

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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9 Attorney and Special Hearing Officer
10 for the Labor Commissioner

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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

10 HEATHER STONE, an individual, on) No. TAC 7-02
11 behalf of PARKER MCKENNA POSEY,))
12 a minor,))
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Petitioner,))
vs.))
LITA RICHARDSON, an individual))
dba L. RICHARDSON ENTERTAINMENT,))
Respondent.)))

DETERMINATION OF CONTROVERSY

INTRODUCTION

19 Petitioner HEATHER STONE, an individual, filed a Petition to
20 Determine Controversy on behalf of minor PARKER MCKENNA POSEY in
21 the above-captioned case on February 13, 2002. The Petition seeks
22 a determination that: 1. Respondent LITA RICHARDSON, an individual
23 dba L. RICHARDSON ENTERTAINMENT violated Labor Code §§1700 et seq.
24 by acting as an unlicensed talent agent, 2. the contract between
25 the parties was void *ab initio* and unenforceable, and 3. Respondent
26 be ordered to disgorge fees already paid to her. Respondent filed
27 a Response to the Petition to Determine Controversy on March 26,
28 2002 denying any violation of Labor Code §§1700 et seq. and seeking

1 unpaid commissions.

2 On or about September 17, 2001 Respondent initiated
3 arbitration proceedings before the American Arbitration Association
4 under the arbitration provision contained in Paragraph 9 of the
5 Agreement between the parties (Case No. 72 160 00991 01 BEAH) and
6 asserted claims therein against Petitioners for commissions
7 allegedly due pursuant to the Agreement. In March of 2002, the
8 arbitration was stayed pending the issuance of Determination on the
9 Petition to Determine Controversy herein.

10 A hearing was held on September 30, 2002 before the
11 undersigned attorney, specially designated by the Labor
12 Commissioner to hear this matter. Petitioner Heather Stone
13 appeared represented by Brian G. Wolf, Esq. of Lavelly & Singer, a
14 P.C. Respondent LITA RICHARDSON, an individual dba L. RICHARDSON
15 ENTERTAINMENT, appeared represented by Derek S. Yee, Esq. of
16 Albright, Yee, & Schmit, LLP. A transcript of the hearing
17 proceedings was prepared by court reporter Linda Myers of Esquire
18 Deposition Services. Due consideration having been given to the
19 testimony, documentary evidence, arguments presented both orally
20 and by hearing briefs, post-hearing briefs, and post-hearing reply
21 briefs, the Labor Commissioner adopts the following determination
22 of controversy.

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FINDINGS OF FACT

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1. Petitioner Heather Stone is the mother of minor Parker McKenna Posey, an actress who is an "artist" under the terms of Labor Code § 1700.4(b).

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2. Respondent Lita Richardson, who does business under the

1 fictitious business name of L. Richardson Entertainment, is a
2 licensed attorney in the State of California and is currently an
3 active member of the State Bar of California. Ms. Richardson is
4 not licensed as a talent agent under Labor Code §§1700, et seq.

5 3. The parties initially met before March 1, 2000 while
6 Respondent was still employed by Magic Johnson Management Group.
7 Ms. Richardson left Magic Johnson Management Group's employment
8 March 1, 2000 to form her own management company: L. Richardson
9 Entertainment.

10 4. On April 5, 2000 Heather Stone, on behalf of minor Parker
11 McKenna Posey signed a Management Contract with Lita Richardson,
12 dba L. Richardson for Ms. Richardson to serve as Ms. Posey's
13 personal manager for the two years from January 1, 2000 to January
14 1, 2002. The contract (hereafter the "Agreement") was admitted
15 into evidence at the hearing as Exhibit 1. The Agreement was
16 effective January 1, 2000 rather than April 5, 2000 because
17 Respondent had already been acting as Parker McKenna Posey's
18 personal manager **prior** to April 5, 2000.

