

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
 Department of Industrial Relations
 2 State of California
 BY: DAVID L. GURLEY (Bar No. 194298)
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5
 6 BEFORE THE LABOR COMMISSIONER
 7 OF THE STATE OF CALIFORNIA
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10	BILLY BLANKS, an individual; BG STAR)	Case No. TAC 27-00
	PRODUCTIONS INC., a California)	
11	corporation,)	
	Petitioners,)	
12	vs.)	DETERMINATION OF
		CONTROVERSY
13)	
14	JEFFREY GREENFIELD, an individual,)	
15	Respondents.)	
16)	

17 INTRODUCTION

18 The above-captioned petition was originally filed on
 19 August 28, 2000, by BILLY BLANKS, and BG STAR PRODUCTIONS INC.,
 20 (hereinafter Petitioner or "BLANKS"), alleging that JEFFREY
 21 GREENFIELD and GREENFIELD & WALLACE C.P.A., (hereinafter Respondent
 22 or "GREENFIELD"), acted as an unlicensed talent agency. Petitioner
 23 seeks a determination voiding *ab initio* any and all management
 24 agreements between the parties, and requests disgorgement of
 25 commissions paid to the respondent.

26 Respondent filed his answer with this agency on December

1 13, 2000. A hearing was scheduled before the undersigned attorney,
2 specially designated by the Labor Commissioner to hear this matter.
3 The hearing commenced as scheduled on September 10, 2001, in Los
4 Angeles, California. As a result of September 11, 2001, the
5 hearing was continued and rescheduled for November 5, 2001. The
6 hearing commenced on November 5, 2001 and was completed November 7,
7 2001. Petitioner was represented by Martin D. Singer of Lavelly &
8 Singer, and Charles N. Kenworthy and Andrew E. Miller of Allen
9 Matkins Leck Gamble & Mallory LLP; respondent appeared through his
10 attorneys Leonard D. Venger and Donald R. Brown of Manatt Phelps &
11 Phillips, LLP. Due consideration having been given to the
12 testimony, documentary evidence, and arguments presented, the Labor
13 Commissioner adopts the following Determination of Controversy.

14
15 FINDINGS OF FACT
16

17 1. Billy Blanks is a professional martial arts
18 champion who attained significant notoriety for his athletic
19 accomplishments. Blanks eventually opened up a training center and
20 ultimately created an exercise regimen incorporating kick boxing
21 into a fast paced cardiovascular routine which gained rapid,
22 widespread popularity. Blanks named the exercise regimen, TaeBo.

23 2. In 1990, Blanks and Greenfield met at Blanks'
24 training center and soon thereafter, Greenfield became Blanks'
25 business accountant. As the friendship prospered between the
26 parties, Greenfield began assuming additional responsibilities for
27 Blanks. In 1993, Greenfield became the secretary to Blank's loan-

1 out corporation. In October of 1998, Greenfield's role for Blanks
2 undertook a dramatic change. Under the terms of an oral agreement
3 between the parties, Greenfield began to manage Blank's flourishing
4 business enterprises, and was compensated by 10% of Blank's
5 earnings.

6 3. As Blanks popularity and notoriety increased, so
7 did the offers for his services. TaeBo video tapes were selling at
8 an astonishing rate and soon offers for Blanks' services in other
9 television enterprises arose. Blanks hired William Morris as his
10 talent agency, who indicated a desire to make Blanks an action
11 star. While those efforts fizzled, the public adoration for TaeBo
12 did not.

13 4. In February of 1999, Blanks terminated William
14 Morris as his talent agency. And soon thereafter, Greenfield began
15 to assume that role. Specifically, Greenfield began negotiations
16 with Sony Wonder, a related business enterprise of Sony Music.
17 Greenfield negotiated the deal points for a Saturday morning,
18 children's television series named "TaeBo Squad", featuring Billy
19 Blanks as a character. The correspondence to and from Greenfield
20 to Sony left no doubt that Greenfield was intimately involved in
21 the negotiations of this employment deal. A talent agent was not
22 utilized during these negotiations. The deal was never completed,
23 but Greenfield's attempts were clearly established.

24 5. Additionally, in early 1999, Blanks was offered a
25 role as an on-camera referee for the extreme sports series,
26 Battledome. William Morris agent, Susie Unger, testified that
27 during the initial stages William Morris was involved in the

1 negotiations for Blanks' participation in Battledome. Moreover,
2 Unger credibly testified that Greenfield, as Blank's manager, began
3 to interfere in the negotiations for this deal. Unger maintained
4 that Greenfield's inexperience lead to poor negotiating by
5 Greenfield on Blank's behalf, and consequently she was left with no
6 alternative but to remove William Morris from the deal. Unger was
7 very clear that she did not desire Greenfield's involvement with
8 this negotiation for an employment contract. Therefore, Greenfield
9 was not conducting these negotiations in conjunction with and at
10 the request of a licensed talent agency and may not rely on the
11 exemption found at Labor Code §1700.44(d).

