

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
4 BY: MILES E. LOCKER, No. 103510  
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8 Attorney for the Labor Commissioner

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BEFORE THE LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

10	WILLIAM B. JENNER,	)	No. TAC 44-95
11		)	
11	Petitioner,	)	
12	vs.	)	ORDER DENYING MOTION TO
13		)	DISMISS AND NOTICE OF
13	GEORGE WALLACH,	)	HEARING
14		)	
14	Respondent.	)	
15	_____)		

16 The above-captioned petition to determine controversy, filed  
17 on October 30, 1995, alleges, inter alia, that from 1976 to 1991,  
18 respondent performed the functions and acted in the capacity of a  
19 talent agent without a license, in violation of Labor §1700.5.  
20 Petitioner seeks a determination that the 'personal management'  
21 agreement under which respondent performed these services for  
22 petitioner is void ab initio and unenforceable, and an accounting  
23 and restitution of all amounts paid to respondent pursuant to this  
24 agreement.

25 By his motion to dismiss, respondent contends that the  
26 petition is barred under Labor Code §1700.44(c), in that the  
27 petition fails to allege the commission any wrong doing within the  
28 one-year period to its filing. Labor Code §1700.44(c) provides

1 that "no action or proceeding shall be brought with respect to any  
2 violation which is alleged to have occurred more than one year  
3 prior to the commencement of the action or proceeding". This  
4 section requires the Labor Commissioner to dismiss any untimely  
5 filed petition, irrespective of whether, or when, the respondent  
6 asserts the statute of limitations as a defense.

7 Respondent is correct in the observation that the petition  
8 fails to allege any violation within the year prior to the  
9 commencement of this proceeding. However, in a declaration  
10 attached to petitioner's opposition to the motion to dismiss,  
11 counsel for petitioner alleges that in August 1995 - - two months  
12 prior to the filing of the instant petition - - respondent filed  
13 an action against petitioner in the Los Angeles superior court,  
14 seeking recovery of commissions purportedly due pursuant to the  
15 'personal management' agreement now at issue herein.

16 If, as alleged in the petition, the 'personal management'  
17 agreement is void and unenforceable as a consequence of  
18 respondent's violation of Labor Code §1700.5, then any action  
19 taken to collect commissions purportedly due under the agreement  
20 would constitute an independent violation of the Talent Agencies  
21 Act. Since the petition was filed within one year of the filing  
22 of the superior court action, it is not barred under Labor Code  
23 §1700.44(c). Of course, any relief that might be granted would be  
24 limited to a determination of the validity of the 'personal  
25 management' contract (that is, whether the contract is void and  
26 unenforceable so as to deprive the respondent of any rights  
27 thereunder) and, if any amounts were paid to the respondent  
28 pursuant to the agreement within the one-year period preceeding

1 the filing of the petition, an order for the reimbursement of  
2 only those amounts. Any amounts paid to respondent prior to  
3 October 30, 1994 are not recoverable as a consequence of Labor  
4 Code §1700.44(c).

5 Respondent's motion to dismiss the petition is therefore  
6 DENIED. This controversy is hereby set for an evidentiary hearing  
7 before the undersigned attorney for the Labor Commissioner, to be  
8 held on July 15, 1996 at 10:00 a.m. at 107 South Broadway,  
9 Room 5015, Los Angeles, California.

10 DATED: 5/17/96



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12 MILES E. LOCKER  
13 Attorney for the Labor Commissioner  
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STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL  
(C.C.P. §1013a)

(WILLIAM B. JENNER v. GOERGE WALLACH)  
(TAC 44-95)

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 45 Fremont St., Suite 3220, San Francisco, CA 94105.

On May 17, 1996, I served the following document:

ORDER DENYING MOTION TO DISMISS AND NOTICE OF HEARING

by placing a true copy thereof in envelope addressed as follows:

KENNETH A. WEISSMAN, ESQ.  
8601 Wilshire Boulevard, Suite 900  
Beverly Hills, CA 90211-3014

NEVILLE L. JOHNSON, ESQ.  
NEVILLE L. JOHNSON & ASSOCIATES  
12121 Wilshire Boulevard, Suite 1201  
Los Angeles, CA 90025-1175

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on May 17, 1996, at San Francisco, California.

  
MARY ANN E. GALAPON