ALBERT J. REYFF, Deputy Chief
DIVISION OF LABOR STANDARDS ENFORCEMENT
By: Carl G. Joseph
107 South Broadway, Room 5015
Los Angeles, CA 90012
213/620-2500

Attorney for the State Labor Commissioner
and Special Hearing Officer

BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

TANYA TUCKER, Petitioner, vs. FAR OUT MANAGEMENT, LTD., JERRY GOLDSTEIN and STEVE GOLD, Respondents.	No. TAC 14-79 DETERMINATION

The above-entitled controversy came on regularly for hearing before the Labor Commissioner, Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, by CARL G. JOSEPH, Industrial Relations Counsel II, acting as Special Hearing Officer for the DIVISION OF LABOR STANDARDS ENFORCEMENT, under the provisions of Section 1700.44 of the Labor Code of the State of California; petitioner TANYA TUCKER appearing by the law offices of DONALD S. ENGEL of ENGEL & ENGEL, and respondents FAR OUT MANAGEMENT, LTD., JERRY GOLDSTEIN and STEVE GOLD appearing by the law offices of BUSHKIN, KOPELSON, GAIMS, GAINES & WOLF. Evidence both oral and documentary having

been introduced, and the matter being briefed and submitted for decision, the following determination is made:

It is the determination of the Labor Commissioner:

That there is nothing due to petitioner from respondents.

I

INTRODUCTION

On or about May 7, 1979, respondent FAR OUT MANAGEMENT, LTD. ("FOM"), as plaintiff, commenced action in the Superior Court against petitioner TANYA TUCKER, her personal services corporation, TANYA, INC., her father, BOE TUCKER, and others, seeking to enforce a "Personal Management Agreement" entered into on or about August 16, 1977. The complaint in the Superior Court action, verified by respondent STEVE GOLD ("Gold"), was admitted into evidence as Exhibit 32 at the hearing of this proceeding; the hearing officer stated that the Labor Commissioner will take judicial notice of the allegations of the complaint. Tr. 310.

On or about July 11, 1979, TANYA TUCKER commenced the instant proceeding by the filing of her petition against respondents FOM, Gold and JERRY GOLDSTEIN. Petitioner's demurrer and motion to stay the Superior Court action on the ground that the Labor Commissioner has exclusive original jurisdiction over the dispute between an artist and the alleged talent agents was granted on August 30, 1979. Respondents then moved before the Labor Commissioner for a dismissal of this proceeding on the ground that the Labor Commissioner lacked jurisdiction over the subject matter; the motion was denied by the Commissioner by order dated December 3, 1979. Thereafter, respondents moved in the

Superior Court to vacate the stay, which motion was also denied by order dated March 17, 1980.

The petition, in part, alleged:

1. That all of the respondents were acting in the capacity of a "talent agency" or "talent agents" as that term is defined in Section 1700.4 of the Labor Code.

2. That respondents have never been licensed as required by Section 1700.5 of the Labor Code and have never held a valid talent agent's license as defined therein.

3. That on or about August 16, 1977, petitioner and FOM entered into a written agreement, a copy of which is attached hereto as Exhibit A.

4. That prior to entering into said agreement, respondents, for the purpose of inducing petitioner to engage their services, represented to petitioner that they would arrange to secure bookings for personal appearances which would result in substantial additional income to her.

5. That respondents, in carrying out the terms of the aforesaid agreement, acted in the capacity of "talent agents" and, among other things, they:

a) negotiated and entered into an agreement or agreements with another talent agency pursuant to which such other talent agency was to represent petitioner, all without consulting with or obtaining the approval or consent of petitioner;

b) negotiated, procured and made all arrangements for personal appearances by petitioner, established the terms and conditions thereof and cancelled or changed the dates thereof, all

The case law construing the provisions of the Labor Code dealing with artists' manager controversies are Raden v. Laurie, 120 C.A.2d 778, 262 P.2d 61 (1953); Buchwald v. Superior Court, 254 C.A.2d 347; 62 Cal.Rptr. 364 (1967); and Buchwald v. Katz, 8 Cal.3d 493, 105 Cal.Rptr. 378 (1972).

IV

DISCUSSION AND FINDINGS

Petitioner has been a major recording star for many years, having started in the business at the age of 13. Her father, Boe Tucker ("Boe"), had been her personal manager and advisor during most of that time. Boe entered into discussion with respondents because he wanted her to "cross over" into a different category of artist and both Boe and Gold testified that the initial discussions were for the purpose of securing Goldstein as the producer of petitioner's next album. However, a "package" deal was agreed to whereby the respondents would act in the capacity of co-managers along with the petitioner's father.

Both the "personal management agreement" between petitioner and FOM (Exhibit 7) and the three-way agreement among petitioner, FOM and MCA Records pursuant to which FOM was to provide the services of respondent Goldstein as the "Individual Producer" of petitioner's next album (Exhibit 8), were executed simultaneously under date of August 16, 1977. The "personal management agreement" had an initial term of about 16 months to January 1, 1979 and provided for four one-year options if certain contingencies (not relevant to the issues to be determined by the Labor Commissioner) occurred. Paragraph 1 of Exhibit 7A. FOM was

obligated only to "advise and counsel" petitioner in all aspects of her career and was to receive commissions of 10 percent of her gross receipts from her recording services and 15 percent of her other gross receipts. Paragraphs 2 and 4 of Exhibit 7.

