

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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9
10 BEFORE THE LABOR COMMISSIONER
11 OF THE STATE OF CALIFORNIA
12

13 JAMES MANERA,) Case No. TAC 32-96
14 Petitioner,)
15 vs.) DETERMINATION OF
16) CONTROVERSY
17)
18)
19 PETER STAMELMAN, an individual and)
20 THE STAMELMAN GROUP, a corporation,)
21 Respondent.)
22)
23)
24)
25)

26 INTRODUCTION

27 The above-captioned petition was filed on October 7,
1996, by JAMES MANERA (hereinafter "Petitioner"), alleging that
PETER STAMELMAN dba THE STAMELMAN GROUP INC., (hereinafter
"Respondents"), acted in the capacity of a talent agency without
possessing the required California talent agency license pursuant
to Labor Code §1700.5¹. Petitioner seeks from the Labor
Commissioner a determination voiding the 1995 oral agreement *ab*
initio and requests disgorgement of all payments made to respondent

¹ All statutory citations will refer to the California Labor Code unless otherwise specified.

1 arising from this agreement. Additionally, petitioner alleges
2 respondent intentionally and/or negligently misrepresented material
3 facts inducing petitioner to enter into a "deal memo" with Sony
4 Pictures Commercial Division. Petitioner seeks general, specific,
5 punitive and exemplary damages arising from respondent's tortious
6 conduct.

7 Respondent was personally served with a copy of the
8 petition on October 22, 1996. After respondent's Motion to Dismiss
9 based on the Labor Commissioner's lack of jurisdiction was denied,
10 the respondent filed his answer with this agency on May 6, 1999.
11 Respondent alleged twenty six (26) affirmative defenses, most
12 notably, respondent did not act in the capacity of a talent agency.
13 A hearing was scheduled before the undersigned attorney, specially
14 designated by the Labor Commissioner to hear this matter. The
15 hearing commenced on September 3, 1999, in Los Angeles, California.
16 Petitioner was represented by Michael J. Plonsker of Lavelly &
17 Singer. Respondent failed to appear. Due consideration having
18 been given to the documentary evidence and arguments presented, the
19 Labor Commissioner adopts the following determination of
20 controversy.

21
22 FINDINGS OF FACT

23 1. In August of 1995 the parties entered into an oral
24 agreement, whereby respondent would act as petitioner's personal
25 manager in connection with all activities conducted within the
26 entertainment industry. In exchange for those services, respondent
27 would be entitled to 15% of petitioner's gross earnings.

1 Additionally, according the terms of the oral agreement, respondent
2 would be reimbursed for all travel and related business expenses
3 incurred by respondent who is domiciled in New York.

4 2. On August 31, 1995, at respondent's request,
5 petitioner paid an initial \$5,000.00 fee advance to respondent as
6 a "good faith" payment for respondent's services. In October of
7 1995 respondent made the first of three trips to California
8 attempting to secure employment on petitioner's behalf. Again,
9 respondent requested a \$500.00 advanced payment for traveling which
10 petitioner paid. While in Los Angeles, respondent made various
11 phone calls to production companies on petitioner's behalf
12 resulting in two or three meetings between the parties and
13 prospective employers. One such meeting culminated in petitioner's
14 employment as a director with Off Duty Productions. Respondent's
15 actions included, telephoning the producer, setting up the meeting
16 and negotiating the terms of the contract. The evidence produced
17 at the hearing demonstrated respondent received \$3,705.00 as 15% of
18 petitioner's earnings. Respondent recouped an additional \$265.94
19 for travel related expenses.

20 3. Again in early November 1995, respondent requested
21 an additional \$5,000.00 payment, of which \$4,500.00 petitioner
22 reluctance paid. At the end of November 1995, respondent embarked
23 on his second trip to California attempting to secure employment
24 for petitioner. Respondent telephoned numerous production
25 companies attempting to set up meetings with prospective employers.
26 These telephone calls produced two meetings rendering no
27 employment. Respondent was reimbursed \$520.55 for incurred travel

1 expenses.

2 4. Respondent's final trip to California occurred in
3 March of 1996. Again the evidence demonstrated respondent's
4 repeated efforts on petitioner's behalf, specifically repeated
5 phone calls to production companies attempting to secure employment
6 in the entertainment industry. Respondent contacted Sony's
7 Commercial Division and arranged a meeting between respondent,
8 petitioner, and Sony representatives. This meeting culminated in
9 a "deal memo" negotiated by respondent containing the following
10 express terms: Petitioner would be awarded a \$150,000.00 signing
11 bonus of which respondent would receive 15% or \$22,500.00.
12 Respondent would be paid \$20,000.00 by Sony as a finders fee.
13 Finally, respondent negotiated a 2% profit participation and
14 producer screen credit. The aforementioned terms would be
15 memorialized in a subsequent long form agreement.

