

AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR

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: In the Matter of the Arbitration :
: :
: BETWEEN :
: :
: SCREEN ACTORS GUILD : OPINION
: : and
: - and - : AWARD
: :
: LAWRENCE BUTNER ADVERTISING, INC. :
: :
: (AAA Case No. 1330-0108-87; Claim of :
: Barbara Christie) :
: :
: -----X

APPEARANCES:

For the Guild:

Shea and Gould, Esqs.,
by: Eve Klein, Esq.
Elinor London, Senior Executive,
Commercials Department, SAG
Bridget Greco, Executive Assistant
SAG

For the Agency:

Donald B. Krasnow, Esq.
Lawrence Butner, President
Robin L. Butner, Esq.,
Associate Counsel
Beverly Beach, Broadcast Producer

Lawrence Butner Advertising, Inc. (hereinafter the
"Agency") was employed to produce a 30-second television commer-
cial for Trans America Insurance, the subject of which was a

guaranteed death benefit rider. Barbara Christie, the Grievant herein, was engaged to perform in that commercial as the wife in a four-person family, signing an extra contract to do so.

The commercial was shot on August 19, 1986. After the shoot, but before the commercial was aired, Christie complained to the Guild that she had actually appeared as a "principal performer," as defined in the Guild's 1985 Commercials Contract and demanded that she be paid accordingly. After the Guild's Commercials Department screened the commercial, it agreed and made claim on the Agency for such payment. The Agency disputed the claim and the matter was referred to the Guild's executive staff, which unanimously agreed with the Commercials Department and ordered that an Arbitration Demand be filed. That Demand (Joint Exhibit 2) was filed on January 21, 1987 and the Under-signed was selected to hear and determine the matter.

A hearing was held in New York City on July 9, 1987, at which time the Parties, after attesting that the dispute was properly before the Arbitrator, were afforded full opportunity to offer evidence and argument, and to present, examine and cross-examine witnesses. At the hearing, the Union requested

permission to submit arbitration cases. However, it advised by letter dated July 24 that there were none on the point at issue. Thereafter, the Record was closed as of August 18.

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The Issues

The issues, which were agreed to by the Parties, are:

"Does Barbara Christie's performance in the commercial, as illustrated in the final edited version, meet the definition of 'principal performer' as defined in Section 6(C) of the 1985 Commercials Contract?

If so, is Barbara Christie entitled to be upgraded from an extra to a principal performer and receive all the benefits thereof?"

The Contract Language

The Commercials Agreement, in relevant part, reads as follows:

"4. Definitions

Commercials are short advertising or commercial messages made as motion pictures, three minutes or less in length, and intended for showing over television. Advertising or commercial messages include any narration, dialogue, songs, jingles or other matter which depict or mention the advertiser's name, product or service. They include program openings and closings which mention the advertiser's name, product or service. Advertising and commercial messages over three minutes in length shall be subject to separate negotiations between the Union and producer. . . .

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6. Persons Covered

The following classification of persons are included in the term 'principal performer' and are covered by this contract:

- A. Anyone who is seen and who speaks a line or lines of dialogue, whether directly employed for such work or after being hired as an extra performer. . . .
- B. Anyone whose face appears silent, alone in a stationary camera shot, and is identified with the product or service;
- C. Anyone whose face appears silent and is identifiable and whose foreground performance demonstrates or illustrates a product or service or illustrates or reacts to the on or off-camera narration or commercial message;

Persons appearing in the foreground solely as atmosphere and not otherwise covered by the foregoing shall be deemed extra performers; "

It is conceded that Ms. Christie's face appears silent and is identifiable. It is also conceded that she is in the foreground for approximately six seconds as the commercial opens. The quarrel is whether her "foreground performance demonstrates or illustrates a product or service or illustrates or reacts to the on or off-camera narration or commercial message."

The Background

The commercial as finally edited shows a man in tennis clothes alighting from his car and going to the right-hand side and opening the door for his wife as he says, "Great game." The wife gets out of the car, looks at him in reaction to that statement, then turns towards the back of the car and opens the door so that the two children in the rear can get out. At this point, the camera follows the man as he moves past the front of the car, opens a gate and climbs the steps of a back porch. As soon as the camera begins to move, the children and wife are out of camera range. As the man talks about life insurance while standing or sitting on the porch, the wife and children come into view again. This time, however, they are in the yard, far in the background. In the narration, the man refers to his wife

many times, saying, among other things, "My wife and I enjoy our active life style. We're both 42." "We used to worry about living too long. What if one of us should die? Where would the money come from, to support the other?" He then extols the virtues of Trans America's death benefit rider, ending with the statement, "We don't worry anymore. You shouldn't either." The commercial ends with the Trans America pyramid and logo and an 800-number, with a voice-over advising the viewer that they can call the number for more information about the company's guaranteed lifetime insurance.

