DIVISION OF LABOR STANDARDS ENFORCEMENT Department of Industrial Relations State of California MILES E. LOCKER, No. 103510 BY: 45 Fremont Street, Suite 3220 San Francisco, CA 94105 Telephone: (415) 975-2060 Attorney for the Labor Commissioner 6 7 BEFORE THE LABOR COMMISSIONER 8 OF THE STATE OF CALIFORNIA 9 JOHN CLIFF BOYDSTON, No. TAC 45-95 11 Petitioner, 12 vs. DETERMINATION OF CONTROVERSY 13 GARY STORM, an individual dba BLACK LOTUS TALENT AGENCY, 14 Respondent.

INTRODUCTION

On September 29, 1995, petitioner JOHN CLIFF BOYDSTON filed a petition to determine controversy pursuant to Labor Code §1700.44, alleging that respondent GARY STORM, an individual dba BLACK LOTUS TALENT AGENCY, failed to remit certain funds owed to petitioner in connection with an artistic engagement that had been procured by the respondent. A hearing was held on July 30, 1996 before the undersigned attorney for the Labor Commissioner specially designated to hear this matter. Both petitioner and respondent appeared in propria persona. Based on the evidence presented at this hearing, the Labor Commissioner adopts the following determination of controversy.

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- Petitioner is a musician and a member of the band
 'Indigo Swing', and as such, is an "artist" within the meaning of
 Labor Code §1700.4(b).
- 2. Respondent owned a business known as 'Black Lotus Talent Agency' which, among other things, procured employment or engagements for musicians and musical bands. In this capacity, respondent acted as a "talent agent" within the meaning of Labor Code §1700.4(a).
- 3. The Labor Commissioner has jurisdiction to hear and determine this controversy pursuant to Labor Code §1700.44(c).
- 4. Respondent never applied for a license, and was never licensed, as a talent agent by the State of California. By acting as talent agent without a license, respondent violated Labor code §1700.5. A person acting as talent agent is not entitled to any commissions for his services unless he is licensed as a talent agent by the State Labor Commissioner. Waisbren v. Peppercorn Productions (1995); Buchwald v. Superior Court (1967) 254 Cal.App.2d 347. An artist is entitled to the reimbursement of all commissions paid to, or retained by, an unlicensed talent agent. Ibid.
- 5. On February 15, 1995 the parties executed a written agreement, titled "Artist/Agency Employment Agreement", under which Boydston agreed to perform at a wedding on May 20, 1995 - an engagement that had been procured by respondent - for which Boydston was to be paid \$1,700. The agreement did not specify how respondent was to be compensated for his services in procuring the employment for Boydston. In his testimony, however, Gary Storm

admitted that the purchaser of the artists' services had agreed to pay a total of \$2,000 for this engagement, from which respondent was to retain \$300 (that is, a 15% commissions for serving as Boydston's talent agent) and Boydston was to receive \$1,700. However, according to Storm, the customer only paid a total of \$1,700 (\$1,000 was paid directly to Boydston and on May 24, 1995, \$700 was paid to Storm). No evidence was presented to contradict Storm's testimony as to the total amount received from the customer. Storm testified that even though Boydston and his band 10 performed as contracted for at the engagement on May 20, 1995, Storm kept the \$700 he received from the customer because Boydston 11 12 "forfeited this money" by speaking to the customer about the 13 band's actual compensation, conduct that Storm asserts is prohibited under the terms of his contract with Boydston. 15 whether or not the contract prohibits such conduct (and it does 16 I not appear that any provision of the contract can be construed in such a manner), as a matter of law, because of respondent's failure to comply with the licensing requirement of Labor Code 19 §1700.5, this contract is void ab initio, and any rights 20 l purportedly arising to respondent under the contract are unenforceable. Waisbren v. Peppercorn Productions, supra; 21 l 22 Buchwald v. Superior Court, supra. We therefore find that 23 Boydston is entitled to payment of the \$700 that was unlawfully 24 retained by respondent.

6. Under Labor Code §1700.25, a talent agent is required to disburse all funds that the agent has received on behalf of an artist to the artist within thirty days of the receipt of said funds, less any lawful commissions. An agent who fails to

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disburse such funds in a timely manner is liable for interest on the withheld funds at the rate of 10% per year. Here, Boydston is entitled to payment of interest in the amount of \$76.77. Also, as the prevailing party, Boydston is entitled to reimbursement of \$55, his costs for having a process server serve the petition to determine controversy.

ORDER

For the reasons set forth above IT IS HEREBY ORDERED that respondent GARY STORM, an individual dba BLACK LOTUS TALENT AGENCY, pay petitioner JOHN CLIFF BOYDSTON a total of \$831.77.

DATED: $8/16/c_{i6}$

MILES E. LOCKER

Attorney for the Labor Commissioner

The above Determination is adopted by the Labor Commissioner in its entirety.

DATED: $\frac{8/23/96}{}$

ROBERTA E. MENDONCA STATE LABOR COMMISSIONER