

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
4 BY: DAVID L. GURLEY (Bar No. 194298)  
5 455 Golden Gate Ave., 9<sup>th</sup> Floor  
6 San Francisco, CA 94102  
7 Telephone: (415) 703-4863

8 Attorney for the Labor Commissioner

9  
10 BEFORE THE LABOR COMMISSIONER  
11  
12 OF THE STATE OF CALIFORNIA  
13

14	CHER; EYE OF HORUS PRODUCTIONS INC.;	)	Case No. TAC 17-99
15	ISIS PRODUCTIONS, INC.; APIS	)	
16	PRODUCTIONS, INC.,	)	
17		)	
18		)	
19		)	
20	vs.	)	DETERMINATION OF
21		)	CONTROVERSY
22		)	
23		)	
24	BILL SAMMETH and THE BILL SAMMETH	)	
25	ORGANIZATION,	)	
26		)	
27		)	
28		)	
29		)	
30		)	
31		)	
32		)	
33		)	
34		)	
35		)	
36		)	
37		)	
38		)	
39		)	
40		)	
41		)	
42		)	
43		)	
44		)	
45		)	
46		)	
47		)	
48		)	
49		)	
50		)	
51		)	
52		)	
53		)	
54		)	
55		)	
56		)	
57		)	
58		)	
59		)	
60		)	
61		)	
62		)	
63		)	
64		)	
65		)	
66		)	
67		)	
68		)	
69		)	
70		)	
71		)	
72		)	
73		)	
74		)	
75		)	
76		)	
77		)	
78		)	
79		)	
80		)	
81		)	
82		)	
83		)	
84		)	
85		)	
86		)	
87		)	
88		)	
89		)	
90		)	
91		)	
92		)	
93		)	
94		)	
95		)	
96		)	
97		)	
98		)	
99		)	
100		)	

1 INTRODUCTION

2 The above-captioned petition was originally filed on May  
3 5, 1999 by CHER, EYE OF HORUS PRODUCTIONS, INC., ISIS PRODUCTIONS,  
4 INC., and APIS PRODUCTIONS, INC., a.k.a. "CHER" (hereinafter  
5 Petitioner or "CHER"), alleging that BILL SAMMETH dba THE BILL  
6 SAMMETH ORGANIZATION, (hereinafter Respondent or "SAMMETH"), acted  
7 as a talent agency without possessing the required California  
8 talent agency license pursuant to Labor Code §1700.5<sup>1</sup>. Petitioner

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

<sup>1</sup> All statutory citations will refer to the California Labor Code unless otherwise specified.

1 seeks a determination voiding *ab initio* any and all management  
2 agreements between the parties, and requests disgorgement of  
3 commissions paid to the respondent.

4 Respondent filed his answer with this agency on July 1,  
5 1999. Petitioner filed an amended Petition on January 5, 2000,  
6 alleging over 43 specific instances of respondent's illegal  
7 conduct. Respondent filed an answer to petitioner's amended  
8 petition on January 27, 2000. A hearing was scheduled before the  
9 undersigned attorney, specially designated by the Labor  
10 Commissioner to hear this matter. The hearing commenced on March  
11 27 through March 30, 2000, in Los Angeles, California. Petitioner  
12 was represented by Donald S. Engel and Mark D. Passin of Engel &  
13 Engel; respondent appeared through his attorney J. Larson Jaenicke  
14 of Rintala, Smoot, Jaenicke & Rees. Due consideration having been  
15 given to the testimony, documentary evidence, arguments and briefs  
16 presented, the Labor Commissioner adopts the following  
17 Determination of Controversy.

18  
19 FINDINGS OF FACT

20  
21 1. Cher met Mr. Sammeth in 1977, after she became a  
22 client of the Katz, Galfin & Depression management firm. On October  
23 20, 1983, after both parties departed Katz, Galfin, the parties  
24 entered into an exclusive, 3-year personal management agreement.  
25 Sammeth would receive 10%<sup>2</sup> of Cher's gross compensation for acting

26  
27 <sup>2</sup> An amendment to the October 20, 1983 agreement provided that Cher's  
attorneys could unilaterally establish when Sammeth was not entitled to  
commission certain projects or receive a reduced commission.