19 5. The second paragraph of Section 2 "Services" of the
20 Agreement states in capital letters in its entirety:

21 "L. RICHARDSON HAS SPECIFICALLY ADVISED
22 'ARTIST' THAT WE ARE NOT A TALENT AGENT
23 BUT ACTIVE SOLELY AS A PERSONAL MANGAGER,
24 AND THAT WE ARE NOT LICENSED AS A TALENT
25 AGENT UNDER THE LABOR CODE OF THE STATE
26 OF CALIFORNIA. WE HAVE AT ALL TIMES
27 ADVISED YOU THAT WE ARE NOT LICENSED
28 TO SEEK OR OBTAIN EMPLOYMENT OR
ENGAGEMENTS FOR YOU AND THAT WE DO NOT
AGREE TO DO SO, AND WE HAVE MADE NO
REPRESENTATIONS TO YOU, EITHER ORAL OR
WRITTEN, TO THE CONTRARY."

6. Immediately after being retained by Heather Stone as

1 Parker McKenna Posey's personal manager, Lita Richardson arranged
2 for Parker McKenna Posey to be represented by Abrams Artists
3 Agency, a talent agency licensed by the State of California, which
4 represented other clients of Ms. Richardson.

5 7. Witnesses Wendi Green and Jennifer Millar are both talent
6 agents, who represented Parker McKenna Posey on behalf of their
7 employer, Abrams Artists Agency.

8 8. Abrams Artists Agency procured Parker McKenna Posey's
9 employment as "Kady Kyle" on the ABC/Touchstone Television
10 Productions, LLC television series "My Wife and Kids". The talent
11 agency also negotiated the contract for her appearance in the
12 series, which is currently in its third season. (See Respondent's
13 Exhibit D). Both Abrams Artists Agency and Lita Richardson dba L.
14 Richardson Entertainment have received commissions from Parker
15 McKenna Posey's employment on "My Wife and Kids" pursuant to their
16 respective Agreements with Heather Stone, as guardian ad litem for
17 Parker McKenna Posey.

18 9. In or about April of 2000, Lita Richardson arranged for
19 Parker McKenna Posey to audition with Sharon Chazin, the casting
20 director of Nickelodeon Television, for a part in a movie "Maniac
21 Magee". Although Heather Stone took her daughter to 5 or 6 call
22 back auditions, another slightly older girl was ultimately cast for
23 the part. [See Respondent's Exhibit I for April 27, 2000 date of
24 one of the auditions.] Abrams Artists Agency did not submit Parker
25 McKenna Posey's name for the initial audition and its staff was not
26 notified about it until after the fact.

27 10. In or about June of 2000, Lita Richardson arranged an
28 audition for Parker McKenna Posey with Sheila Manning, the casting

1 director for a McDonald's commercial, in which a little girl would
2 play opposite Ronald McDonald in a nationally broadcast commercial.
3 Parker McKenna Posey was not cast for this commercial. Abrams
4 Artists Agency did not submit Parker McKenna Posey's name for the
5 McDonald's commercial audition and its staff was not notified about
6 it until after the fact.

7 11. Parker McKenna Posey made a guest appearance as "Latanya"
8 on an episode of NYPD BLUE after an audition which took place prior
9 to mid-September of 2000. Abrams Artists Agency and Lita Richardson
10 each independently "submitted" Parker McKenna Posey for this role
11 without informing each other of their contact with the NYPD BLUE
12 casting director. Abrams Artists Agency negotiated the contract
13 for Ms. Posey's appearance on NYPD BLUE.

14 12. Lita Richardson prepared a biography and head shot
15 photograph of Parker McKenna Posey which she sometimes submitted
16 unsolicited to casting directors and production companies.

17 13. On or about January 24, 2001, Heather Stone gave written
18 notice to Respondent that the Agreement was being terminated by
19 Petitioners. On the same day Ms. Stone issued Ms. Richardson a
20 check drawn on the account of Parker M. Posey, a Minor, Heather
21 Stone, Custodian, UTMA for \$6,000.00 for 6 episodes of "My Wife and
22 Kids", on which she had handwritten the notation "10% management
23 fee Endorsement of this check is final payment of contract". The
24 check was cashed by Ms. Richardson and the check returned by the
25 bank showed that the words "of this check is final payment of
26 contract" had been crossed out. [See Petitioner's Exhibit 4]

