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**DIRECTORS GUILD OF AMERICA
ARBITRATION**

UNITED TALENT AGENCY, INC., a
California Corporation,

Claimant,

vs.

BARRY SONNENFELD, an individual,

Respondent.

ARBITRATOR'S AWARD

This matter came on for arbitration on February 2, 2012 before the undersigned, acting as sole arbitrator pursuant to stipulation of the parties. Bryan J. Freedman, Esq. and Steven B. Stiglitz, Esq. of Freedman & Taitelman, LLP appeared on behalf of Claimant Untied Talent Agency, Inc. ("UTA" or "Claimant"). Edward M. Anderson, Esq. and Camille L. Rustia, Esq. of Anderson General & Entertainment Law PC appeared on behalf of Respondent Barry Sonnenfeld ("Sonnenfeld" or "Respondent").

The arbitration was held on February 2, 2012. It was agreed amongst the parties and their counsel that no oral testimony would be presented at the arbitration.

Each party submitted two sets of briefs with exhibits attached prior to the hearing of

1 February 2, 2012.

2 The Arbitrator read all of the briefs and the voluminous exhibits prior to the oral argument
3 of February 2, 2012. Mr. Freedman and Mr. Stiglitz argued for UTA and Mr. Anderson argued on
4 behalf of Mr. Sonnenfeld. Also present at the oral argument were Andrew Thau and James
5 Meenaghan as representatives for UTA.

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8 FINDINGS OF FACT

9 Sonnenfeld and UTA entered into an oral agency agreement in or about 1990 for UTA to
10 act as Sonnenfeld's exclusive talent agency in the entertainment industry. Sonnenfeld's primary
11 agent at UTA was Jim Berkus.

12 Sonnenfeld entered into a written agreement with Columbia Pictures ("Columbia") dated
13 as of April 4, 1995 to direct the motion picture *Men in Black* ("MIB") (the "MIB Agreement").
14 UTA procured and substantially negotiated the MIB Agreement on behalf of Sonnenfeld. Melanie
15 Cook, Sonnenfeld's attorney, also participated in the negotiations and the drafting of the
16 agreement.

17 Paragraph 15 of the MIB Agreement, entitled "Remakes/Sequels," provides as follows:

18 Artist shall have a ***rolling right of first negotiation*** to direct theatrical
19 and/or television remakes and/or ***sequels*** to the Picture on Columbia's
20 standard terms for such matter (***including that Artist directed the***
immediately preceding subsequent production). The financial terms
and conditions with respect to a theatrical production shall be no less
favorable to Lender and Artist than those set forth in this Agreement.
(Emphasis added.)

21 This paragraph provides Sonnenfeld with the right to negotiate with Columbia to direct any
22 sequel or remake of MIB before Columbia negotiates with anyone else to direct such subsequent
23 production. Conversely, it obligates Columbia to approach and negotiate with Sonnenfeld to direct
24 a subsequent production before approaching or negotiating with anyone else. The language
25 requiring that Sonnenfeld have "directed the immediately preceding subsequent production" in
26 order to be considered for the next production, as well as the phrase "rolling right of first
27 negotiation," contemplates that the right of first negotiation granted in the MIB Agreement applies
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1 to *all subsequent sequels or remakes* of MIB, not only the first such sequel or remake. Finally,
2 the last sentence of Paragraph 15 provides a “floor” for Sonnenfeld’s compensation on subsequent
3 MIB-related theatrical productions: his compensation for any and all subsequent theatrical
4 productions (*i.e.*, not television) can be no less than his directing (“cash”) compensation on MIB
5 provided in the MIB Agreement.

6 UTA participated significantly in the negotiations of the MIB Agreement, which included
7 the rolling right of first negotiation clause and the “floor” language. Sonnenfeld’s transactional
8 attorney’s participation in the negotiations and the drafting of the MIB Agreement does not alter
9 those facts. Sonnenfeld does admit in his Response to Complaint (¶ 9) that the MIB Agreement
10 “was negotiated and entered into prior to the termination of Respondent’s agency relationship with
11 UTA.” Accordingly, I find that UTA procured and substantially negotiated the initial MIB
12 Agreement, including Paragraph 15 which provided Sonnenfeld with the right of first negotiation
13 to direct any and all sequels to MIB. Such a “right of first negotiation” is legally enforceable and
14 is not uncommon in the feature film business.