1 as Cher's exclusive personal manager in the entertainment industry,  
2 advising, and counseling in all matters pertaining to publicity,  
3 public relations and advertising for the artist.

4           2. The relationship proved fruitful, both financially  
5 and emotionally as the parties' relationship flourished. Cher and  
6 Sammeth became "best friends". The management agreement continued  
7 under the original terms of the 1983 agreement until 1995. In  
8 1995, Sammeth desiring to be paid what he thought was the industry  
9 standard, orally requested that Cher increase his commission  
10 percentage to 15%. Cher agreed to the contract modification.

11           3. Soon thereafter, Sammeth unhappy with show business  
12 and life in Los Angeles moved to Northern California and attempted  
13 to continue the relationship from his home via cellular telephone.  
14 Eventually, communications between the parties deteriorated and on  
15 August 19, 1997, Cher terminated the twenty-year relationship<sup>3</sup>.

16           4. Cher's credible testimony demonstrated that during  
17 the years of 1983 through 1997, Sammeth not only acted as Cher's  
18 personal manager, tending to her personal needs and advising her in  
19 all matters of publicity, public relations and advertising, but he  
20 also acted as Cher's primary negotiator for all of her personal  
21 appearances and concert tours, evidenced by the following:

- 22           a. A 1990 performance at the opening of the Mirage  
23 Hotel and Casino was negotiated by Sammeth, along  
24

---

25           <sup>3</sup> Cher's business manager, Warren Grant, wrote Sammeth: "Cher does not  
26 believe that you are involved or concerned with her recording project, as you  
27 should be. She has decided to complete the record on her own with the assistance  
of the staff at Warner UK. Consequently, she wishes to terminate all further  
services between you and her. This will include any representation for the book  
and any other projects, that I may not be aware of."

1 with the deal points for the accompanying CBS  
2 telecast and BMG video deal<sup>4</sup>.

3 b. In 1993 Sammeth renegotiated an ongoing  
4 relationship with the NutraSweet Company. Cher  
5 continued as spokesperson for Equal brand sweetener  
6 which lead to several commercials and eventually a  
7 collaboration between CBS/FOX and NutraSweet for  
8 the creation of a Cher exercise video, that  
9 according to Cher, "was as good a [video] deal as  
10 Jane Fonda's".

11 c. The 1991 "Heart of Stone" concert tour dates were  
12 arranged by Sammeth evidenced by his direct  
13 communications with promoters.

14 d. The 1992 "Love Hurts" concert tours were arranged  
15 by Sammeth, demonstrated by compelling documentary  
16 evidence of direct communications and subsequent  
17 negotiations with concert promoters.

18 e. The documentary evidence and testimony from Cher  
19 and Warren Grant clearly demonstrated that Sammeth  
20 negotiated the financial aspects of Cher's  
21 relationship with Health and Tennis Corporation dba  
22 Holiday Health Spa whom Cher acted as limited  
23 spokesperson. These negotiations resulted in  
24

---

25 <sup>4</sup> CBS aired Cher's performance at the Mirage hotel. BMG generated a  
26 video of the performance which was sold to both foreign and domestic markets.  
27 The documentary evidence referencing Sammeth's involvement in negotiating the  
Mirage appearance, the subsequent CBS telecast and resulting BMG video was  
overwhelming.

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

various commercials and print ads.

5. During the early years of the relationship, testimony revealed that Cher had become disillusioned with paying commissions to both an agent and a manager for concert tours and personal appearances. Cher always obtained a licensed talent agent to secure her roles in television and movies, but requested that Sammeth negotiate personal appearances and concert tours, which ultimately lead to greater profits for the artist. In fact, testimony revealed that Cher included language in her talent agency agreements that excluded representation for concert tours and personal appearances. It became very clear throughout the hearing that Cher not only encouraged this arrangement but often required it. The parties continued this method of operation for personal appearances and concert tours throughout the length of the relationship.