16 5. Petitioner expressed reservation regarding the terms
17 of the "deal memo". Specifically, petitioner objected to respondent
18 receiving a finders fee, profit participation and screen credits.
19 Petitioner opined his interests were not being properly
20 safeguarded, complaining of inherent conflicts of interest.
21 Petitioner relayed these concerns to respondent who assured
22 petitioner that any concerns regarding the "deal memo" could be
23 rectified prior to the completion of the long form agreement.
24 Prior to finalizing the long form agreement, respondent received
25 the \$20,000.00 finders fee and \$22,500.00 in commissions.
26 Petitioner suggested independent counsel negotiate the long form
27 agreement, but respondent insisted his personal counsel draft the

1 long form agreement. Communications deteriorated and the
2 relationship was formally severed in June of 1996.

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4 CONCLUSIONS OF LAW

5 1. Labor Code §1700.4(b) includes "directors" in the
6 definition of "artist" and petitioner is therefore an "artist"
7 within the meaning of §1700.4(b).

8 2. Respondent is not a licensed California talent
9 agency².

10 3. The primary issue is whether based on the evidence
11 presented at this hearing, did the respondent operate as an
12 unlicensed "talent agency" within the meaning of §1700.40(a). Labor
13 Code §1700.40(a) defines "talent agency" as, "a person or
14 corporation who engages in the occupation of procuring, offering,
15 promising, or attempting to procure employment or engagements for
16 an artist or artists." The statute also provides that "talent
17 agencies may in addition, counsel or direct artists in the
18 development of their professional careers."

19 4. Labor Code section 1700.5 provides that "no person
20 shall engage in or carry on the occupation of a talent agency
21 without first procuring a license therefor from the Labor
22 Commissioner." In Waisbren v. Peppercorn Production, Inc (1995)
23 41 Cal.App.4th 246, the court held that any single act of procuring

24
25 ² The Labor Commissioner's Licensing and Registration Unit maintains
26 records of all talent agencies that are, or have been licensed by the State Labor
27 Commissioner. A search of these records reveals that no license has ever been
issued to a business operating under the name "Peter Stamelman or The Stamelman
Group."

1 employment subjects the agent to the Talent Agencies Act's
2 licensing requirement, thereby upholding the Labor Commissioner's
3 long standing interpretation that a license is required for any
4 procurement activities, no matter how incidental such activities
5 are to the agent's business as a whole. Applying Waisbren, it is
6 clear respondent acted in the capacity of a talent agency within
7 the meaning of §1700.4(a).

8 5. Respondent's actions on behalf of petitioner
9 included repeated phone calls to production companies attempting to
10 procure employment for petitioner. Respondent on various occasions
11 organized meetings between the parties and production companies and
12 negotiated the material terms of an employment contract. This
13 activity clearly falls within the definition of procuring
14 employment or engagements for an artist within the meaning of
15 §1700.4(a).

16 6. Having determined respondent acted as an unlicensed
17 talent agent, it follows respondent is subject to all laws
18 regulating talent agencies. Labor Code §1700.39, states, "[n]o
19 talent agency shall divide fees with an employer, an agent or other
20 employee of an employer." Respondent's negotiations with Sony,
21 ostensibly conveys upon respondent compensation from the employer
22 contingent upon profit margins received by the employer.
23 Respondent's efforts to secure a 2% profit participation contained
24 in the "deal memo" with Sony violates Labor Code §1700.39.

25 7. Further, respondent accepted a \$20,000.00 finders
26 fee from the employer. This practice commonly called "double
27 dipping", is a breach of fiduciary duty, and a violation of the

1 Talent Agencies Act. It has long been the historical policy of the
2 Labor Commissioner to preclude agents from receiving finders fees.
3 Acquiescence of this practice would encourage agents to negotiate
4 monies benefitting the agent over and above the commission
5 percentage required to be filed with the Labor Commissioner. This
6 would effectively supercede the amount of compensation approved by
7 the Labor Commissioner and render regulatory control over
8 compensation meaningless.

9 8. As a result of respondent's unlawful conduct, the
10 aforementioned agreement between respondent and petitioner is
11 hereby void *ab initio* and is unenforceable for all purposes.
12 Waisbren v. Peppercorn Inc., supra, 41 Cal.App. 4th 246; Buchwald
13 v. Superior Court, supra, 254 Cal.App.2d 347.

14 9. With respect to petitioner's claim for damages
15 stemming from intentional or negligent misrepresentation, the Labor
16 Commissioner is without jurisdiction over tort causes of action.

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19 ORDER

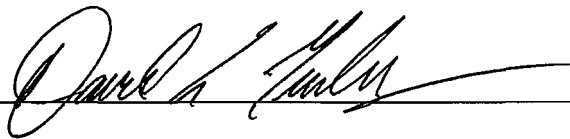
20 For the above-stated reasons, IT IS HEREBY ORDERED that
21 the 1995 oral contract between respondent PETER STAMELMAN dba THE
22 STAMELMAN GROUP and petitioner JAMES MANERA is unlawful and void *ab*
23 *initio*. Respondent has no enforceable rights under that contract.

24 Petitioner is entitled to recoup \$32,279.87 in payments
25 made to respondent resulting from the aforementioned illegal
26 contract. Petitioner is precluded from recouping the initial
27 October 31, 1995 \$5,000.00 "good faith" payment, as respondent

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collected this payment outside the one-year statute of limitations prescribed by Labor Code §1700.44(c).

Dated: 11/10/99



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 11/10/99



MARCY SAUNDERS
State Labor Commissioner