15 Sonnenfeld claims that he terminated his agency agreement with UTA in or about mid-
16 April, 1995. There is evidence in the form of a request sent from Ms. Cook dated June 8, 1995
17 asking for information from Mr. Berkus regarding certain video rights. This communication
18 shows that UTA remained, at some level, involved in the MIB Agreement negotiations until well
19 after April 1995 prior to the MIB Agreement being finalized. At some point in 1995 it appears,
20 Sonnenfeld hired Creative Artists Agency (“CAA”) to act as his talent agency with respect to MIB.
21 There was no evidence submitted regarding what role CAA played in the 1995 negotiations. It is
22 undisputed that Sonnenfeld paid UTA commissions of 10% of the \$3,250,000 (\$325,000), which
23 was the “floor” or guaranteed “cash” compensation from the MIB agreement.

24 Sonnenfeld directed MIB, which was released in 1997 and achieved commercial success

25 Sonnenfeld entered into a written agreement with Columbia dated as of May 23, 2001 to
26 direct the motion picture *Men in Black II* (“MIB II”), the first sequel to MIB (the “MIB II
27 Agreement”). CAA procured and substantially negotiated the MIB II Agreement on behalf of
28

1 Sonnenfeld. Paragraph III.F.1. of the MIB II Agreement, entitled “First Opportunity. Theatrical
2 Sequel or Remake,” provides, in pertinent part:

3 Artist shall have the first opportunity to direct such theatrical sequel
4 and/or remake (and each succeeding theatrical sequel or theatrical
5 remake...) on terms to be negotiated in good faith within Company’s
6 standard parameters [but upon material terms no less favorable than
7 the material terms of this Agreement with respect to [MIB II]];
8 provided, however, that if Artist elects not to direct, is not reasonably
9 available, or no agreement is reached within thirty (30) days following
10 Company’s service of notice on Lender of commencement of
11 negotiations therefor, then Company shall have the right to engage
12 another director and shall have no further obligation to Lender and/or
13 Artist under this Paragraph III.F.

14 I find that Paragraph III.F.1 of the MIB II Agreement and Paragraph 15 of the MIB
15 Agreement, both provide Sonnenfeld with the right of first negotiation/first opportunity¹ to direct
16 theatrical sequels to or remakes of the applicable motion picture upon the satisfaction of certain
17 conditions. The MIB II agreement provides a floor for Sonnenfeld’s directing (“fixed”)
18 compensation on the next production, similar to the compensation language in the MIB agreement.
19 In fact, the language of Paragraph 15 of the MIB Agreement can be read as more favorable to
20 Sonnenfeld than the language of Paragraph III.F.1 of the MIB II Agreement because (a) the MIB
21 Agreement provides Sonnenfeld with a “rolling right” of first negotiation to direct *all* subsequent
22 sequels, whereas the MIB II Agreement’s right of first opportunity applies only to the next picture;
23 and (b) the only condition in the MIB Agreement is that Sonnenfeld must have directed the
24 immediately preceding picture, whereas the MIB II Agreement contains additional conditions on
25 Sonnenfeld’s right of first negotiation, including a 30 days negotiation period, 10-year time limit
26 on the right of “first opportunity” and that the preceding picture have been completed on budget.
27 Regardless, however, Sonnenfeld would not have had the right or the opportunity to direct MIB II
28 were it not for the “rolling right of first negotiation” contained in the MIB Agreement.

On January 19, 2001, CAA sent a letter to Sonnenfeld’s transactional attorney confirming
that Sonnenfeld would pay CAA a 10% commission on all moneys received in connection with

¹ There is no material difference between the terms “first negotiation” and “first
opportunity”; indeed, a leading industry legal guidebook refers to them synonymously. Appleton
& Yankelevits, *Hollywood Dealmaking*, p. 108 (2d ed. 2010).

1 MIB II and also agreeing that CAA would indemnify Sonnenfeld for claims, if any, by UTA for
2 commissions on MIB II. This letter was sent before UTA made any claim for commissions on
3 Sonnenfeld's compensation from MIB II. The indemnity was asked for by Sonnenfeld and agreed
4 to by CAA in anticipation of a claim by UTA for commission on MIB II.

5 Sonnenfeld directed MIB II, which was released in 2002 and achieved commercial success.
6 CAA received commissions on MIB II, and CAA paid UTA \$325,000 per UTA's written invoice
7 of September 9, 2011, and CAA's indemnity agreement with Sonnenfeld.

8 Sonnenfeld entered into a written agreement with Columbia dated as of February 3, 2012 to
9 direct the motion picture *Men in Black III* ("MIB III"), the second sequel to MIB (the "MIB III
10 Agreement"). MIB III is scheduled to be released in 2012. Paragraph 16.2 of the MIB III
11 Agreement provides Sonnenfeld with the first opportunity to direct a sequel on terms similar to
12 those contained in the MIB II Agreement.

