

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

11 DIANNE ELIZABETH REEVES)

) CASE NO. TAC 17-89

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Petitioner,)

) DETERMINATION

14 vs.)

15 MICHAEL R. MORRIS, AN INDIVIDUAL,)
16 AND BETTIE J. DAVIE, AN INDIVIDUAL)

17 Respondents.)
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18 The above-entitled controversy came on regularly for
19 hearing before the Labor Commissioner, Division of Labor Stan-
20 dards Enforcement, Department of Industrial Relations, State
21 of California, by JOAN E. TOIGO, serving as Special Hearing
22 Officer under the provisions of Section 1700.44 of the Labor
23 Code of the State of California, Petitioner DIANNE ELIZABETH
24 REEVES, appearing by the law offices of COHEN and LUCKEN-
25 BACHER, by MARTIN COHEN, and Respondent, MICHAEL R. MORRIS,
26 appearing by the Law Office of KENT J. KLAVERNS, by KENT J.
27 KLAVERNS.

1 BACHER, by MARTIN COHEN, and Respondent, MICHAEL R. MORRIS,
2 appearing by the Law Office of KENT J. KLAUVENS, by KENT J.
3 KLAUVENS.

4 Evidence, both oral and documentary, having been intro-
5 duced, and the matter briefed and submitted for decision, the
6 following determination is made:

7 It is the determination of the Labor Commissioner that:

8 1. The Petitioner's claim is barred in part by the
9 one-year statute of limitations provision in Labor Code Sec-
10 tion 1700.44(c);

11 2. Respondent, Michael R. Morris, did not engage in
12 the procurement of employment on Petitioner's behalf in viola-
13 tion of the Labor Code;

14 3. The management agreement between the parties be
15 given full force and effect, until its termination by the
16 parties, entitling Respondent to any compensation he is due by
17 its terms; and

18 4. That Petitioner take nothing by her Petition.

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20 I.

INTRODUCTION

21 On June 29, 1989, Petitioner filed with the Labor Com-
22 missioner a Petition to Determine Controversy pursuant to
23 Labor Code Section 1700.44. On July 20, 1989, Respondent
24 filed an Answer to the Petition to Determine Controversy.
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1 Husband and Morris vs. Dianne Reeves, Case No.

2 90K01440, is currently pending in the Los Angeles Municipal
3 Court in which Respondent, Morris' former partnership seeks
4 fees for services allegedly performed on behalf of Petitioner.

5 The Petition alleges that on or about November 1, 1987,
6 the parties entered into a "purported" written contract. The
7 Petition further alleges that a controversy has arisen between
8 Petitioner and Respondents in that Respondents are seeking
9 compensation pursuant to this purported written agreement.

10 Petitioner maintains that no past or future compensation is
11 due on the ground that Respondents sought to obtain employment
12 for Petitioner without being licensed to do so under Labor
13 Code Section 1700 et seq., and therefore did engage in illegal
14 activities.

15 In the Petitioner's prayer relief, Petitioner has re-
16 quested:

17 1. That the purported contract of November 1, 1987 be
18 declared invalid, illegal, void and unenforceable and that,
19 therefore, no past compensation is due, and no future compen-
20 sation will be owing, to Respondents from Petitioner;

21 2. A determination that Respondents have acted as an
22 unlicensed talent agency;

23 3. A determination that, while being unlicensed,
24 Respondents procured or attempted to procure employment for
25 Petitioner; and

26 4. A determination that Respondents are not due any
27 compensation from Petitioner.

