

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
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6 BEFORE THE LABOR COMMISSIONER  
7 OF THE STATE OF CALIFORNIA

8 CLEROW WILSON, professionally	)	NO. MP 456
9 known as FLIP WILSON,	)	
	)	AMC 13-78
10                   Petitioner,	)	
	)	DETERMINATION
11                   v.	)	
	)	
12 MICHAEL BERGMAN,	)	
	)	
13                   Respondent.	)	
	)	
	)	
	)	
	)	
	)	

16 The above entitled controversy came on regularly for  
17 hearing on March 19 1979 before the Labor Commissioner,  
18 Division of Labor Standards Enforcement, Department of  
19 Industrial Relations, State of California, by John H. Stewart,  
20 Senior Counsel for the Division of Labor Standards Enforcement,  
21 under the provisions of Section 1700.44 of the Labor Code of  
22 the State of California; petitioner CLEROW WILSON,  
23 professionally known as FLIP WILSON, appearing through  
24 Swerdlow, Glikberg & Shimer by Michael L. Glickfeld and  
25 Judianne J. Jaffe, attorneys, and respondent MICHAEL BERGMAN  
26 ("Bergman"), appearing by and through Pollock, Rigrod and Bloom  
27 by Jonathan David Rapore, attorney; evidence, both oral and  
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1 documentary having been introduced, and the matter being  
2 briefed by counsel and submitted for decision the following  
3 determination is made:

4 DETERMINATION

- 5 1. Respondent was at all times herein unlicensed as an  
6 Artist's Manager\* under Labor Code section 1700, et  
7 seq..  
8 2. Petitioner was at all times relevant and artist  
9 within[] the meaning of Labor Code section 1700.4.  
10 3. Respondent did not act as Artist Manager in violation  
11 of Labor Code section 1700.4.

12 Labor Code section 1700.4 defines an artist's manager\* as:

13 ". . . a person who engages in the occupation of  
14 advising, counseling, or directing artists in the  
15 development or advancement of their professional  
16 careers and who procures, offers promises or attempts  
17 to procure employment or engagements for an artist  
18 only in connection with and as a part of the duties  
19 and obligations of such person under a contract with  
20 such artists by which such person contracts to render  
21 services of the nature above mentioned to such  
22 artist."

23 California Administrative Code, title 8, section 1200(b),  
24 defines an artist's manager as:

25 "A person, who, for a consideration, advises,  
26 counsels or direct artists in the development or  
27 advancement of their professional careers and who, in  
28 fact, either procures, offers, promises, or attempts  
to procure employment or engagements for an artist  
shall be deemed to be an artists' manager even though  
the agreement or contract with an artist provides  
that there is no obligation to do so."

The fact that petitioner was an artist within the meaning  
of Artist's Managers Act (Labor Code sec. 1700 et seq.) is

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\* "Artist's Managers are presently known as talent agencies by a  
1978 amendment to Labor Code section 1700.4.

1 uncontroverted. Furthermore, it is undisputed that Michael  
2 Bergman was not at the times pertinent herein a licensed artist  
3 manager under the Act. Also, uncontroverted is the fact that  
4 Wilson and Bergman had some sort of business relationship for a  
5 period beginning August 1977 and ending February 1978.

6 The question raised is whether or not Bergman in carrying  
7 out his obligations under the business relationship with Wilson  
8 acted as an unlicensed artist manager.

9 The facts elicited from the evidence presents an other  
10 than clear conclusive case for either proposition. The facts  
11 in short are in conflict.

12 Bergman was intimately involved in all aspects of Wilson's  
13 career during his business association with Wilson. The  
14 evidence indicates that Bergman gave Wilson counsel and also  
15 had some part in the obtaining of certain employments. Of  
16 importance, it should be noted that throughout the business  
17 association of Bergman and Wilson, Wilson employed booking  
18 agents. The booking agents were primarily the William Morris  
19 Agency and Regency Artist. While the employment of booking  
20 agents would not of itself eliminate the possibility of some  
21 other individual or entity acting as an unlicensed artist-  
22 manager for an artist, it would give some indication of whether  
23 the parties involved intended to circumvent or by-pass artist-  
24 managers licensing requirements.

25 Before evaluating Bergman's actions the question of  
26 exactly what the relationship was between Wilson and Bergman  
27 must be explored. The facts are clear that there was no written  
28 agreement between the parties. Instead there was some oral

1 arrangement by which Bergman was paid approximately \$116,000  
2 for seven months services to Wilson. Notwithstanding, the  
3 absence of a written contract the services performed are  
4 subject [to the ruling - *illegible in copy*] of this tribunal.

5 The leading case of Buchwald v. Superior Court (1967) 254  
6 Cal.App. 2d 347, 350 sets the following standard for applying  
7 the law herein. "The Act is a remedial statute. Statutes such  
8 as the Act are designed to correct abuses that have long been  
9 recognized and which have been the subject of both legislative  
10 action and judicial decision (citation omitted)." Such  
11 statutes are enacted for the protection of those seeking  
12 employment.

13 Essentially, the engagements obtained for Wilson during  
14 the period of August 1977 through February 1978 were largely  
15 obtained through the use of the William Morris Agency.  
16 Bergman's activities on behalf of Wilson are much more  
17 questionable in regards to the efforts made to obtain a  
18 television series with ABC. In regards to this proposed  
19 television series the evidence revealed that Bergman had more  
20 of a direct involvement in the negotiations of the terms of the  
21 proposed series.

22 However, factually, the case at hand differs significantly  
23 from the situation facing the court in the Katz case. In the  
24 Katz case the situation presented was that of relatively  
25 unknown entertainers who were looking to get started in the  
26 entertainment business and who as a result were completely  
27 dominated by their managers.

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1 In the present case, the facts reveal a relatively well-  
2 known entertainer of some stature. Throughout the period  
3 involved, Mr. Wilson was represented by an attorney and booking  
4 agents. The activities of Bergman must be viewed against this  
5 background. Also, there is some evidence that the relationship  
6 which existed may have been that of a joint venture which would  
7 tend to indicate that Bergman's activities were aimed at  
8 furthering that joint venture. There is no doubt that  
9 Bergman's activities in general approach precariously close to  
10 violating [the letter and spirit of Labor Code section -  
11 *illegible in copy*] 1700.3. However, when his activities are  
12 weighed against the presence of the William Morris Agency and  
13 Regency Artist and the personal involvement of Wilson himself,  
14 the weight of the preponderance of the evidence indicates that  
15 the decision must go in favor of respondent Bergman and  
16 Wilson's petition must be rejected.

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18 Dated: January 9, 1980.

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20 JAMES L. QUILLIN, Labor Commissioner  
21 Division of Labor Standards  
Enforcement  
22 Department of Industrial Relations  
23 State of California

24  
25 By \_\_\_\_\_/s\_\_\_\_\_  
John H. Stewart, Attorney  
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