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BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

11	ETHAN RIEFF, an individual; and	)	No. TAC 20-02
12	CYRUS VORIS, an individual,	)	
13		)	
14	Petitioners,	)	
15		)	
16	vs.	)	
17		)	
18	STEVEN FREEDMAN, an individual	)	DETERMINATION OF
19	<del>sometimes doing business as</del>	)	CONTROVERSY
20	FREEDMAN LITERARY MANAGEMENT,	)	
21		)	
22	Respondent.	)	
23		)	

24 The above-captioned matter, a petition to determine  
25 controversy under Labor Code §1700.44, came on regularly for  
26 hearing on May 14, 2003 in Los Angeles, California, before the  
27 Labor Commissioner's undersigned hearing officer. Petitioners  
28 were represented by Martin D. Singer and Paul N. Sorrell, and  
Respondents were represented by Jay M. Coggan and David N.  
Tarlow. Based on the evidence presented at this hearing and on  
the other papers on file in this mater, the Labor Commissioner  
hereby adopts the following decision.

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FINDINGS OF FACT

1  
2           1. Petitioners Ethan Rieff and Cyrus Voris are script  
3 writers. Since 1988 or 1989, petitioners have written scripts  
4 for motion pictures and for television films.

5           2. Respondent Steven Freedman testified that he is a  
6 "literary personal manager". He has never been licensed by the  
7 State Labor Commissioner as a talent agent.

8           3. In 1989, petitioner Cyrus Voris received a telephone  
9 call from Freedman, during which Freedman stated that he had read  
10 'Demon Knight,' a script authored by the petitioners; that he  
11 wanted to represent the petitioners as their agent; that he would  
12 try to sell any scripts written by petitioners to producers; and  
13 that he would try to find work for petitioners in Hollywood as  
14 script writers. Following this telephone call, petitioners  
15 ~~agreed to engage Freedman as their agent, for which Freedman was~~  
16 to be paid commissions. In 1991, the parties entered into a  
17 written "Exclusive Management Agreement," under which Freedman  
18 agreed to serve as petitioners' "sole and exclusive personal  
19 manager . . . in connection with all of the Artist's services and  
20 materials in the entertainment, communication, literary and all  
21 other related fields." Under this Agreement, Freedman was to  
22 receive commissions in the amount of 10% of petitioners' gross  
23 entertainment earnings. The Agreement was for an initial term of  
24 two years, with automatic annual renewals thereafter absent  
25 notice to terminate. The Agreement purported that the "Manager  
26 is not conducting the business of an employment, theatrical or  
27 booking agency . . . that the Artist is not employing the Manager  
28 in such capacity and that the Manager has not promised to obtain

1 employment for Artist."

2 4. In 1993, Freedman sent the 'Demon Knight' script to  
3 Scott Fay, then vice president of production and development for  
4 Full Moon Entertainment, a film production studio. Freedman told  
5 Fay that the script was available for production. Full Moon  
6 Entertainment unsuccessfully tried to buy the script from  
7 Freedman. Ultimately, Freedman sold the script to Universal  
8 Pictures, and the petitioners were hired as screen writers for  
9 the production.

10 5. Petitioners sent other scripts to Freedman, including  
11 'Slayer' and 'Blown Away,' in response to his requests to send  
12 him anything else they write, in order to either sell these other  
13 scripts to producers or to use them as writing samples as part of  
14 his effort to obtain script writing work for the petitioners.  
15 Freedman submitted the scripts for 'Blown Away' and 'Slayer' to  
16 various production companies, and the scripts were eventually  
17 purchased by production companies as a result of Freedman's  
18 efforts.

19 6. Freedman called petitioners, who were then living in New  
20 York, to advise them that Fries Entertainment was looking for  
21 writers to re-write the script of 'Under Surveillance.'  
22 Petitioners traveled to Los Angeles, and along with respondent,  
23 met with Fries. Freedman negotiated a deal on behalf of the  
24 petitioners to re-write the script.