1 In the Answer to the Petition, Respondent, Michael Mor-
2 ris, denies the substantive allegations raised therein and
3 raises the following affirmative defenses:

4 1. The Labor Commissioner lacks jurisdiction over the
5 subject matter of the Petition;

6 2. The Petition fails to state a claim against Respon-
7 dents upon which any of the relief sought by Petitioner can be
8 granted in law or equity;

9 3. Respondents' supervision of Petitioner's affairs in
10 fulfilling Respondents' role as Petitioner's personal
11 managers, is and was conducted by Respondents solely as agents
12 for Petitioner acting as principals, and as such, constitute
13 acts that, if Petitioner performed them herself, are not
14 violative of the Labor Code of the State of California;

15 4. Labor Code Section 1700.44(d) bars any claim by
16 Petitioner that Respondents acted as unlicensed talent agency,
17 inasmuch as any negotiation of any employment by Respondents
18 on behalf of Petitioner was in conjunction with and at the re-
19 quest of a licensed talent agency; and

20 5. Respondents' administration of Petitioner's employ-
21 ment relationships with Petitioner's employers, pre-existing
22 at the time of the establishment of the personal management-
23 artist relationship between Respondents and Petitioner, in
24 fulfilling Respondents' role as Petitioner's personal
25 managers, is and was, at all times mentioned in the Petition
26 conducted by Respondents solely as agents for Petitioner ac-
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1 ting as principals, and as such, constitute acts that, if
2 Petitioner performed them herself, are not violative of the
3 Labor Code of the State of California.

4 It should be noted that, although Petitioner originally
5 brought this action against Respondents, Michael R. Morris and
6 Bettie J. Davie, Petitioner produced a memo at the hearing in-
7 dicating that Davie has withdrawn her claim for compensation
8 and, since Petitioner introduced no evidence to establish any
9 agency, employee or partnership relationship between Davie and
10 Morris, the claim will be decided with reference to Respon-
11 dent, Michael R. Morris. Petitioner, herself, testified that
12 Petitioner requested Davie's services and that Ms. Davie was
13 paid separately by Petitioner's business manager, so it is
14 determined that various references made during the hearing to
15 activities of Betty Davie are irrelevant.

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17 II

18 ISSUES

19 Inasmuch as Respondents were admittedly not licensed as
20 talent agents, the issues are as follows:

21 1. Is Petitioner's claim barred in whole or in part by
22 the one-year statute of limitations provision in Labor Code
23 Section 1700.44(c)?

24 2. Did Respondents procure, offer, promise or attempt
25 to procure employment on Petitioner's behalf in violation of
26 the Talent Agency Act?
27

1 Labor Code Section 1700.44(d) provides:

2
3 "It is not unlawful for a person or corporation
4 which is not licensed pursuant to this chapter to
5 act in conjunction with, and at the request of, a
6 licensed talent agency in the negotiation of an
7 employment contract."

8 IV

9 DISCUSSION AND FINDINGS

10 The threshold issue to be decided is whether the
11 Petitioner's claim is barred in whole or in part by the one-
12 year statute of limitations provision in Labor Code Section
13 1700.44(c). Petitioner has alleged seven specific instances
14 of illegal activity by Respondents. Specifically, in Septem-
15 ber and October of 1987, a "Freedom" coffee commercial in
16 Japan for Pepsi-Cola Company; in November, 1987 a performance
17 at the Oscar Micheaux Awards Ceremony; in June, 1988 a perfor-
18 mance at the Hampton Jazz Festival; in July, 1988 sponsorship
19 for a tour and accompanying commercial from Coors Brewing Com-
20 pany; in August, 1988 a performance at the 19th Annual South-
21 western State University Jazz Festival; in October 1, 1988 the
22 performance of the National Anthem at the Hoosier Dome; and
23 sometime in 1988 an appearance on the T.V. dance show "soul
24 train".

25 As to the first three alleged violations (Pepsi-Cola
26 Company, Oscar Micheaux Awards and Hampton Jazz Festival)
27 since each occurred more than one year prior to the filing of

1 Petitioner's claim on June 29, 1989, these claims are barred
2 by the one-year statute of limitations provision in Labor Code
3 Section 1700.44(c).

