage in the occupation of "loan
23 out" of artists' services. The only artist's services which are
24 involved in this "loan out" arrangement are those of ARNOLD.

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1 II. DISCUSSION

2 A. THE ROLE OF THE CORPORATE PETITIONERS

3 Labor Code §1700.44 provides that:

4 The Labor Commissioner may certify without a hearing
5 that there is no controversy within the meaning of
6 this section if he or she has by investigation estab-
7 lished that there is no dispute as to the amount of
8 the fee due.

9 Initially, we address the standing of the corporate
10 Petitioners in this case. It is uncontroverted that both FULL
11 MOON and BABY ARNOLD are California corporations engaged in the
12 "loan out" of the services of ARNOLD. There is no allegation
13 that these corporations are artists as that term is defined at
14 Labor Code §1700.4(b).

15 Labor Code §1700.44 provides, *inter alia*:

16 In cases of controversy arising under this chapter,
17 the parties involved shall refer the matter in dispute
18 to the Labor Commissioner, who shall hear and deter-
19 mine the same, subject to an appeal within 10 days
20 after determination, to the superior court where the
21 same shall be heard de novo.

22 Labor Code §1700.4 defines only "talent agency" and
23 "artists" for purposes of the Act. The Petitioners have cited
24 no authority and the Labor Commissioner is unaware of any
25 precedent for the inclusion of "parties" other than the artist
26 and the Talent Agency. Obviously, the Legislature did not
27 intend to confer jurisdiction upon the Labor Commissioner to
28 consider matters which are not directly related to the Talent
Agency Act. Absent such authority, the Labor Commissioner is
without jurisdiction to entertain the allegations of the corpor-
ate Petitioners herein.

Lacking jurisdiction to consider the petitions of the

1 corporate Petitioners, FULL MOON & HIGH TIDE, INC., and BABY
2 ARNOLD PRODUCTIONS, INC., those Petitions are hereby dismissed
3 with prejudice.
4

5 **B. THE ARBITRABILITY OF THE CONTROVERSY**

6 The Respondents, joined by *Amicus* Association of Talent
7 Agents, argues that arbitration is mandated not only by the
8 terms of the AFTRA and WGA agreements, but by the provisions of
9 federal law which require adherence to arbitration provisions
10 involving collective bargaining. The parties point to the *Steel*
11 *Workers Trilogy* in the U.S. Supreme Court and the California
12 case of *Plumbing, Heating and Piping Employers Council of No.*
13 *Calif. v. Howard* (1975) 53 Cal.App.3d 828, for the proposition
14 that state and federal policies favor arbitration of labor
15 cases. While these cases are instructive, they are not
16 determinative. The matter involved here does not impact on the
17 collective bargaining process and the talent agency is not a
18 party to the CBA. This controversy is only of peripheral
19 concern to the collective bargaining process.

20 However, the California policy is to encourage arbitration
21 (See Code of Civil Procedure §1281) whenever that process does
22 not violate public policy. (See Labor Code §229) See *Franklin*
23 *v. Nat C. Goldstone Agcy* (1949) 33 Cal.2d 628.

24 Labor Code §1700.45 provides, *inter alia*:

25 Notwithstanding Section 1700.44, a provision in a
26 contract providing for the decision by arbitration of
27 any controversy under the contract or as to its
existence, validity, construction, performance,
nonperformance, breach, operation, continuance, or
termination, shall be valid:

28 ...

1 (b) If the provision is inserted in the contract
2 pursuant to any rule, regulation, or contract of a
3 bona fide labor union regulating the relations of its
4 members to a talent agency...

5 As the facts in this case indicate, the agreements entitled
6 AFTRA Exclusive Agency Contract and the WGA Artists' Manager
7 Basic Agreement, contain clauses which require that the
8 controversy be submitted to arbitration. For instance, the
9 AFTRA agreement contains a broad arbitration clause which
10 provides, *inter alia*:

11 All disputes and controversies of every kind and
12 nature whatsoever between an agent and an artist
13 arising out of or in connection with or under any
14 agency contract between the agent and an artist...as
15 to the existence of such contract, its execution, its
16 validity, the right of either party to avoid same on
17 any grounds, or as to its construction, performance,
18 non-performance, operation, breach, continuance, or
19 termination...and all disputes and controversies of
20 every kind and nature regarding the meaning or
21 interpretation of any of these regulations, or the
22 breach thereof, or their effective enforcement, shall
23 be submitted to arbitration...