12 6. In February of 1999, Greenfield sought to increase
13 his role and compensation with Blanks. Greenfield proposed a
14 partnership with the petitioner, whereby his percentage of the
15 profits for all business related enterprises would begin at 33
16 1/3%, increasing over time eventually to a 49% interest in Blank's
17 enterprises. The parties', through the pleadings, contradicted
18 each other dramatically whether this arrangement was accepted by
19 the petitioner. Nevertheless, Greenfield continued his pervasive
20 role on behalf of Blanks. Greenfield eventually was instrumental
21 in negotiating the complete sale of the TaeBo trademark for an
22 estimated \$140,000,000.00. Greenfield received a roughly estimated
23 \$10,000,000 for his efforts which fell a dramatic \$40,000,000.00 to
24 \$50,000,000.00 below the 33 1/3% of the \$140,000,000.00 sale of the
25 TaeBo trademark. On November 4, 1999, Blanks filed suit against
26 Greenfield in Los Angeles Superior Court, Case No. BC 219673 for,
27 *inter alia*, violations of both the Talent Agencies Act and the

1 Business and Professions Code, ostensibly seeking a decision
2 voiding any agreement between the parties. On December 6, 1999,
3 Greenfield filed a cross complaint alleging, *inter alia*, breach of
4 contract, seeking \$49,000,000.00 under the alleged partnership
5 agreement. The superior court action is stayed pending a
6 determination by the Labor Commissioner, whether Greenfield acted
7 as unlicensed talent agent.

8
9 CONCLUSIONS OF LAW

10
11 1. Labor Code §1700.44 vests the Labor Commissioner
12 with exclusive and primary jurisdiction in cases arising under the
13 Talent Agencies Act. The Act¹ governs the relationship between
14 artists and talent agencies.

15 2. Labor Code §1700.4(a) defines "talent agency" in
16 pertinent part as: "a person or corporation who engages in the
17 occupation of procuring, offering, promising, or attempting to
18 procure employment or engagements for an artist or artists..."

19
20 3. Labor Code §1700.4(b) defines "artists" as:
21 actors and actresses rendering services on the legitimate
22 stage and in the production of motion pictures, radio
23 artists, musical artists, musical organization, directors
24 of legitimate stage, motion pictures and radio
25 productions, musical directors, writers,
26 cinematographers, composers, lyricists, arrangers,
27 models, and other artists rendering professional services
28 in the motion picture, theatrical, radio, television
(emphasis added) and other entertainment enterprises."

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¹ The "Act" refers to the "Talent Agencies Act" which describes the statutory scheme created to regulate talent agents and found at Labor Code §§1700.00 et seq.

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3 4. Greenfield attempted to procure for Blanks a role
4 on a television series based on a Blanks-like character, starring
5 Blanks. Additionally, Greenfield's negotiation attempts for
6 *Battledome* also involved a weekly television engagement sought to
7 capitalize on Blanks personality. In short, Blanks' fame as an
8 athlete and creator of *TaeBo*, resulted in production companies
9 desiring to use his likeness to boost ratings, which would
10 inevitably attract more advertisers. Consequently, Blanks is an
11 artist within the meaning of §1700.4(b). We do not address here
12 whether or not Blanks role as an infomercial pitchman for *TaeBo* is
13 an entertainment or employment engagement under the Act.

14 5. The primary issue is whether based on the evidence
15 presented at this hearing, did the respondent operate as a "talent
16 agency" within the meaning of Labor Code §1700.4(a). For the
17 reasons enumerated above, we conclude he did.

18 6. In Waisbren v. Peppercorn Production, Inc (1995) 41
19 Cal.App.4th 246, the court held that any single act of procuring
20 employment subjects the agent to the Talent Agencies Act's
21 licensing requirement, thereby upholding the Labor Commissioner's
22 long standing interpretation that a license is required for any
23 procurement activities, no matter how incidental such activities
24 are to the agent's business as a whole. Applying Waisbren, it is
25 clear respondent acted in the capacity of a talent agency within
26 the meaning of Labor Code §1700.4(a).

27 7. Labor Code §1700.5 provides that "no person shall
engage in or carry on the occupation of a talent agency without

1 first procuring a license therefor from the Labor Commissioner."
2 It was stipulated that the respondent has never held a talent
3 agency license and is therefore in violation of Labor Code §1700.5.

4 8. The question of whether there was one contract or
5 two, a modification, acceptance, implied or otherwise, is
6 irrelevant for purposes of this hearing. The petitioner has met
7 his burden of proof and established that Greenfield attempted
8 and/or procured employment on behalf of Blanks during 1999.
9 Therefore, respondent is not entitled to benefit further from the
10 sale of the TaeBo trademark.

11 9. The aforementioned agreement(s) between respondent
12 and petitioner are hereby void *ab initio* and are unenforceable for
13 all purposes. Waisbren v. Peppercorn Inc., supra, 41 Cal.App. 4th
14 246; Buchwald v. Superior Court, supra, 254 Cal.App.2d 347.

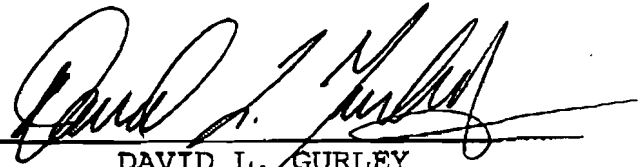
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17 ORDER

18 For the above-stated reasons, IT IS HEREBY ORDERED that
19 the oral agreement(s) between respondent JEFFREY GREENFIELD and
20 petitioner BILLY BLANKS and BG STAR PRODUCTIONS, INC., are unlawful
21 and void *ab initio*. Respondent has no enforceable rights under
22 these contracts.

23 The petitioner has failed to establish that commissions
24 were paid during the one-year statute of limitations prescribed by
25 Labor Code §1700.44(c). Consequently, the petitioner is not
26 entitled to disgorgement of commissions. No fees are awarded.

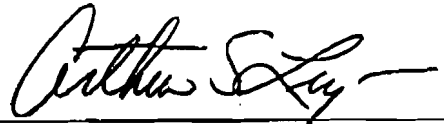
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Dated: March 11, 2002


DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: March 11, 2002


ARTHUR S. LUJAN
State Labor Commissioner