27 14. Lita Richardson has received a total of \$8,135.00 in fees
28 for her representation of Parker McKenna Posey. In addition to the

1 \$6,000.00 payment described above in Paragraph 13, the payments
2 include \$1750.00 paid on May 2, 2000 by Abrams Artists Agency for
3 the pilot of "My Wife and Kids" and \$385.00 paid September 19, 2000
4 by Abrams Agency for NYPD BLUE. [See Petitioner's Exhibits 3 and 4
5 and Respondent's Exhibit F and H (6/27/01 \$310.00 uncashed check
6 from Abrams Artists Agency to Lita Richardson).]
7

8 CONCLUSIONS OF LAW

9 1. Legal Issues

10 The legal issues to be determined by the Labor Commissioner in
11 this talent agency controversy are:

12 A. Whether Ms. Richardson procured, offered, promised, or
13 attempted to procure employment for minor Parker McKenna Posey for
14 three projects:

- 15 1. "Maniac Magee" movie for Nickelodeon Television,
- 16 2. a nationwide McDonald's television commercial, and
- 17 3. The "NYPD Blue" television series episode.

18 B. Respondent Lita Richardson dba L. Richardson Entertainment
19 seeks a determination of whether her status as a licensed
20 California attorney and/or the involvement of licensed talent agent
21 Abrams Artists Agency in Parker McKenna Posey's acting career
22 exempt her from liability as an unlicensed talent agent.

23 C. Does the one year statute of limitations in Labor Code
24 §1700.44 (c) preclude a finding that the Agreement was illegal and
25 void *ab initio*?

26 D. If it is determined that Ms. Richardson acted as an
27 unlicensed talent agent, is disgorgement the appropriate remedy?

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1 **2. Applicable Statutes and Regulations**

2 The rights and responsibilities of talent agencies and artists
3 are governed by Labor Code §1700 et seq. and Title 8 California
4 Code of Regulations (CCR) §12000 et seq. Petitioner Parker
5 McKenna Posey is an "artist" under the terms of Labor Code § 1700.4
6 (b). Respondent Lita Richardson, dba L. Richardson Entertainment
7 is not licensed by the State of California as a "talent agency".
8 She is, however, licensed as an attorney in the State of
9 California. Abrams Artists Agency is a talent agency licensed by
10 the State of California.

11 **3. Nickelodeon Television**

12 Lita Richardson attempted to procure employment for Parker
13 McKenna Posey by arranging for her to audition with the casting
14 director for Nickelodeon Television for a part in the movie
15 entitled "Maniac Magee". Abrams Artists Agency was not involved in
16 arranging the initial audition and was not informed of it prior to
17 its occurrence. Arranging for the "Maniac Magee" movie audition
18 with Nickelodeon Television constituted an attempt by Lita
19 Richardson to procure employment for Parker McKenna Posey in
20 violation of Labor Code §1700.5. In Waisbren v. Peppercorn
21 Production, Inc. (1995) 41 Cal. App. 4th 246, the court held that
22 any single act of procuring employment subjects the agent to the
23 Talent Agencies Act's licensing requirements. See also Jason Behr
24 v. Marv Dauer & Associates, and Marv Dauer, TAC 21-00, p.8:11-19.

25 **4. McDonald's Television Commercial**

26 Lita Richardson attempted to procure employment for Parker
27 McKenna Posey by arranging for her to audition with Sheila Manning,
28 the casting director for a nationwide McDonald's television

1 commercial. Abrams Artists Agency was not involved in arranging
2 the audition for this commercial and was not informed of it prior
3 to its occurrence. Arranging for the McDonald's commercial
4 audition constituted a second attempt by Lita Richardson to procure
5 employment for Parker McKenna Posey in violation of Labor Code
6 §1700.5.

