

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
JOAN E. TOIGO, Special Hearing Officer
30 Van Ness Ave., Room 4400
San Francisco, CA 94102
(415) 557-2516

Attorney for Labor Commissioner

BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

JULIAN RAYMOND CASPER MALSON,)
JOSEPH HUNTING, CHRISTOPHER GEORGE,)
CARL TRISTAN DE VILLAR,)
and EDWARD SEDANO, COLLECTIVELY)
P/K/A/ "DEAR MR. PRESIDENT")
Petitioners,)
vs.)
GARO TASHJIAN)
Respondent.)

CASE NO. TAC 17-88
DETERMINATION

The above-entitled controversy came on regularly for hearing before the Labor Commissioner, Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, by JOAN E. TOIGO, serving as Special Hearing Officer under the provisions of Section 1700.44 of the Labor Code of the State of California, Petitioners JULIAN RAYMOND CASPER MALSON, JOSEPH HUNTING, CHRISTOPHER GEORGE, CARL TRISTAN DE VILLAR, and EDWARD SEDANO, COLLECTIVELY P/K/A/ "DEAR

1 PRESIDENT", appearing by the law offices of MANATT, PHELPS,
2 ROTHENBERG and PHILLIPS, by DIANE L. FABER, and Respondent,
3 GARO TASHJIAN, appearing in pro per.

4 Evidence, both oral and documentary, having been intro-
5 duced, the following determination is made:

6 It is the determination of the Labor Commissioner that:

7 1. Petitioners' claim is not barred by the one-year
8 statute of limitations provision in Labor Code Section
9 1700.44(c).

10 2. Respondent engaged in the procurement of employment
11 on Petitioners' behalf in violation of the Talent Agency Act.

12 3. The personal management agreement between the
13 parties is hereby declared null and void.

14 4. Petitioners' request for attorneys fees is denied.

15
16 I

17 INTRODUCTION

18 On July 18, 1988, Petitioners filed with the Labor Com-
19 missioner a Petitioner to Determine Controversy pursuant to
20 Labor Code Section 1700.44.

21 The Petition alleges that on or about April 6, 1987,
22 the parties entered into a written agreement of the type cus-
23 tomary in the entertainment industry, pursuant to which
24 Petitioners engaged Respondent as Petitioners' Personal
25 Manager. The agreement provides for a term of five years, and
26 contains a provision (which Petitioners did not exercise)
27 providing Petitioners with an option to terminate the agree-

1 ment at the end of the initial year, upon the required written
2 notice, if Petitioners failed to enter into a contract for
3 services as recording artists during said initial year with a
4 "major" record label.

5 Petitioners allege that Respondent acted as a "talent
6 agency" within the meaning of California Labor Code Section
7 1700.4(a) on behalf of Petitioners, by procuring and attempt-
8 ing to procure employment for Petitioners in various aspects
9 of the music industry, including without limitation, in the
10 area of live personal appearances.

11 Petitioners specifically allege that Respondent has
12 procured and attempted to procure employment on behalf of
13 Petitioners in connection with the following agreements and
14 engagements, among others:

15 (a) A July 17, 1987 live personal appearance at the
16 Roxy Club in Hollywood, California; and

17 (b) An August 8, 1987 live personal appearance at the
18 Country Club in Reseda, California.

19 By virtue of the alleged acts and conduct of Respon-
20 dent, Petitioners maintain that they are entitled to a deter-
21 mination that all agreements between Petitioners and Respon-
22 dent are null and void, and that Respondent is not entitled to
23 any commissions or other payments under the management agree-
24 ment or otherwise.

25 In the Petitioners' prayer for relief, Petitioners have
26 requested:

27

1 1. That Respondent is, and at all times material
2 thereto, has been acting as a "talent agency" as that term is
3 defined in the California Labor Code, without being duly
4 licensed to so act;

5 2. That the management agreement and all other agree-
6 ments between Petitioners and Respondent shall be rescinded
7 and adjudged of no force or effect;

8 3. That Petitioners are entitled to an accounting
9 from, and audit of, Respondent concerning all monies and
10 things of value received by Respondent, directly or in-
11 directly, as a result of any agreement between Petitioners and
12 Respondent or between Petitioners and any third parties;

13 4. That Respondent be assessed and Petitioners recover
14 their costs of suit, including attorney's fees incurred
15 herein; and

16 5. That the Labor Commissioner grant such other and
17 further relief as may be just and proper.

18 At the hearing, however, Petitioners agreed that those
19 sums, if any, received by Respondent, were probably so negli-
20 gible that Petitioners have dropped this issue and are merely
21 seeking a determination that the management agreement be in-
22 validated.