25 7. In 1993 or 1994, Freedman set up a meeting with the  
26 director and producers of 'Men of War,' and succeed in getting  
27 them to hire petitioners to re-write the script. Freedman  
28 negotiated the terms of the petitioners' contract to do this re-

1 write.

2 8. In 1993 or 1994, Freedman introduced petitioners to  
3 Melanie Weiner, then an assistant, responsible for reading  
4 scripts, at August Entertainment. Freedman asked Weiner to  
5 submit petitioners' names for consideration on projects that  
6 might be appropriate, and as a result of Freedman's efforts,  
7 Weiner submitted petitioners' names for writing projects on  
8 numerous occasions over the course of a two year period. These  
9 efforts led to a writing job for a film called 'Bear Fire - The  
10 Hot Pit.'

11 9. Sometime around 1995, Full Moon Entertainment hired the  
12 petitioners for script writing services in connection with 'Josh  
13 Kirby - Time Warrior.' Scott Fay sent the "deal memo" setting  
14 out the terms of the proposed contract to the respondent, and  
15 held discussions with the respondent about "deal points," i.e.,  
16 the terms of petitioners' compensation. Scott Fay only dealt  
17 with the respondent in this regard, and did not deal with anyone  
18 else purporting to represent petitioners.

19 10. In 1995, after 'Demon Knight' was produced by  
20 Universal, petitioners became a "hot commodity" in Hollywood, and  
21 their services were in high demand. Freedman then apparently  
22 decided that the petitioners would be best served by having a  
23 licensed talent agency to procure and negotiate employment deals,  
24 so he then advised the petitioners that they should retain the  
25 services of a talent agency, and that he would limit his  
26 activities to personal management. Petitioners then hired a  
27 talent agency, and from then on, have been represented by a  
28 licensed talent agency -- first UTA, later APA, and now William

1 Morris Agency.

2 11. For a while, petitioners continued using the services  
3 of Freedman as their personal manager, even though all of the  
4 procurement and negotiation services he used to perform were  
5 instead being provided by licensed talent agents, or attorneys  
6 working in conjunction with licensed talent agents. Finally,  
7 petitioners concluded that Freedman was no longer providing any  
8 services to them, and they notified him that they were  
9 terminating their Agreement with him.

10 12. Freedman filed a now pending court action against the  
11 petitioners, seeking payment of commissions purportedly under the  
12 Exclusive Management Agreement. On June 20, 2002, this petition  
13 was filed. The parties have stipulated that petitioners have not  
14 paid any commissions to Freedman in the one year period prior to  
15 the filing of this petition.

16 LEGAL ANALYSIS

17 Petitioners are artists within the meaning of Labor Code  
18 §1700.4(b), which defines "artists" to include "writers...  
19 rendering professional services in motion picture, theatrical,  
20 radio, television and other entertainment enterprises." The  
21 issue here is whether Respondent functioned as a "talent agency"  
22 within the meaning of Labor Code §1700.4(a), and if so, what  
23 consequences should flow from the fact that Respondent was not  
24 licensed by the Labor Commissioner as a talent agency.

25 Labor Code §1700.4(a) defines "talent agency" as "a person  
26 or corporation who engages in the occupation of procuring,  
27 offering, promising, or attempting to procure employment or  
28 engagements for an artist or artists." Labor Code §1700.5

1 provides that "[n]o person shall engage in or carry on the  
2 occupation of a talent agency without first procuring a license  
3 therefor from the Labor Commissioner."

4 The Talent Agencies Act is a remedial statute; its purpose  
5 is to protect artists seeking professional employment from the  
6 abuses of talent agencies. For that reason, the overwhelming  
7 judicial authority supports the Labor Commissioner's historic  
8 enforcement policy, and holds that "[E]ven the incidental or  
9 occasional provision of such [procurement] services requires  
10 licensure." *Styne v. Stevens* (2001) 26 Cal.4th 42, 51.

11 Here, we are confronted with much more than incidental or  
12 occasional procurement. Rather, the evidence herein establishes  
13 pervasive and ongoing employment procurement activities.