7 **5. The "NYPD Blue" Episode**

8 Lita Richardson procured employment for Parker McKenna Posey
9 by arranging for her to audition for a guest role on NYPD BLUE. As
10 a result of the audition, Ms. Posey was hired for a guest role on
11 an episode of the series. Although Wendi Green of Abrams Artists
12 Agency testified that she also had submitted Ms. Posey's name to
13 NYPD BLUE, Ms. Richardson's independent contact with the casting
14 director constituted an attempt to procure or procurement of
15 employment, an activity for which a talent agency license is
16 required under Labor Code §1700.4 (a). Ms. Richardson's
17 arrangement of the NYPD BLUE audition for Parker McKenna Posey
18 constituted a third violation of Labor Code §1700.5.

19 **6. Publicity and Promos**

20 To the extent that Lita Richardson may have submitted
21 biographies and/or head shot pictures of Parker McKenna Posey to
22 casting directors or production companies unsolicited by the
23 directors or companies and without an express request by Abrams
24 Artists Agency to do so, such actions also constituted "attempts to
25 procure" the employment of an artist for which one must be
26 licensed as a talent agent under Labor Code §1700.4 (a) and any
27 such acts also violated Labor Code §1700.5.

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1 **7. Effect of Respondent Being a Licensed California Attorney**

2 Although Respondent acknowledges that she is not a licensed
3 talent agent, at the hearing and in post-hearing briefs filed on
4 her behalf, her counsel argued that she should be exempt from any
5 requirement to be a licensed as a talent agent, because she could
6 legally perform all the activities in which she engaged on behalf
7 of Parker McKenna Posey as a licensed attorney in the State of
8 California. That assertion is false. Even a licensed attorney
9 must be licensed as a talent agent if he or she:

10 "engages in the occupation of procuring, offering,
11 promising, or attempting to procure employment or
12 engagements for an artist or artists..."
 (Labor Code §1700.4 (a))

13 In Jewel Kilcher v. Inga Vainshtein and Cold War Management,
14 TAC 2-99, now posted at <http://www.dir.ca.gov/dlse/TAC/02-99.pdf>,
15 ~~the Determination explains in some detail why the "exemption" under~~
16 Labor Code §1700.44(d) does **not** extend to attorneys. [See TAC
17 2-99, p.24:12 - p.26:12] The express language of the statute does
18 not include those working in "conjunction with, and at the request
19 of a licensed" **attorney** as well as "**licensed talent agency**" By
20 the express language adopted by the Legislature only a licensed
21 talent agency can invoke the exemption of this statute. Lita
22 Richardson as a licensed attorney cannot do so.

23 **8. Does Petitioner Parker McKenna Posey's Representation by**
24 **Abrams Artists Agency Exempt Respondent from Liability as**
 an unlicensed Talent Agent?

25 As Parker McKenna Posey's personal manager, Lita Richardson
26 did put her and her mother, Heather Stone, in touch with Abrams
27 Artists Agency, a licensed talent agent, which represented other
28 clients of Ms. Richardson. However, the fact that Ms. Stone signed

1 a contract with Abrams Artists Agency for that licensed talent
2 agency to serve as Parker McKenna Posey's talent agent does not
3 absolve Ms. Richardson of the requirement to be licensed as a
4 talent agency if she engages in activities that require a license
5 which are not done "in conjunction with, and at the request of, a
6 licensed talent agency in the negotiation of an employment
7 contract." [Labor Code §1700.44 (d)]

8 Jewel Kilcher v. Inga Vainshtein and Cold War Management, TAC
9 2-99, cited above, also holds that Labor Code §1700.44 (d) is
10 construed very narrowly:

11 "All elements of the statute must be independently
12 met. The exemption is not satisfied when a
13 licensed talent agent appears to finalize a deal.
14 The manager is only relieved of liability when he/
15 she "negotiates an employment contract", not solicits
16 one. And that negotiation must be "**at the request
17 of**" and "**in conjunction with**" a licensed talent
18 agent. Here the burden of proof is on the respondent
19 when invoking 1700.44(d)." (TAC 2-99, p. 26:13-21)

20 By setting up auditions for the "Maniac Magee" movie for
21 Nickelodeon Television, the McDonald's television commercial, and
22 the episode of NYPD BLUE, **all done without the prior knowledge of**
23 **Abrams Artists Agency**, Ms. Richardson's clearly cannot invoke the
24 exemption of Labor Code §1700.44 (d). These activities were not
25 done "in conjunction with, and at the request of," Abrams Artists
26 Agency. Furthermore they were attempts to procure employment not
27 to negotiate a contract for employment already obtained.

