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(Endorsed)

FILED
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Labor Commissioner
State of California
By _____, Clerk

BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

LOUIS ST. LOUIS, an individual and ST. LOU-WES EXPRESSION, LTD., a corporpation, Petitioners, v. HOWARD B. WOLF, an individual and WOLFHEAD PRODUCTIONS, INC., Respondents.	NO. SF MP 57 TAC 29-79 DETERMINATION AND AWARD
WOLFHEAD PRODUCTIONS, INC. Cross-Petitioner, v. RSO RECORDS, INC. and BIG FOOT PRODUCTIONS, INC., Cross-Respondents,	

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Ans'd.....

The above-entitled Petition for Determination of Controversy came on regularly for hearing, commencing on April 29, 1980, Richard N. Dinallo, Esq., presiding as Special Hearing Officer for, and on behalf of the Labor Commissioner of the State of California. Stephen F. Rohde, Esq., and Harold

Messing, Esq., appeared on behalf of Petitioners and Cross-Respondents, and Terry Steinhart, Esq., appeared on behalf of Respondents and Cross-Petitioners.

Evidence, both testimonial and documentary, having been introduced and the matter having been duly submitted, and

GOOD CAUSE APPEARING THEREFOR, the following Determination and Award is made:

FINDINGS OF FACT

The parties stipulated during the hearing that Respondents, at all times herein mentioned, were unlicensed by the State of California, to act or perform services as Artists' Managers, as defined by Labor Code, §§1700, et seq. (hereinafter referred to as "the Act"). (R. T. 150) Further, the Labor Commissioner granted RSO RECORDS, INC.'S (originally named as Cross-Respondent) Motion to Dismiss on the grounds that the Labor Commissioner lacked jurisdiction over said party and that it was not properly joined for purposes of this Controversy. Nor were any of the agreements (Exhibits A through E), executed by the parties, ever approved by the Labor Commissioner (R. T. 150)

Summarized, Petitioner, LOUIS ST. LOUIS, is a singer/song-writer/composer/musician (R. T. 112) and met Respondent, HOWARD WOLF, sometime in May of 1976. The latter approached ST. LOUIS to discuss "a possible artists' manager relationship"; that as his manager, WOLF could be "very effective in getting him a record deal" (R. T. 76). WOLF represented that he was on a "one-to-one basis with most of the decision-making people" with several major record companies and club owners (R. T. 77 & 78)

The allegations contained on page 6 of the Petition are deemed true.

Subsequently, WOLF attempted to engage ST. LOUIS to perform in several clubs (R. T. 102). On August 4, 1976, the parties executed a personal management agreement; "HOWARD WOLF being the manager and LOUIS ST. LOUIS being the artist" (R. T. 101) WOLF had been operating a "personal management company" (R. T. 639) under the fictitious name of "WOLF AND ASSOCIATES" but its bank account was closed around May, 1976, and ceased as a viable entity because WOLF had legal problems with a car rental business and wanted to preclude it from attaching any moneys being held in the WOLF AND ASSOCIATES account. (R. T. 483, 641-643). The existing money was transferred to an account bearing the name of WOLFHEAD PRODUCTIONS, INC., a co-respondent named herein. (R. T. 640). Thereafter, ST. LOUIS was paid out of the WOLFHEAD PRODUCTIONS, INC. account (R. T. 644). At times, commissions earned by WOLF as a manager, were deposited in the WOLFHEAD account. (R. T. 471).

WOLFHEAD PRODUCTIONS, INC., (hereinafter referred to as "WOLFHEAD"), was a recording production company, whose sole purpose and function was to produce Petitioner -- no other artist being involved. (R. T. 655). It was to find and promote Artists. (R. T. 382) WOLF was the sole shareholder of WOLFHEAD; a director and president. Its address and phone number are the same as those of WOLF and WOLF AND ASSOCIATES. (R. T. 309). At times, stationery of the two entities was used interchangeably. (R. T. 380-384). WOLF personally received commissions pursuant to

correspondence on WOLFHEAD stationery (R. T. 383). Personal money was deposited into the WOLFHEAD account (R. T. 483).

He admitted he had managed artists in the music industry since 1963 (R. T. 310). "I am the personal manager". (R. T. 319) WOLF testified that, pursuant to the August 4th agreement, he would be Petitioner's "personal manager" (R. T. 321).

Respondents advanced Petitioner various sums of money so as to "invest in ST. LOUIS' career. . . . as a manager it was important for LOUIS . . . to put on a showcase so record people could come and see him and use the money in any area that I (WOLF) felt, be it publicity, or whatever, that needed to be done." (R. T. 339-340).

Believing the August 4th agreement to be in violation of the Act, WOLF initiated the execution of a subsequent November 19th, 1976 agreement (R. T. 363).