24 Clearly, an arbitration clause that broad in its scope,
25 would allow the arbitrator to consider the allegations of over-
26 reaching and breach of fiduciary duty alleged by Petitioner.

27 For example, Petitioner alleges that TRIAD failed to dis-
28 close the fact that it had entered into a "packaging agreement"
with Carsey-Werner in connection with the same "Series" which
was the object of the employment contract between ARNOLD and
Carsey-Werner. As a result of that packaging agreement, accord-
ing to the allegations raised by ARNOLD, Respondent, TRIAD was
entitled to a percentage of the profits of the "Series" which
effectively reduced the "net profits" upon which the artist's
compensation is calculated. The fact that the "secret" profits

1 of the agent impacted upon the sums due the client would cer-
2 tainly raise the issue of conflict of interest. Such conduct
3 would be even more egregious if it were shown that the agent had
4 failed to apprise the client of the conflict.

5 If these allegations were found to be true, it would: 1)
6 violate Section VIII(b)(2) of the AFTRA Regulations which are a
7 part of the contract between the artist and the signatory agency
8 and violate Section 6(D) of the WGA Agreement; and, 2) be a
9 clear breach of the fiduciary duty owed to the client by the
10 agency under common law agency concepts.

11 Under either legal theory, the arbitrator would be able to
12 fashion a remedy of the violation.

13 Under the broad arbitration clauses contained in the agree-
14 ments, the arbitrator can determine, as well as the Labor Com-
15 missioner, whether the contract is one of adhesion. Such ques-
16 tions go to the "validity" of the contract and such issues may
17 be decided by the arbitrator under the terms of the agreements.

18 The term "consulting services" is unique in the annals of
19 the Labor Commissioner. The services alleged by the Petitioner
20 to fall within the meaning of the term could, however, be con-
21 strued to be within the broader definition of "Artists" found at
22 Labor Code §1700.4 which covers "artists and persons rendering
23 professional services in motion picture, theatrical, radio,
24 television and other entertainment enterprises."

25 The addition by the Petitioner of the term "consulting
26 services" to the amended Petition when it did not appear in the
27 original Petition, coupled with the added allegation contained
28 in the "amended" Petition that more than 50% of the services

1 expected of ARNOLD under the contract with Carsey-Werner are for
2 these "consulting services" smacks of artful pleading. It is
3 indeed unusual for someone to fail to allege in the first in-
4 stance that work which consists of more than 50% of the services
5 rendered is at issue. Assuming that the failure to mention that
6 fact was an oversight, its inclusion does not affect the arbi-
7 trability of the issues.

8 If the agency contract is found by the arbitrator to be
9 void as a result of overreaching or breach of a material condi-
10 tion of the contract (i.e., implied-in-law good faith dealing),
11 the arbitrator can remedy the breach by applying common law
12 principles of agency law.

13 If, on the other hand, the arbitrator finds that there are
14 issues raised which are not subject to the arbitration clause,
15 the arbitrator may remand those issues to the Labor Commis-
16 sioner. In such an event, the Labor Commissioner will review the
17 findings of the arbitrator and, if, in the opinion of the Labor
18 Commissioner, the issues reserved are found to be within the
19 jurisdiction of the Labor Commissioner, this agency would assume
20 jurisdiction.

21 For purposes of this provision, the Labor Commissioner will
22 not dismiss the Petition but will defer to arbitration. The
23 statute of limitations will be measured by the filing of the
24 Petitions with the Labor Commissioner.

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III. ORDER

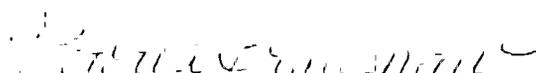
1. The Petition by FULL MOON & HIGH TIDE, INC., and BABY ARNOLD PRODUCTIONS, INC., California corporations, is dismissed with prejudice.

2. Further proceedings on the Petition by ROSEANNE ARNOLD, formerly professionally known as Roseanne Barr, are stayed pending submission to arbitration of all of the issues raised in the Amended Petition To Determine Controversy filed with the Labor Commissioner on January 4, 1992.

Dated: February 20, 1992



H. THOMAS CADELL, JR.
Chief Counsel as Special Hearing Officer
Division of Labor Standards Enforcement



VICTORIA BRADSHAW
State Labor Commissioner