6. Cher and Sammeth's testimony established the parties were well aware that a personal manager could not legally procure employment. However, both parties continued to operate in this fashion. At some point in the early portion of the relationship, Mr. Sammeth hired Ed Kasses, dba Princeton Entertainment, a previously licensed talent agent with ICM in News York, to be a

1 "hip pocket"<sup>5</sup> talent agent used for the legal protection of  
2 Sammeth. Cher was aware of Mr. Kasses, but did not fully  
3 understand his role. Cher denied acquiescence of this arrangement  
4 between Sammeth and Kasses and prohibited any monies to be paid by  
5 her to Kasses. Any commissions paid to Ed Kasses in his  
6 performance as the "hip-pocket agent" were paid directly from  
7 Sammeth to Kasses at a reduced rate. Moreover, Kasses was not a  
8 California licensed talent agent and consequently Kasses could not  
9 provide the legal protection Sammeth sought under Labor Code  
10 §1700.44(d)<sup>6</sup>.

11 7. A year passed after the 1997 termination and in  
12 August of 1998, the parties resumed communications. Cher attempted  
13 other managers without success. Her new album, "Believe" was  
14 experiencing tremendous success in Europe and soon thereafter, Cher  
15 resumed communication with Sammeth.

16 8. Cher requested that Sammeth return as her personal  
17 manager and Sammeth agreed. The terms of the agreement were not  
18 established. Sammeth's testimony and correspondence sought a 15%  
19 commission structure, but those figures were not memorialized in

---

20  
21 <sup>5</sup> A hip-pocket agent refers to a licensed talent agent that is hired as a  
22 legal guarantor for a manager who procures employment in violation of the Talent  
23 Agencies Act (Labor Code §§1700.00 et seq.). Sammeth believed that by creating  
24 a "hip-pocket" arrangement, it would be possible to procure work for Cher without  
25 running afoul of the licensing requirements. Typically, as here, the "hip-  
26 pocket" agent is not hired by the artist, but rather the manager. Often the  
27 "hip-pocket" agent is paid directly by the manager out of his profits and the  
artist is not aware of the terms of the agreement between the manager and the  
agent. The Labor Commissioner routinely sees this arrangement and consequently  
does not recognize this attempted subterfuge created ostensibly to avoid the  
Talent Agencies Act's licensing requirements.

26 <sup>6</sup> Labor Code §1700.44(d) states, "it is not unlawful for a person or  
27 corporation which is not licensed pursuant to this chapter to act in conjunction  
with and at the request of a licensed talent agency in the negotiation of an  
employment contract."

1 any writings by the parties. In October of 1998 after Sammeth had  
2 been rehired, Sammeth continued to negotiate Cher's personal  
3 appearances and concert tours in the same fashion as evidenced by  
4 the following:

5 f. Sammeth accompanied Cher to Europe to promote  
6 Cher's "Believe" album. During this time Sammeth  
7 first proposed a European tour for the "Believe"  
8 album to be played in large venues. At the request  
9 of Cher, Sammeth began discussions with various  
10 European concert promoters including Rob Dickens,  
11 Tim Parsons, Barry Marshall, Barry Clayman, and  
12 Harvey Goldsmith.<sup>7</sup> After success in the domestic  
13 market was realized, Sammeth commenced tour  
14 discussions with various domestic promoters  
15 including, Bill Silva.<sup>8</sup>

16 g. Sammeth, prior to his termination, arranged for  
17 Cher to sing the national anthem at the 1999  
18 Superbowl. Sammeth began negotiating all of the  
19 arrangements, including the \$38,500.00 allotment  
20 for expenses.<sup>9</sup>

---

21 <sup>7</sup> Letters and accompanying responses were introduced into evidence  
22 establishing Sammeth's solicitation efforts to gauge interest by various  
23 promoters.

24 <sup>8</sup> Bill Silva's sworn deposition revealed that Sammeth discussed specific  
25 dollar values for the proposed "Believe" tour with Silva in a variety of  
26 settings. "Hip-pocket" agent Ed Kasses was also involved with these  
discussions, but as previously discussed, the exemption allowing a manager to  
negotiate employment contracts in conjunction with and at the request of a  
licensed talent agent pursuant to Labor Code §1700.44(d) will not apply.

27 <sup>9</sup> There was considerable testimony from Rob Heller, agent for the William  
Morris Agency, who was involved as a liaison between the NFL and Cher. Mr.  
Heller testified that in his specific role as NFL liaison, he considered himself

1 h. Cher's appearance on the David Letterman show was  
2 negotiated by Sammeth. Sammeth used his  
3 longstanding connections at the show .

