

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
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(Endorsed)

FILED
APR 27 1981

Labor Commissioner
State of California

R. Juliana Fogaruello
Clerk

BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

10 LOUIS ST. LOUIS, an individual and)
11 ST. LOU-WES EXPRESSION, LTD.,)
12 a corporation,)

13 Petitioners,)

14 v.)

15 HOWARD B. WOLF, an individual and)
16 WOLFHEAD PRODUCTIONS, INC.,)

17 Respondents.)

18 WOLFHEAD PRODUCTIONS, INC.)

19 Cross-Petitioner,)

20 v.)

21 RSO RECORDS, INC. and BIG FOOT)
22 PRODUCTIONS, INC.,)

23 Cross-Respondents,)

NO. SF MP 57
TAC 29-79

DETERMINATION
AND AWARD

RECEIVED
APR 29 1981
Asst.....

23 The above-entitled Petition for Determination of Contro-
24 versy came on regularly for hearing, commencing on April 29,
25 1980. Richard N. Dinallo, Esq., presiding as Special Hearing
26 Officer for, and on behalf of the Labor Commissioner of the
27 State of California. Stephen F. Rohde, Esq., and Harold

1 Messing, Esq., appeared on behalf of Petitioners and Cross-Respon-
2 dents, and Terry Steinhart, Esq., appeared on behalf of Respondents
3 and Cross-Petitioners.

4 Evidence, both testimonial and documentary, having
5 been introduced and the matter having been duly submitted, and

6 GOOD CAUSE APPEARING THEREFOR, the following
7 Determination and Award is made:

8 FINDINGS OF FACT

9 The parties stipulated during the hearing that Respon-
10 dents, at all times herein mentioned, were unlicensed by the
11 State of California, to act or perform services as Artists'
12 Managers, as defined by Labor Code, §§1700, et seq. (hereinafter
13 referred to as "the Act"). (R. T. 150) Further, the Labor Commis-
14 sioner granted RSO RECORDS, INC.'S (originally named as Cross-
15 Respondent) Motion to Dismiss on the grounds that the Labor
16 Commissioner lacked jurisdiction over said party and that it
17 was not properly joined for purposes of this Controversy. Nor
18 were any of the agreements (Exhibits A through E), executed
19 by the parties, ever approved by the Labor Commissioner (R. T. 150)

20 Summarized, Petitioner, LOUIS ST. LOUIS, is a
21 singer/song-writer/composer/musician (R. T. 112) and met Respon-
22 dent, HOWARD WOLF, sometime in May of 1976. The latter approached
23 ST. LOUIS to discuss "a possible artists' manager relationship";
24 that as his manager, WOLF could be "very effective in getting him
25 a record deal" (R. T. 76). WOLF represented that he was on a
26 "one-to-one basis with most of the decision-making people" with
27 several major record companies and club owners (R. T. 77 & 78)

1 The allegations contained on page 6 of the Petition are deemed
2 true.

3 Subsequently, WOLF attempted to engage ST. LOUIS to
4 perform in several clubs (R. T. 102). On August 4, 1976, the
5 parties executed a personal management agreement; "HOWARD WOLF
6 being the manager and LOUIS ST. LOUIS being the artist" (R. T. 101)
7 WOLF had been operating a "personal management company" (R. T. 639)
8 under the fictitious name of "WOLF AND ASSOCIATES" but its bank
9 account was closed around May, 1976, and ceased as a viable
10 entity because WOLF had legal problems with a car rental business
11 and wanted to preclude it from attaching any moneys being held
12 in the WOLF AND ASSOCIATES account. (R. T. 483, 641-643). The
13 existing money was transferred to an account bearing the name
14 of WOLFHEAD PRODUCTIONS, INC., a co-respondent named herein.
15 (R. T. 640). Thereafter, ST. LOUIS was paid out of the WOLFHEAD
16 PRODUCTIONS, INC. account (R. T. 644). At times, commissions
17 earned by WOLF as a manager, were deposited in the WOLFHEAD
18 account. (R. T. 471).