4 Regarding the remaining four alleged instances of un-
5 licensed talent agent activity by the Respondents, the
6 evidence established the following:

7 Petitioner engaged Respondent as her attorney in 1986.
8 In early 1987 Petitioner was represented by the Berkeley
9 Talent Agency but did not have a personal manager. On October
10 12, 1987, Petitioner entered into a three-year written agree-
11 ment with the William Morris Agency (a licensed talent agency)
12 and on November 1, 1987, entered into a written personal
13 management agreement with Respondent. Thus, at the time the
14 parties entered into said written agreement, and at all times
15 thereafter, Petitioner was represented the William Morris
16 Agency (hereinafter referred to as "Agency"). In late Novem-
17 ber or early December, 1988, Petitioner wished to terminate
18 the management agreement with Respondent.

19 Coors Tour and Commercial

20 Petitioner alleges that in July, 1988 Respondent began
21 negotiations with Coors Brewing Company for sponsorship of a
22 tour and an accompanying commercial. Petitioner alleges that
23 Respondent had several meetings regarding this employment op-
24 portunity with Lu Vason, an independent promoter from Denver,
25 Colorado, and Ivan Berwell, a representative from the Coors
26 Company. Although the tour never materialized, Petitioner al-

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1 leges that negotiations had "progressed to the point of dis-
2 cussing fees for Lu Vason for his services and putting the
3 parties together."

4 However, Scott Pang, Petitioner's "responsible agent"
5 at the Agency, testified that, in general, his job is to nego-
6 tiate any and all deals for his clients and further, that, to
7 his knowledge, Respondent had never negotiated any deals on
8 behalf of Petitioner. Regarding the Coors deal, specifically,
9 Pang testified that he was contacted directly by Lu Vason, who
10 Pang has known for years. Pang then turned the matter over to
11 Nina Nisenholtz, who is in charge of all promotional deals at
12 the Agency.

13 Nisenholtz testified that the Agency was involved from
14 the very beginning of the deal, and that very early in the ne-
15 gotiations there was a meeting with everyone in attendance
16 (Respondent, Coors representatives, and the Agency).

17 Nisenholtz further testified that there were numerous con-
18 ference calls throughout the negotiations and that it was
19 during the second or third conversation that she, herself,
20 brought up the subject of fees because, as she testified, it
21 is her responsibility to do so. Nisenholtz specifically
22 denied that Respondent ever came to her with the fees already
23 set as Petitioner alleges.

24 **Southwestern State University Jazz Festival**

25 Petitioner alleges that the Agency was not notified of
26 this particular scheduled appearance until weeks after Respon-
27 dent had received notice of the concert and had negotiated and

1 confirmed Petitioner's fee and appearance. In support of this
2 allegation, Petitioner introduced an August 18, 1988 letter to
3 Respondent from Dr. Terry Segress, Director, requesting
4 Respondent to advise him of the availability and fee of
5 Petitioner for the dates in question. Petitioner also intro-
6 duced a telefax transmission cover sheet from Respondent to
7 Scott Pang dated September 13, 1988 apparently for the submis-
8 sion of a document dealing with this particular appearance;
9 however, the attachment itself was not introduced.

10 Petitioner's allegation rests on the fact that there was al-
11 most a month delay between the letter from Dr. Terry Segress
12 to Respondent on August 18, 1988 and the transmission of some
13 unidentified document from Respondent to Scott Pang on Septem-
14 ber 13, 1988.

15 However, Pang testified that he, alone, conducted the
16 negotiation of this offer and that he had spoken to the school
17 several times over the years and had always refused to commit
18 Petitioner because, in Pang's opinion, they could not offer
19 Petitioner the fee that he felt she should command. Pang fur-
20 ther testified that on this particular occasion he again
21 refused, since Petitioner, at this point, had recorded an al-
22 bum.

23 Hoosier Dome

24 Petitioner alleges that Respondent negotiated an Oc-
25 tober 1, 1988 appearance at the Hoosier Dome in Indianapolis
26 where she was to sing the National Anthem for the Circle City
27 Classic football game. As evidence, Petitioner introduced a

1 September 13, 1988 letter from Tiffany Barsotti of
2 Respondent's office to J. Johnson, Program Director, stating
3 that, pursuant to Mr. Johnson's request, Respondent was send-
4 ing a letter to confirm Petitioner's appearance on the date in
5 question.