The Arbitrator viewed another commercial in which the same question arose. There, a man hired as an extra performer reacted to a toast and the vigorous clinking of glasses, as the voice-over extolled the durability of a particular kind of crystal. In that matter, the Guild's claim was agreed to by that producer and the actor was paid.

The Contentions of the Parties

The Guild contends that producers often sign performers as extras, particularly when it is not certain what they will

be doing and that it is the industry's practice to upgrade those extras to a principal performer if the final edited version of the commercial demonstrates that they meet the three criteria of Section 6(C). Ms. London and Ms. Greco of the Guild both testified that the upgrading issue was a frequent one occurring some six to fifteen times a week, that commercials were routinely viewed by the Commercials Department on complaint of a particular member, and that the sole basis for judgment was the language of the Agreement. Here, they testified, that after the Agency had contested its request, the Union went further and had the commercial viewed by its 10-person executive staff, which unanimously concurred that Ms. Christie's role in the commercial as finally edited was that of a principal performer rather than an extra.

The Guild's position is that Grievant was identified as the wife, that as such she was both illustrating the commercial message and reacting to the narration and thus clearly falls within the language of the Agreement.

On this point, the Agency vigorously disagrees. It points out that she was hired as an extra solely from her picture

without any casting call or readings, that the object was for her and the children to be part of the atmosphere in order to enhance the texture of the commercial but not to perform in it as such, and that the script itself noted that the commercial had to be shot so that "WIFE is billed as an Extra" (Joint Exhibit 4).

The Agency also relies on the testimony of the director, Adrian Riso of the Adrian Riso Production Company. He testified that his intention was to have Ms. Christie acknowledge "Great game" while she was still in the car and thus hidden, that she was told many times to face to the rear when she got out of the vehicle, but persisted in turning the other way and looking up at the "husband," that there were a number of takes of this because Ms. Christie kept suggesting bits of business which he vetoed and that in the two or three usable takes, Ms. Christie always "managed" to get out of the car a bit too soon and turn the wrong way. Though he thought during the shoot that she was being helpful and conscientious, he testified that after she had made an early complaint to the Guild (long before she had seen the edited commercial), it became his belief that she had deliberately attempted to insinuate herself into the production

in the hope of being classified as a principal performer even though she knew she was to be nothing more than background.

Discussion and Analysis

If, as the Guild says, the test is the commercial as finally edited (and there is nothing in the Record to contradict that assertion), then, in my view, Ms. Christie's performance met the definition of principal performer as that term is used in Section 6(C). It is conceded that she was identifiable and was, at least for a time, in the foreground. It is also plain that as the identified wife she was part of the commercial message. As a consequence, she was illustrating the message, as that term is generally understood. Moreover, she was reacting to the narration. Given all that, it cannot be said that she was there, at least in the final edited version, "solely as atmosphere."

Since, in my estimation, she met the test, the remaining question is whether she is entitled to an upgrade from an extra to a principal performer. In effect, the Agency argues she is not because she "made" the role over the director's protestations.

It may be, as the script states, that the commercial was conceived with the wife as an extra. But that was not the end result. In the ultimate analysis, the responsibility for that result lies, not with Ms. Christie, but with the director and the Agency. If she behaved as they say she did, they could have taken any number of additional steps to modify that behavior. They did not do so and in the end, i.e., in the final edited version, they chose to use a take in which she met the principal performer test.

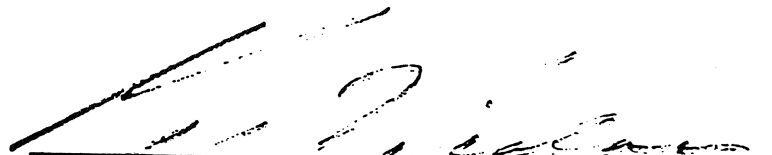
In such circumstances, though there may be other forums in which her asserted behavior could be judged, she should not be deprived of the upgrade.

The Undersigned, acting as the Arbitrator and having duly heard the proofs and allegations of the Parties, therefore renders the following

A W A R D

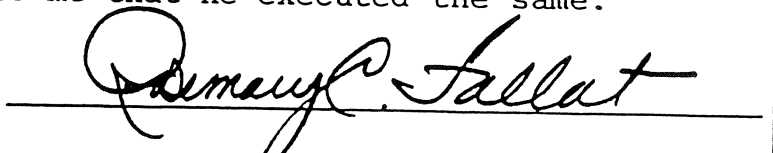
Barbara Christie's performance in the Trans America commercial, as illustrated in the final edited version, meets the definition of "principal performer" as defined in Section 6(C) of the 1985 Commercials Contract.

Barbara Christie is entitled to be upgraded from an extra to a principal performer and receive all the benefits thereof.


George Nicolau, Arbitrator

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this ^{31st} day of August, 1987, before me personally came and appeared George Nicolau, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



ROSEMARY C. FALLAT
Commissioner of Deeds
City of New York No. 1-1667
Certificate filed in New York County
Commission Expires April 1, 1989