

# Daily Journal

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PERSPECTIVE

## Malcontented managers turn on talent

By Edward A. Klein

Until recently, it was relatively rare for a talent manager to sue a former client for commissions, but it now appears the gloves are off and managers are increasingly willing to fight for their compensation with their high profile clients. In one of the few cases that has gone to trial, a Los Angeles County Superior Court jury recently found that actress Lisa Kudrow owes her former personal manager, Scott Howard, approximately \$1.6 million. The jury held that Kudrow breached an oral agreement she made with Howard by failing to pay him commissions on amounts she received after she terminated him. This jury verdict is the latest, although probably not the final, episode in a legal saga that debuted in 2008 and has already made two appearances at the California Court of Appeal. *Howard Entertainment Inc. v. Kudrow*, SC99232 (Feb. 25, 2014).

After graduating from Vassar, Kudrow landed minor roles in film and television and became a featured member of The Groundlings improv theater group. In 1991, Kudrow did not have a personal manager, talent agent or entertainment lawyer, and met with Howard about him becoming her manager. At the time, Howard had worked in the entertainment industry for several years, including as a talent agent at William Morris, and was launching his career as a personal manager. Kudrow and Howard testified that Howard was very enthusiastic about representing Kudrow and the two agreed — orally — that Howard would provide Kudrow personal management services in return for 10 percent of Kudrow's entertainment industry income. They did not discuss any further details and they did not put the terms of their agreement in writing.

Shortly after hiring Howard, Kudrow guest starred on the sitcom "Mad About You" (as the ditzy waitress Ursula Buffay), and in 1994, was cast as Phoebe Buffay (Ursula's twin sister) on the hit comedy series "Friends." NBC broadcast over 200 episodes of "Friends" over 10 years and Howard



Lisa Kudrow poses for a portrait in New York in 2012.

remained Kudrow's manager throughout. Kudrow ultimately earned over \$1 million per "Friends" episode, plus residuals and a share of the show's "back end." In 2004, Howard agreed to reduce his commission from 10 percent to 5 percent on Kudrow's earnings for the final season of "Friends."

Kudrow terminated Howard's services in March 2007, but they did not discuss how the termination would impact his post-termination compensation. Shortly thereafter, Howard asked Kudrow for his commissions on her post-termination income from "Friends" and other work she did (or had agreed to do) before his termination. She refused to pay, in August 2008, Howard sued Kudrow.

Kudrow filed a motion for summary judgment in which she acknowledged her oral agreement, but argued there was no evidence she had agreed to pay Howard post-termination compensation. Howard, however, submitted a declaration from Martin Bauer, a personal manager and the former president of talent agency UTA, testifying that at the time of the Kudrow-Howard oral agreement, there was a custom and practice in the entertainment industry that personal managers were paid post-termination commissions for services the client rendered, and engagements the client accepted, during the period that the personal

manager was still representing the client. Kudrow objected to Bauer's declaration and the trial court ruled that the declaration was insufficient and granted summary judgment for Kudrow. Howard appealed, and the Court of Appeal ordered the trial court to consider whether he should have been allowed to file a further declaration.

Back at the trial court, the judge granted Howard's request to file a supplemental declaration from Bauer that elaborated on Bauer's experience and opinions. Undeterred, Kudrow objected to the second Bauer declaration and the trial court again granted summary judgment because, "[o]ther than Mr. Bauer's conclusory statements, there are no facts to support his opinion that a talent manager's receipt of post-termination compensation was 'widely known and generally applied' within the entertainment industry in 1991 when Kudrow and Howard entered into the oral agreement."

Howard again appealed and the Court of Appeal again sent the case back to the trial court, holding that courts may look to industry custom, usage and practices to imply missing terms in a contract and that expert testimony is admissible to prove such customs and practices. Accordingly, "[c]ustom and usage in the entertainment industry therefore may become part of the oral agreement between the parties to explain whether Howard was entitled to receive post-termination compensation." Therefore, Bauer's declaration created triable issues of fact. (The state Supreme Court declined to review the decision.)

The only significant issue at trial was whether industry custom and practice implied in their oral agreement a term requiring Kudrow to pay Howard post-termination compensation. This came down to a proverbial "battle of the experts" between Howard's Bauer and Kudrow's David Tenzer, an entertainment lawyer, personal manager and former CAA talent agent. The jury sided with Howard and found Kudrow liable to Howard for approximately \$1.6 million in post-termination compensation.

The Kudrow case is just one of

several cases brought in the last few years by managers against their former clients. Manager Steve Dontanville sued "Good Wife" star Julianna Margulies; manager Tracy Quinn sued "Ugly Betty" actor Tony Plan; manager Kieran Maguire sued actress Melissa Joan Hart; and manager Clifford Sterit brought two cases against "Sex and the City" author Candace Bushnell.

Talent agents have also gotten into the act. SDB Partners sued "Star Trek" star Chris Pine; WME went after CNBC anchor Amanda Drury; UTA took "Men in Black 3" director Barry Sonnenfeld to federal court; and CAA and WME fought over commissions from "The Dark Night Rises" director Christopher Nolan. These cases undoubtedly represent a small fraction of the post-termination disputes that arise between talent and their representatives, since most are resolved privately either before they reach litigation or in private arbitrations.

Agent/manager relationships are a fertile ground for disputes because the parties often do not have a written agreement spelling out their rights and obligations, after termination or otherwise. In an industry infamous for often neglecting to document deals, many personal managers remain reluctant to put their agreements in writing. For example, Bauer testified that, until recently, all of his management agreements were oral. A highly unscientific survey conducted by the author suggests that this stems from managers' belief that such agreements may not be enforceable and their desire to avoid an overly formal relationship with their clients. Indeed, Kudrow's lawyer compared the relationship to a marriage and suggested that a written agreement addressing post-termination compensation was akin to, and as potentially awkward as, a prenuptial agreement. Whatever the reason, so long as managers and their clients do not expressly address the issue of post-termination compensation, litigation in this area will continue to arise.

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