4 i. Cher's appearance on the Tonight Show starring Jay  
5 Leno was negotiated by Sammeth. Sammeth also  
6 negotiated a video clip to be played as an  
7 alternative to a live performance.

8 j. Prior to termination, Sammeth initiated discussions  
9 with the Venetian Hotel for Cher's personal  
10 appearance at the hotel's opening.<sup>10</sup>  
11

12 9. The parties renewed relationship did not last long.  
13 By January 1999, it was evident to Cher that Sammeth was not  
14 working quickly enough to arrange the tour and had become "a  
15 liability". As a result, Sammeth was again terminated in January  
16 of 1999. Notably, during the parties travel through Europe in late  
17 1998, Sammeth absorbed expenses on behalf of Cher using his  
18 personal credit card. The evidenced established these expenses  
19 totaled \$24,595.54. Sammeth was not reimbursed for these expenses  
20 and testimony revealed that Cher was not aware that Sammeth  
21 incurred these expenses on her behalf.  
22

23 a representative of Cher. The evidence revealed that Cher was not represented  
24 by Mr. Heller or the William Morris Agency for this engagement.

25 <sup>10</sup> Sammeth attempted to bring in deposition testimony of Eliot Weisman,  
26 entertainment consultant for the Venetian Hotel, who indicated that Rob Heller  
27 was a William Morris licensed talent agent representing Cher in this endeavor.  
Weisman and Heller's testimony proved unavailing for purposes of Labor Code  
§1700.44(d), as Heller nor William Morris represented Cher in any capacity during  
this time period. Mr. Heller sought this deal and attempted to protect the deal  
for William Morris, but was eventually "out of the loop" and consequently so was  
William Morris.





1 A statute of limitations is procedural, that is it only affects the  
2 remedy, not the substantive right or obligation. It runs only  
3 against causes of action and defenses seeking affirmative relief,  
4 and not against any other defenses to an action. The statute of  
5 limitations does not bar the defense of illegality of a contract,  
6 and in any action or proceeding where the plaintiff is seeking to  
7 enforce the terms of an illegal contract, the other party may  
8 allege and prove illegality as a defense without regard to whether  
9 the statute of limitations for bringing an action or proceeding has  
10 already expired. Sevano v. Artistic Production, Inc., (1997)TAC  
11 No. 8-93 pg.11. Additionally, this issue was brought before the  
12 California Court of Appeals in Park v. Deftones 84 Cal.Rptr.2d 616,  
13 at 618, which agreed with the Labor Commissioners ruling in Moreno  
14 v. Park (1998) TAC No. 9-97, p.4, stating, "the attempt to collect  
15 commissions allegedly due under the agreement was itself a  
16 violation of the Act." In that case, as here, the petitioner has  
17 brought this case before the Labor Commissioner as a result of  
18 respondents superior court action filed on March 8, 1999. Park  
19 adds, "it also assures that the party who has engaged in illegal  
20 activity may not avoid its consequences through the timing of his  
21 own collection action." Park, supra at 618. We thus conclude that  
22 §1700.44(c) does not bar petitioner from asserting the defense of  
23 illegality of the contract on the ground that respondent acted as  
24 a talent agent without a license.

25 4. The primary issue is whether based on the evidence  
26 presented at this hearing, did the respondent operate as a "talent  
27 agency" within the meaning of Labor Code §1700.4(a). Labor Code

1 §1700.4(a) defines "talent agency" as, "a person or corporation who  
2 engages in the occupation of procuring, offering, promising, or  
3 attempting to procure employment or engagements for an artist or  
4 artists." Moreover, Labor Code §1700.5 provides that "no person  
5 shall engage in or carry on the occupation of a talent agency  
6 without first procuring a license therefor from the Labor  
7 Commissioner."