This agreement, entitled "Conference of Personal Managers" (Petitioner's Exhibit No. 11 admitted into evidence) reads, in part, as follows:

> "I desire to obtain your advice, counsel and direction in the development and enhancement of my artistic and theatrical career . . . ."

This latter agreement was signed by "HOWARD B. WOLF" and LOUIS ST. LOUIS (R. T. 372).

While ST. LOUIS' manager (R. T. 303), WOLF, introduced ST. LOUIS to WOLFHEAD whereby another agreement was entered into between ST. LOUIS and WOLFHEAD on or about December 29, 1976 (R. T. 386-388), the purpose of securing the agreement was to "make a deal" with C. A. M. (a previous company which had signed

with Petitioner ST. LOUIS whereby a second engagement could be secured (R. T. 295; 388). WOLFHEAD, pursuant to its terms, would receive a "50-50 split" with Petitioner (R. T. 304) based upon any moneys received by WOLFHEAD in selling Petitioner's master recordings to outside record companies. WOLF testified that in signing Petitioner to WOLFHEAD, he was acting on behalf of WOLFHEAD and not as ST. LOUIS' manager (R. T. 390).

As a manager, WOLF testified that his function was "to advise and counsel (ST. LOUIS) with respect to the different facets of his career and to assist as liaison for him." Commissions paid to Respondents by Petitioner appear somewhat conflicting depending upon whether 15% was paid on the Mocambo gross of $15,000.00 (or $14,000.00 (R. T. 117)) in addition to those other items testified to by Petitioner or whether those items included the $15,000.00 amount (R. T. 282; 287-288; 289). If the former is the case, Petitioner paid Respondents 15% of $105,400.00 or $15,810.00. Further, conflicting testimony reveals that Respondents were paid $15,210.00 (R. T. 164).

WOLF told ST. LOUIS that he could "book him" at the Roxy Theatre (R. T. 114-116). Apparently, ST. LOUIS was thereafter so "booked" (R. T. 473) and performed the engagement as a "showcase". (R. T. 117) (a term used in the theatrical industry to mean that the performer does not actually get paid for the engagement but, rather, performs for publicity reasons.) WOLF further "shopped" Petitioner's tapes to Twentieth Century Fox Records, A & M Records, and perhaps a dozen others (R. T. 115).

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Services performed, at Media Sound for instance, were immediately commissioned by WOLFHEAD pursuant to the December 29th agreement (R. T. 127-128). When Petitioner was put in charge of post-production of the music for the "Grease" soundtrack, WOLF gave "all the encouragement in the world" (R. T. 141). Respondents were actively engaged in negotiations on Petitioner's behalf with R. S. O. Record Company regarding the "Grease" production (R. T. 143). On Petitioner's behalf, WOLF negotiated and agreed to a $20,000.00 amount for Petitioner's services (R.T. 145). Indeed, WOLF admitted having represented Petitioner as his client (R. T. 157, 465); that he could get ST. LOUIS a record deal (R. T. 76). He, in fact, attempted to "get a distribution deal" with A & M Records (R. T. 478), Capitol Records (R. T. 479), Elektra, R. S. O. and Portrait Record Companies (R. T. 481). He negotiated a record whereby Petitioner and Ann-Margaret would jointly perform (R. T. 484). Similarly, WOLF engaged a liaison between Petitioner and Stockard Channing (R. T. 485).

ISSUES

1. WAS PETITIONER ST. LOUIS AN "ARTIST" FOR PURPOSES OF THE ACT?

2. WERE RESPONDENTS "MANAGERS" WITHIN THE MEANING OF THE ACT? IF SO, DID THEY UNLAWFULLY PERFORM SERVICES OF ARTISTS'-MANAGERS?

3. WAS WOLFHEAD PRODUCTIONS, INC. THE "ALTER EGO" OF HOWARD B. WOLF?

4. MAY THE PREVAILING PARTY BE AWARDED ATTORNEY FEES?

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CONCLUSIONS OF LAW

The Labor Commissioner has original jurisdiction to determine whether or not he has jurisdiction to determine the controversy brought before him. Buchwald v. Superior Court, 254 C.A. 2d 347; 62 Cal. Rptr. 364 (1967). Because we find the following, we determine that we properly have jurisdiction to determine the controversy at bar -- the parties being either artists or managers as defined by the Act.

An "artist" refers to ". . . musical artists . . . writers. . . composers; lyricists; arrangers; and other persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises." Labor Code §1700.4. Clearly, Petitioner LOUIS ST. LOUIS is an artist for purposes of the Act. No evidence having been submitted whereby a basis for artist applies to either ST. LOU-WES EXPRESSION, LTD. or BIG FOOT PRODUCTIONS, INC., these two entities are hereby dismissed from these proceedings, as no rights or obligations inure to either of them.