As practical observation, the management agreement entered into on August 16, 1977, which must be taken into account when the activities of respondents and Boe are viewed below, is that Boe is designated in the agreement as a co-manager. Exhibit 7A, paragraph 1. It is clear that all of the parties intended that Boe act as a co-manager. Respondents, themselves, admitted in their testimony that Boe was the co-manager during the time that the relationship existed between them and petitioner. (Tr. 289, 303-306) Moreover, although they deny in their testimony that Boe acted as their "partner", they made a conclusive admission that Boe was, in fact, acting in "partnership" with them when they so alleged in their verified complaint against petitioner and Boe filed in their Superior Court action. Exhibit 32, paragraphs 30, 31 and 33. Petitioner testified that she was under the impression that Boe was supposed to be a partner of respondents and that all decisions respecting her career would be made among the partners, as did Boe. Tr. 458-59, 479. In view of the conclusive admission in respondents' own complaint, this state of facts must be held to have existed during the entire period of time that respondents purported to act as the "personal manager" of petitioner.

Another aspect that bears mentioning is the fact that there was never a period of time when TANYA, INC. was not

represented by either Iron Head Talent, the Tennessee booking agency operated by Boe Tucker's son, Don, or by the William Morris Agency of California. With almost no exceptions, every engagement was booked and commissioned through a booking agency.

Reference was made at the hearing to the case of Buchwald v. Superior Court, 254 Cal.App.2d 347, 62 Cal.Rptr. 364, which held under the prior Act that when a prima facie showing is presented to the Labor Commissioner indicating that a person was acting as an unlicensed artists' manager under the pretext of a contract designed to circumvent the regulatory statutes by some sham, fraud, or deceit, the Labor Commissioner shall have initial jurisdiction to determine whether such a connivance or scheme actually exists. But the circumstances present in Buchwald demonstrate so great a disparity from the fact situation presented in the instant proceeding that the matter deserves some comment.

As the Commissioner well knows, Buchwald involved a fledgling musical group known as the Jefferson Airplane which filed a Petition to Determine Controversy before the California State Labor Commissioner in 1967, alleging that Matthew Katz, who was unlicensed as an artists' manager, had acted as and performed services for which a license was required. The petition alleged that Katz had acted fraudulently by asserting in writing that he was not acting as an artists' manager when at all relevant times he had intended to act and did act in such a capacity. The petition's allegations included the following:

> [D]efendant [Matthew Katz] acting as an artists' manager and through false and fraudulent statements and by duress caused complainants to sign with

> defendant as an artists' manager; that defendant prior to the time of signing said contracts, promised the complainants and each of them that he would procure bookings for them; that defendant thereafter procured bookings for the complainants and insisted that the complainants perform the bookings procured by him; that complainants sought to procure their own bookings, and that defendant refused them the right to procure their own bookings ... that Matthew Katz never rendered an accounting to the complainants for thousands of dollars received by Mr. Katz for their services; that Matthew Katz has not allowed complainants to inspect the books and records maintained by Matthew Katz with respect to fees earned by the complainants; that Matthew Katz has and continues to obtain payments intended for one or more of the above complainants and has cashed checks intended for one or more of the above complainants for his own use and benefit.

Buchwald at 352.

Although the testimony concerning whether or not respondents actually engaged in activities violative of the Talent Agencies Act during the early stages of the relationship between the parties is in sharp dispute, petitioner contends that there is substantial evidence in the record to support the conclusion that they did violate the act at this stage. However, before the Commissioner addresses this issue, the case of Raden v. Laurie, 120 C.A.2d should be noted. In this case, the court, in construing Labor Code Section 1700.4, before its amendment in 1979, stated:

> One is not an artists' manager unless he both advises, counsels and directs artists in the development or advancement of their professional careers, and also procures, offers, promises or attempts to procure "only in connection with and as a part of the duties and obligations of such artist by which such person contracts to render services of the nature above-mentioned to such artist." Such is the clear wording of the statute. (At 781)

The artists' manager under the prior Act was one who was required to perform the functions of both personal manager and employment procurer. However, the talent agent, under the new Act, is not purely and simply defined as an employment procurer--but one who may also, if he chooses, perform career counseling functions. There seems little doubt that the California Legislature's enactment of the Talent Agencies Act was intended to charge the Labor Commissioner with responsibility for ensuring that persons whose usual or principal work was the procurement of employment for artists, were licensed.

V

CONCLUSION

It is concluded that the respondents acted in a capacity as advisors and managers to petitioner and as such did not violate the Labor Code Section 1700.4.

It is the hearing officer's determination that petitioner taking nothing by way of her petition.

ALBERT J. REYFF, Deputy Chief
DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

DATE: _____

_____
CARL G. JOSEPH
Special Hearing Officer

ADOPTED:

DATED: _____

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ALBERT J. REYFF
Deputy Chief