6 Pang testified that this was a non-commissioned ap-
7 pearance, since Petitioner was performing for no fee, and that
8 Bettie Davies informed him of the engagement and requested
9 that he "block it out" on the calendar. (Pang testified that
10 the Agency does not issue contracts nor get involved with
11 non-commissioned appearances).

12 Soul Train

13 Petitioner alleges that sometime in 1988, Respondent
14 attempted to secure an appearance for her on the T.V. dance
15 show, Soul Train. However, Petitioner provided no specific
16 factual allegations, correspondence or any other evidence to
17 support her contention that Respondents attempted to procure
18 this appearance.

19 However, Mr. Pang testified that Respondent normally
20 directed all requests for television appearances to the agency
21 due to the Agency's significant industry contacts. Respondent
22 testified that Petitioner wanted an appearance on the show and
23 that, since his television contacts were nonexistent, he re-
24 quested the agency to make an effort. (Apparently, the agency
25 had attempted, also, to procure an appearance for Petitioner
26 on the Johnny Carson show, without success).

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1 Finally, Kevin Murray, an agent at William Morris
2 during Petitioner's relationship with the Agency testified, in
3 general, that he gave Pang assistance when necessary and that
4 Respondent was not an aggressive manager. (In fact,
5 Petitioner, herself, testified that this is why she wished to
6 terminate the contract).

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8 V

9 CONCLUSION

10 In sum, Petitioner has simply not made her case.
11 Petitioner testified at the hearing that Respondent made the
12 "arrangements" regarding all seven of the alleged engagements
13 and then turned them over to the William Morris Agency to have
14 the Agency work out the details.

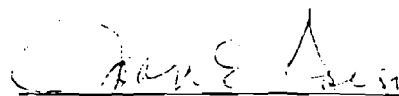
15 In addition to the fact that Petitioner produced no
16 evidence to support this allegation, the testimony of Mr.
17 Pang, Ms. Nisenholtz and Mr. Murray, employees of the William
18 Morris Agency, established that they conducted all procurement
19 and negotiation of employment for Petitioner, and that Respon-
20 dent was in daily communication with one or more of them
21 regarding Petitioner and that, contrary to Petitioner's asser-
22 tion, they could recall no instance in which Respondent sub-
23 mitted to them a "done deal" whereby Respondent had procured
24 and negotiated the terms of employment.

25 Petitioner alleges that, since 1953, the Labor Commis-
26 sioner has consistently construed the Act and its predecessor
27 to encompass any unlicensed procurement activity, regardless

1 of the procuring entity's overall activity. Petitioner cites
2 Buchwald vs. Superior Court, 254 Cal.App.2d 347; (1967) for
3 the proposition that the fundamental purpose and intent of the
4 Act is to prevent even isolated acts of procuring employment.

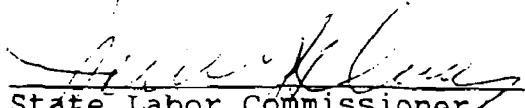
5 Labor Code Section 1700.44(d), however, provides that
6 it is not unlawful for a person or corporation which is not
7 licensed to act in conjunction with, and at the request of, a
8 licensed talent agency in the negotiation of an employment
9 contract. Petitioner states, in a conclusory manner, that
10 Respondent's actions were not in conjunction with nor at the
11 request of any licensed talent agency. However, three
12 employees from the William Morris Agency testified that
13 Respondent had never, to their knowledge, procured or nego-
14 tiated the terms of any employment agreement before bringing
15 it to their attention. Furthermore, even assuming that this
16 Hearing Officer had found that Respondent engaged in the
17 procurement of employment, Respondent's relationship with the
18 William Morris Agency and the testimony of witnesses would
19 render any procurement activity exempt under Section
20 1700.44(d).

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24 Dated: May 18, 1990


JOAN E. TOIGO
Special Hearing Officer

25 ADOPTED:

26 Dated: May 18, 1990


State Labor Commissioner