14 An agreement that violates the licensing requirement of the  
15 Talent Agencies Act is illegal and unenforceable. "Since the  
16 clear object of the Act is to prevent improper persons from  
17 becoming [talent agents] and to regulate such activity for the  
18 protection of the public, a contract between an unlicensed  
19 [agent] and an artist is void." *Buchwald v. Superior Court*  
20 (1967) 254 Cal.App.2d 347, 351. Here, as in *Buchwald*, the  
21 contractual provisions which purport that Respondent will not  
22 procure employment and is not a talent agent are mere subterfuge  
23 for the unlicensed performance of employment procurement  
24 services, and cannot control over the true facts of Respondent's  
25 role as a "talent agent" within the meaning of Labor Code  
26 §1700.4.

27 Having determined that a person or business entity procured,  
28 promised or attempted to procure employment for an artist without

1 the requisite talent agency license, "the [Labor] Commissioner  
2 may declare the contract [between the unlicensed agent and the  
3 artist] void and unenforceable as involving the services of an  
4 unlicensed person in violation of the Act." *Styne v. Stevens*,  
5 *supra*, 26 Cal.4th at 55. "[A]n agreement that violates the  
6 licensing requirement is illegal and unenforceable . . . ."  
7 *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th  
8 246, 262. Moreover, the artist that is party to such an  
9 agreement may seek disgorgement of amounts paid pursuant to the  
10 agreement, and "may . . . [be] entitle[d] . . . to restitution of  
11 all fees paid the agent." *Wachs v. Curry* (1993) 13 Cal.App.4th  
12 616, 626. This remedy of restitution is, of course, subject to  
13 the one year limitations period set out at Labor Code  
14 §1700.44(c).

15 Having found that from the very inception of their business  
16 relationship, Respondent promised petitioners to procure  
17 employment -- and thereafter did procure employment -- on their  
18 behalf, we necessarily conclude that the Management Agreement  
19 between Respondent and petitioners is void *ab initio*, and that  
20 Respondent has no enforceable rights thereunder. In addition,  
21 Respondent is not entitled to any recovery of from petitioners  
22 under a theory of *quantum meruit*, for to allow recovery on this  
23 or any other basis would subvert the clear remedial purpose of  
24 the Act.

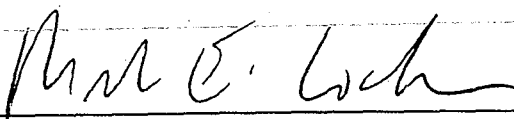
25 Turning to petitioners' prayer for disgorgement of certain  
26 amounts previously paid to Respondent, we conclude that since all  
27 payments made to Respondent under this Agreement were made more  
28 than one year prior to the filing of this petition, the one year

1 limitations period set out at Labor Code §1700.44(c) precludes an  
2 order for disgorgement. Hence, there is no reason to order an  
3 accounting of amounts that were previously received. We note, of  
4 course, that this statute of limitations is not applicable to a  
5 "defensive" petition seeking a determination that a contract is  
6 void *ab initio*, so as to prevent an unlicensed talent agent from  
7 maintaining a legal action against an artist for amounts  
8 allegedly due under that contract. *Styne v. Stevens, supra.*

9 ORDER

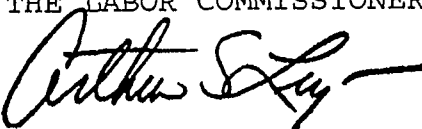
10 For the reasons set forth above, IT IS HEREBY ORDERED that  
11 the Management Agreement between petitioners and respondent is  
12 unlawful and void *ab initio*; that Respondent has no enforceable  
13 rights thereunder; and is not entitled to any amounts for  
14 services that were rendered under that Agreement.

15  
16 Dated: 12/9/03

  
\_\_\_\_\_  
MILES E. LOCKER  
Attorney for the Labor Commissioner

18  
19 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

20  
21 Dated: 12/9/03

  
\_\_\_\_\_  
ARTHUR S. LUJAN  
State Labor Commissioner