The term "artists' manager" is defined as "a person who engages in the occupation of advising, counseling or directing artists in the development or advancement of their professional careers and who procures offers, promises or attempts to procure employment or engagements for the artist . . ." id.

We find that the clear and convincing evidence establishes that HOWARD B. WOLF, both as an individual and doing business as WOLF AND ASSOCIATES, actively advised and counseled Petitioner, LOUIS ST. LOUIS in the development and advancement of

his career and further, offered and subsequently did promise, attempt to procure, and did procure employment for his admitted client, as an admitted manager, as amply borne out by the facts heretofore cited.

Further, the evidence illustrates that Respondent WOLF was acting throughout the course of dealings with Petitioner in bad faith, as his admission of his possible unlawful conduct during the hearing bears witness -- together with his superseding the original August 4th agreement on two or three subsequent occasions as further substantiation. Believing himself to be unlawfully acting as an artists' manager, he attempted to cloak his conduct, first by substituting a widely-used professional managers' agreement and then, still feeling justifiably insecure, creating a corporation (WOLFHEAD) whose apparent exclusive function was to sell the product of Petitioner's talent to third party record companies for a 50% commission. Clearly, Respondent's inculpatory conduct is consistent with one acting in malum prohibitum and, therefore, inconsistent with mere negligent folly. Here, we need not ferret out an illegality which is so blatantly unlawful on its face.

Further, even assuming, arguendo, that Petitioner knew at the time of his entering into the various agreements with Respondent that such contracts were unlawful, artists cannot generally be in pari delicto since they are a member of the class for whose benefit the Act was passed. supra, Buchwald at 351

Respondents, having stipulated that they were never licensed by the Labor Commissioner, and further that the contracts

between the artist and manager never approved, we find that HOWARD B. WOLF and HOWARD WOLF, individually and doing business as WOLF AND ASSOCIATES acted unlawfully as artists' managers as a matter of law.

Further, we find that Respondent, WOLFHEAD PRODUCTIONS, INC. was the "alter ego" of WOLF, by the very criteria submitted in his own brief as recited in Associated Vendors, Inc. v. Oakland Meat Co., 210 C.A. 2d 825; 26 Cal. Rptr. 806 (1962):

1. Commingling of funds: WOLF admitted depositing commissions payable to him as Petitioner's manager to the WOLFHEAD account.

2. Diversion of funds: WOLF admitted placing personal funds into the corporate account to place them out of reach of a potential creditor.

3. Confusion of records of two separate entities: WOLF admitted using stationery of WOLFHEAD and WOLF AND ASSOCIATES interchangeably in reference to billings (Mocambo engagement).

4. Dominion and control of two entities: WOLF solely owned WOLF AND ASSOCIATES and was sole shareholder and President of WOLFHEAD.

5. Use of same business location which was clearly established by the record.

6. Use of corporation as a mere shell and conduit for single venture or business of an individual: The evidence established that Petitioner was WOLFHEAD'S sole "raison d'etre." The corporate purpose was to sell recordings of Petitioner to outside record companies.

7. Failure to maintain arm's length relationship among related entities. (see No. 1 above).

8. Use of corporate entity to procure labor for anothe

9. Diversion of assets to the detriment of creditors or manipulation of assets and liabilities between entities so as to concentrate the assets in one and liabilities in another and to create a shield against personal liability. (see No. 2).

10. Use of corporate status as a subterfuge of illegal transactions: as discussed herein, we find that WOLFHEAD, as discussed herein, unlawfully functioned as an artists' manager.

And while "the equities in any given case are the controlling factors," the rule serves to operate unfortunately against its invoker. We are pressed to find a more flagrant attempt to unlawfully create a corporate shield than the one here involved. No reason was professed for the corporation's creation than to produce business and remuneration to be derived from the pandering of Petitioner's talent. No distinction logicall or in experience exists between WOLFHEAD and any other manager. The fact that it was ostensibly a "production company" does not insulate it from its correlative, if not superlative, functior and purpose. That purpose, we find, was to direct and advise the artist in the development of his professional career and to attempt to, and in fact accomplish, procuring employment. And while that employment is, perhaps, unorthodox, it is nevertheless "the putting of one to work." See the American Heritage Dictionary (1973). And even if WOLFHEAD'S concretizing deals with

outside record companies did not constitute procuring employment for petitioner, it indirectly accomplished the same effect, since Petitioner's remuneration was contingent upon its success. In any case, WOLF, as manager, directly procured the liaison between Petitioner and WOLFHEAD to perform work, labor and services. The mere fact that money was to be filtered through the corporate framework does not render the reality of an employment any the less efficacious.