28 9. Effect of Labor Code §1700.44 (c) Statute of Limitations

The Talent Agency Act contains the following statute of
limitations provision at Labor Code §1700.44 (c):

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

5 Although the petition does not state the dates on which Respondent
6 is alleged to have violated Labor Code §1700.5 by engaging in
7 procuring or attempting to procure employment for an artist without
8 being a licensed talent agent, the evidence introduced at the
9 hearing was that the three auditions Ms. Richardson arranged for
10 Parker McKenna Posey were in April, June, and September of 2000,
11 all of which were more than a year prior to the February 13, 2002
12 filing date of the petition.

13 The Petition to have the Agreement declared illegal and void
14 *ab initio* is not time barred. It is well settled that the statute
15 of limitations runs only against a cause of action which seeks
16 affirmative relief and does not operate to bar a pleading which
17 sets up a purely defensive matter. [See *Styne v. Stevens* (2001) 26
18 Cal. 4th 42, 51-52, 109 Cal. Rptr. 2nd, 14, 22, and *Thomas Haden
19 Church v. Ross Brown*, TAC 52-92, pps. 5-6].

20 Respondent sought to arbitrate her claim for fees under the
21 Agreement. Petitioner brought the validity of the Agreement into
22 question as a defensive matter by filing a Petition to Determine
23 Controversy before the Labor Commissioner pursuant to Labor Code
24 §1700.44. For the reasons discussed in Paragraphs 3 through 6, it
25 is determined that Respondent violated Labor Code §1700.5 by
26 engaging the occupation of talent agent without being licensed as
27 a talent agent and without having procured or attempted to procure
28 employment for artist Parker McKenna Posey in conjunction with, and
at the request of licensed talent agent Abrams Artists Agency. The

1 Agreement between the parties is therefore void *ab initio* and
2 unenforceable for all purposes. [See *Waisbren v. Peppercorn*
3 *Production, Inc.*, *supra*, 41 Cal. App. 4th at 261, and *Buchwald v.*
4 *Superior Court*, (1967) 254 Cal. App. 2d 347, at 351.]

5 **10. The Remedy of Disgorgement**

6 Labor Code Code §1700.44 explicitly bars any claim for
7 **affirmative relief** based on a violation which occurred more than
8 one year prior to the filing of the petition. Here the illegal
9 acts, as well as the final payment by Stone to Respondent under the
10 Agreement all occurred more than one year prior to the filing of
11 the Petition on February 13, 2002. In fact the illegal acts all
12 occurred more than one year prior to Respondent filing for
13 arbitration on September 17, 2001, so even attempting to "relate
14 back" to that earlier filing date will not afford Petitioners the
15 relief they seek. Consequently, any claim by Petitioners for
16 restitution of amounts paid, based on illegality, is time barred.
17 Respondent shall **not** be ordered to disgorge any fees already paid
18 to her.

19
20 **CONCLUSION**

21 For the foregoing reasons, IT IS HEREBY ORDERED:

22 1. Respondent Lita Richardson is determined to have violated
23 Labor Code §1700.5 by having procured or attempted to procure
24 employment for Petitioner by arranging auditions for artist Parker
25 McKenna Posey without being licensed as a talent agent and without
26 having done so in conjunction with, and at the request of, Abrams
27 Artists Agency.


28 2. The Agreement between the parties is unlawful, void *ab*

1 *initio*, and unenforceable for all purposes. Respondent shall have
2 no right to claim further commissions under the Agreement.

3 3. No disgorgement by Respondent is ordered because the
4 alleged violations occurred more than one year prior to the
5 filing of the Petition to Determine Controversy.

6 4. Each party shall bear its own costs and attorney's fees.
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9 Dated: December 30, 2002


ANNE J. ROSENZWEIG
Attorney and Special Hearing Officer
for the Labor Commissioner

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15 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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17 Dated: JAN 3, '03


ARTHUR S. LUJAN
State Labor Commissioner