23 Respondent did not file an Answer to the Petition to
24 Determine Controversy.

25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

ISSUES

Inasmuch as Respondent was admittedly not licensed as a talent agent, the issues are as follows:

1. Is Petitioners' claim barred in part by the one-year statute of limitations provision in Labor Code Section 1700.44(c)?

2. Did Respondent procure, offer, promise or attempt to procure employment on Petitioners' behalf in violation of the Talent Agency Act?

3. If Respondent is determined to have engaged in the procurement of employment pursuant to Labor Code Section 1700.4, are the acts complained of specifically excepted from licensing pursuant to the recording agreement exception contained in Labor Code Section 1700.4?

III

APPLICABLE LAW

Petitioners brought this action under the provisions of Division 2, Part 6, Chapter 4 of the Labor Code commencing with Section 1700. This portion of the Labor Code is commonly known as the Talent Agency Act ("Act").

Section 1700.4 of the act defines the term "talent agency" as:

"A person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers." (Emphasis Added)

Labor Code Section 1700.5 provides:

"No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner..."

Labor Code Section 1700.44(c) provides:

"No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding."

IV

DISCUSSION AND FINDINGS

The threshold issue to be decided is whether the Petitioners' claim is barred in part by the one-year statute of limitations provision in Labor Code Section 1700.44(c). Since the Petition was filed on July 18, 1988, the question becomes whether the July 17, 1987 engagement at the Roxy Club is barred by the statute. The Statute provides for the bringing of an action within one year of the alleged violation; however, since July 17, 1988 fell on a Sunday, Petitioners would, according to the established principles of civil procedure, have until the next day in which to file their Petition. Therefore, Petitioner's claim is timely.

Regarding the two engagements in issue, the evidence established the following:

1 Respondent testified at the hearing that he arranged
2 for Petitioners to perform at the Roxy Club and the Reseda
3 Country Club on at least seven occasions, and testified that
4 he contacted ~~the~~ appropriate booking representatives of each
5 of these two clubs and arranged for Petitioners to perform for
6 a nominal fee. Respondent presented a sample contract
7 procured by him for Petitioners to perform at the Roxy Club on
8 December 20, 1986, which included Respondent's name for signa-
9 ture on Petitioners' behalf and set forth the terms of
10 Petitioners' performance and payment. This clearly indicates
11 that Respondent arranged and procured employment on
12 Petitioners' behalf, acting as their agent.

13 It became very apparent at the hearing that Respondent
14 lacks an understanding of the term "employment" as it pertains
15 to unlicensed talent agency activity under the provisions of
16 the Labor Code (Respondent testified that he considers it
17 "employment" only if a net profit results); however, since he
18 testified that he obtained seven such engagements on
19 Petitioners' behalf, it must be concluded that he was acting
20 as Petitioners' agent, pursuant to the Talent Agency Act, by
21 procuring such employment.

22 Labor Code Section 1700.4 specifically exempts the
23 procurement of recording contracts from the Labor
24 Commissioner's licensing requirements.
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

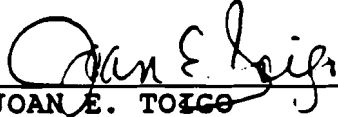
It is often argued that procuring performances which "showcase" a band for possible recording deals is an inherent part of procuring a recording contract; however, if the exception were extended this far it follows that any "gig" would become a "showcasing" for purposes of recording contracts.

V

CONCLUSION

It appears that Respondent did not believe that he was in violation of the Talent Agency Act; however, since he procured engagements on Petitioner's behalf, he has overstepped the terms of his written management agreement with Petitioners and, accordingly, the agreement is voided.

Dated: May 10, 1990



JOAN E. TOIGO
Special Hearing Officer

ADOPTED:

Dated: May 13, 1990



State Labor Commissioner

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

I, RUTH WIGHTMAN, do hereby certify that I am a resident of or employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is:

DIVISION OF LABOR STANDARDS ENFORCEMENT
30 Van Ness, Room 4400
San Francisco, CA 94102

On 5/22/90, I served the within DETERMINATION by placing a true copy thereof in an envelope addressed as follows:

Neville L. Johnson, Esq.
Law Offices of Neville Johnson
6255 Sunset Blvd., Suite 915
Los Angeles, CA 90028

Diane L. Faber
Manatt, Phelps, Rothenbert
11355 West Olympic Blvd.
Los Angeles, CA 90064

and then sealing the envelope and, with postage and certified mail fees (if applicable) thereon fully prepaid, depositing it in the United States mail in this city by Ordinary First Class Mail.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on 5/22/90, at San Francisco, California.


RUTH WIGHTMAN