A "person" for purposes of the Act, may be a corporation. Labor Code, §1700. Further, we reaffirm our holding in Kearny v. Singer, No. MP-429; AM-211-MC that "procurement" includes a negotiation whose directed or logically intended purpose is to market an artist's talent -- whether it be executed or executory. We go further to hold that frustration of that purpose does not preclude one from having violated the Act, since the attempt to procure is sufficient. Theories entitling the violator to recover the reasonable value of services predicated upon equitable theories of quantum meruit have no application where either he who seeks relief has "unclean hands" -- as is the case where bad faith has been established -- or where such relief has not been properly pleaded and not cured by timely amendment. We find both to be the case here. Nothing herein is inconsistent with our holding in Kearny. Only by refusing to place the malcreant in the position he was in before this specie of illegality occurred can the purpose of the Act be served, whose object is to "suppress the mischief at which it is directed." supra, Buchwald.

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Respondents contend that their arranging a "showcase" for Petitioner does not constitute a violation under the Act since such an event is performed without compensation to the artist or commission to the manager, and is therefore, not a "procuring of employment" as the term is employed in Labor Code §1700.

We hold, however, that since the admitted purpose of a "showcase" is to create publicity for the artist whereby employment is intended to result, such arrangements, when effected or participated in by the manager, constitutes an attempt to procure employment within the confines of the statute, id. Any other rule would permit an unlicensed manager to meddle on the outer periphery of conduct whose only "logical" purpose is to gain financial advantage once such engagements result in events more economically rewarding. Our purpose is to render such temptations untantalyzing. Such conduct is not, we hold, so attenuated because it may, in a particular case, fail of further success despite itself. The Act is to be liberally construed to suppress the mischief at which it is directed. Buchwald, supra.

The fact that others in the industry deem it expedient to form "production companies" which advise and counsel artists in their career development and offer or attempt to procure employment -- arguendo on a large-scale basis -- constitutes no defense to Respondents. It is unfortunate that some, and not others, are held accountable, but the remedy "does not lie in the exoneration of the guilty at the expense of society." People v. Montgomery, 47 C.A. 2d 1, 14; 117 P. 2d 437 (1941).

Here, WOLF was WOLFHEAD. So identical were their mutual personalities that WOLF, in dealing with clubs and companies, omitted reference to WOLFHEAD altogether. Rather than comply with the licensing requirements of the law, he sought to sign Petitioner to an exclusive corporate agreement whereby he could derive a far greater sum than he would have been able to commission as a run-of-the-mill manager. The inequity of this kind of exploitation is even more pernicious, therefore, than is the case with the usual unlicensed manager who charges no more than the usual 15-20% commission. By virtue of its exclusivity and exploitative quality, then, Respondent's corporate device is far more injurious to the artist. And those who create such elaborate structures must suffer all losses occasioned by their collapse.

And finally, we conclude that Petitioners may not recover attorneys' fees or travel costs. Even, assuming, that despite the fact that we were to find all contracts between the parties null and void, we could give effect to the attorney fee provisions therein contained, the fact remains that such fees are awardable either where (1) an action is brought to enforce the agreements or (2) where an action is brought to remedy a breach. The present controversy involves neither situation.

Accordingly, we need not decide whether Civil Code, §1717 affords mutuality of remedy. No statute having been cited whereby such an award is authorized, and the agreement between the parties not being applicable to the case at bar, each party must bear his own fees. Travel costs are not allowed in any case. We make no determination as to other costs.

WHEREFORE, the following award is made:

1. All agreements between the parties hereto -- specifically, but not limited to those executed during 1976 -- are declared null and void; that Petitioners have no liability thereunder, and that Respondents have no rights or privileges thereunder; and,

2. An accounting is forthwith ordered by Petitioners of Respondents, whereby Respondents are to collect and submit to Petitioners an itemization of all commissions collected from Petitioners. That Respondents forthwith pay Petitioners all commissions, royalties, and moneys received by Respondents, or any of them, directly or indirectly, pursuant to Exhibits A through E, inclusive, and as may otherwise be shown to be due Petitioners by such accounting; and,

3. That Respondents, and each of them, are denied any reimbursement, claim or offset for any moneys purportedly or actually spent by them, or any of them, on behalf of or in connection with Petitioners or Cross-Respondents or any of them.

DATED: [illegible]

RICHARD N. DINALLO, ESQ.
Special Hearing Officer for
The Labor Commissioner

APPROVED: [illegible]

LOUIS GIANNINI, ESQ.
Chief Counsel and Supervising
Special Hearing Officer of the
Labor Commissioner

ADOPTED: [illegible]

ALBERT J. REYFF
Acting Labor Commissioner

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