8           5. In Waisbren v. Peppercorn Production, Inc (1995) 41  
9 Cal.App.4th 246, the court held that any single act of procuring  
10 employment subjects the agent to the Talent Agencies Act's  
11 licensing requirement, thereby upholding the Labor Commissioner's  
12 long standing interpretation that a license is required for any  
13 procurement activities, no matter how incidental such activities  
14 are to the agent's business as a whole. Applying Waisbren, it is  
15 clear respondent acted in the capacity of a talent agency within  
16 the meaning of Labor Code §1700.4(a). Sammeth's efforts, combining  
17 management with procurement of Cher's personal appearances and  
18 concert tours was established throughout the entire 17-year  
19 relationship. The evidence is overwhelmingly clear, that the  
20 respondent indeed procured employment without a license in  
21 violation of Labor Code §1700.5.

22           6. Sammeth argued that Cher requested that he perform  
23 these services, which were performed for her benefit. The rule is  
24 well established in this state that '\* \* \* when the Legislature  
25 enacts a statute forbidding certain conduct for the purpose of  
26 protecting one class of persons from the activities of another, a  
27 member of the protected class may maintain an action  
notwithstanding the fact that [s]he has shared in the illegal

1 transaction. The protective purpose of the legislation is realized  
2 by allowing the plaintiff to maintain his action against a  
3 defendant within the class primarily to be deterred. In this  
4 situation it is said that the plaintiff is not in pari delicto.'  
5 Lewis & Queen v. N. M. Ball Sons, 48 Cal.2d 141, 308 P.2d 713, 720.  
6 Therefore, regardless of the fact that Cher desired to pay only one  
7 commission and requested that Sammeth conduct a dual illegal role  
8 for her benefit does not alter Sammeth's legal responsibilities  
9 under the Act and does not absolve Sammeth of his illegalities.

10 7. The question of whether there was one contract or  
11 two, is irrelevant for purposes of this hearing. For whatever  
12 contract Sammeth seeks to enforce in the Superior Court, the  
13 petitioner has met her burden of proof and established that Sammeth  
14 procured employment on behalf of Cher for either period.  
15 Therefore, respondent is not entitled to commission either  
16 agreement. Whichever agreement is found to be the subject of the  
17 Superior Court action, respondent is prohibited from commissioning  
18 those engagements.

19 8. The aforementioned agreements between respondent and  
20 petitioner is hereby void *ab initio* and is unenforceable for all  
21 purposes. Waisbren v. Peppercorn Inc., *supra*, 41 Cal.App. 4<sup>th</sup> 246;  
22 Buchwald v. Superior Court, *supra*, 254 Cal.App.2d 347.

23 ORDER

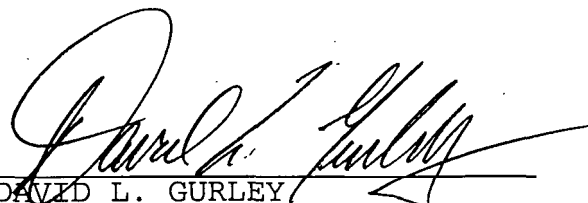
24 For the above-stated reasons, IT IS HEREBY ORDERED that  
25 the 1983 contract and subsequent 1997 agreement between respondent  
26 BILL SAMMETH dba THE BILL SAMMETH ORGANIZATION, and petitioner  
27 CHER; EYE OF HORUS PRODUCTIONS, INC.; ISIS PRODUCTIONS, INC.; APIS  
PRODUCTIONS, INC., is unlawful and void *ab initio*. Respondent has

1 no enforceable rights under these contracts.

2 In June of 1998, Sammeth was commissioned at 10% for a  
3 royalty received from Geffen Records. Having made a showing that  
4 the respondent collected commissions within the one-year statute of  
5 limitations prescribed by Labor Code §1700.44(c), petitioner is  
6 entitled to recoup that commission.


7 Finally, the petitioner shall reimburse Sammeth  
8 \$24,595.54 for expenses incurred on Cher's behalf. (See  
9 respondent's exhibit No. 300)

10  
11 Dated: 7/17/00

  
\_\_\_\_\_  
DAVID L. GURLEY  
Attorney for the Labor Commissioner

12  
13  
14 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

15  
16  
17 Dated: 7/17/00

  
\_\_\_\_\_  
RICHARD W. CLARK  
Chief Deputy Labor Commissioner

18  
19  
20  
21  
22  
23  
24  
25  
26  
27