13 I find that the MIB III Agreement came about because of the "rolling right of first
14 negotiation" that is contained in the original MIB Agreement of which UTA was the agency of
15 record and substantially negotiated the material terms and conditions of that first Agreement.

16 17 CONCLUSIONS OF LAW

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19 The agreement between the Association of Talent Agents ("ATA") and the Directors Guild
20 of America, Inc. ("DGA") (the "DGA Agency Agreement") provides standard terms governing
21 talent agencies' representation of directors. The DGA Agency Agreement is binding on all
22 signatory agencies, including UTA. The DGA Agency Agreement includes Rider "D," which by
23 its terms is "applicable only to agency contracts covering the rendition of services of a member of
24 the [DGA], as a Director in the motion picture and television industry."

25 The oral agency agreement between Sonnenfeld and UTA is valid and enforceable. "Oral
26 agreements between talent agencies and directors are not barred under the provisions of the DGA
27 Rules and are recognized as enforceable under the Regulations." *United Talent Agencies, Inc. v.*
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1 *Friedkin*, Arbitrator's Award dated December 24, 1993, Arbitration Tribunal of Directors Guild of
2 America, Inc., 5:1-3. It should be noted that in *Friedkin* the Arbitrator awarded UTA certain fees
3 to be paid by *Friedkin*. "[T]he fact that no written confirmation was ever sent shall not be, in and
4 of itself, sufficient to invalidate the oral contract." 8 Cal. Code Reg. § 12002. Further, the DGA
5 Agency Agreement, including Rider "D," is applicable to and deemed to be a part of the agreement
6 between UTA and Sonnenfeld. *See Friedkin*.

7 Pursuant to Rider "D," talent agencies are entitled to post-termination commissions on
8 "deals entered into or substantially negotiated prior to such termination or expiration but not on
9 improvements negotiated after such termination." Rider "D," ¶ 4.A. The MIB Agreement was
10 entered into, and/or at least substantially negotiated, prior to Sonnenfeld terminating UTA. The
11 evidence shows Sonnenfeld paid UTA commissions on moneys earned from the MIB Agreement,
12 and that Sonnenfeld agreed CAA could pay UTA a commission on MIBII. The MIB Agreement
13 contains a rolling right of first negotiation which provides that Columbia must negotiate with
14 Sonnenfeld first to direct any sequel or remake of MIB, and it provides the minimum terms on
15 which Sonnenfeld would be hired to direct the subsequent production. It is irrelevant whether the
16 MIB II Agreement (or the MIB III Agreement) contained new or different terms and conditions.
17 Sonnenfeld's right of first negotiation (and Columbia's concomitant obligation to offer to negotiate
18 with Sonnenfeld first) to direct any sequel to MIB arose from the MIB Agreement negotiated by
19 UTA. Therefore, under Paragraph 4.A of Rider "D," UTA is entitled to commissions, up to the
20 amount of commissions payable on the "cash compensation" in Paragraph 8.1 of the MIB
21 Agreement (\$325,000).

22 In addition, Rider "D" goes on to provide that agencies "shall be entitled to commission on
23 direct and indirect renewals, substitutions, replacements, extensions or modifications of contracts
24 referred to in [subparagraph] A above except as specifically provided herein." Rider "D," ¶ 4.B.
25 Because the MIB Agreement provides Sonnenfeld with a "rolling right of first negotiation" to
26 direct any subsequent sequel or remake, the MIB II Agreement and the MIB III Agreement are
27 "renewals, substitutions, replacements, extensions or modifications" of the MIB Agreement.
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AWARD

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Sonnenfeld shall pay UTA a commission of 10% of all compensation paid or payable to him under the MIB III Agreement up to a ceiling of \$325,000. If Sonnenfeld directs other sequels or remakes of MIB, Sonnenfeld shall pay UTA the same commission (10% of all compensation paid or payable to Sonnenfeld on the applicable subsequent sequel or remake of MIB, up to a ceiling of \$325,000) on each such sequel or remake. Any such commissions now due and not paid shall be paid within thirty (30) days after the date of this Award. Any commissions hereafter becoming due shall be paid within ten (10) business days after Sonnenfeld's receipt of money on which such commissions are payable. Sums not paid when due shall bear interest at the legal rate of 10% until paid.

Dated: March 16, 2012

HOWARD WEITZMAN
Arbitrator

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