19 WOLFHEAD PRODUCTIONS, INC., (hereinafter referred
20 to as "WOLFHEAD"), was a recording production company, whose
21 sole purpose and function was to produce Petitioner -- no other
22 artist being involved. (R. T. 655). It was to find and promote
23 Artists. (R. T. 382) WOLF was the sole shareholder of WOLFHEAD; a
24 director and president. Its address and phone number are the
25 same as those of WOLF and WOLF AND ASSOCIATES. (R. T. 309).
26 At times, stationery of the two entities was used interchangeably.
27 (R. T. 380-384). WOLF personally received commissions pursuant to

1 correspondence on WOLFHEAD stationery (R. T. 383). Personal money
2 was deposited into the WOLFHEAD account (R. T. 483).

3 He admitted he had managed artists in the music industry
4 since 1963 (R. T. 310). "I am the personal manager". (R. T. 319)
5 WOLF testified that, pursuant to the August 4th agreement, he
6 would be Petitioner's "personal manager" (R. T. 321).

7 Respondents advanced Petitioner various sums of money
8 so as to "invest in ST. LOUIS' career. . . . as a manager it
9 was important for LOUIS . . . to put on a showcase so record
10 people could come and see him and use the money in any area
11 that I (WOLF) felt, be it publicity, or whatever, that needed
12 to be done." (R. T. 339-340).

13 Believing the August 4th agreement to be in violation
14 of the Act, WOLF initiated the execution of a subsequent November
15 19th, 1976 agreement (R. T. 363),

16 This agreement, entitled "Conference of Personal
17 Managers" (Petitioner's Exhibit No. 11 admitted into evidence)
18 reads, in part, as follows:

19 "I desire to obtain your advice, counsel and
20 direction in the development and enhancement of
my artistic and theatrical career"

21 This latter agreement was signed by "HOWARD B. WOLF" and LOUIS
22 ST. LOUIS (R. T. 372).

23 While ST. LOUIS' manager (R. T. 303), WOLF, introduced
24 ST. LOUIS to WOLFHEAD whereby another agreement was entered
25 into between ST. LOUIS and WOLFHEAD on or about December 29,
26 1976 (R. T. 386-388), the purpose of securing the agreement was
27 to "make a deal" with C. A. M. (a previous company which had signed

1 with Petitioner ST. LOUIS whereby a second engagement could
2 be secured (R. T. 295; 388). WOLFHEAD, pursuant to its terms,
3 would receive a "50-50 split" with Petitioner (R. T. 304) based
4 upon any moneys received by WOLFHEAD in selling Petitioner's
5 master recordings to outside record companies. WOLF testified
6 that in signing Petitioner to WOLFHEAD, he was acting on behalf
7 of WOLFHEAD and not as ST. LOUIS' manager (R. T. 390).

8 As a manager, WOLF testified that his function was
9 "to advise and counsel (ST. LOUIS) with respect to the different
10 facets of his career and to assist as liaison for him." Commis-
11 sions paid to Respondents by Petitioner appear somewhat
12 conflicting depending upon whether 15% was paid on the Mocambo
13 gross of \$15,000.00 (or \$14,000.00 (R. T. 117)) in addition to
14 those other items testified to by Petitioner or whether those
15 items included the \$15,000.00 amount (R. T. 282; 287-288; 289). If
16 the former is the case, Petitioner paid Respondents 15% of
17 \$105,400.00 or \$15,810.00. Further, conflicting testimony reveals
18 that Respondents were paid \$15,210.00 (R. T. 164).

19 WOLF told ST. LOUIS that he could "book him" at the
20 Roxy Theatre (R. T. 114-116). Apparently, ST. LOUIS was thereafter
21 so "booked" (R. T. 473) and performed the engagement as a "show-
22 case". (R. T. 117) (a term used in the theatrical industry to
23 mean that the performer does not actually get paid for the engage-
24 ment but, rather, performs for publicity reasons.) WOLF further
25 "shopped" Petitioner's tapes to Twentieth Century Fox Records,
26 A & M Records, and perhaps a dozen others (R. T. 115).

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1 Services performed, at Media Sound for instance, were
2 immediately commissioned by WOLFHEAD pursuant to the December 29th
3 agreement (R. T. 127-128). When Petitioner was put in charge
4 of post-production of the music for the "Grease" soundtrack,
5 WOLF gave "all the encouragement in the world" (R. T. 141).
6 Respondents were actively engaged in negotiations on Petitioner's
7 behalf with R. S. O. Record Company regarding the "Grease" produc-
8 tion (R. T. 143). On Petitioner's behalf, WOLF negotiated and
9 agreed to a \$20,000.00 amount for Petitioner's services (R.T. 145).
10 Indeed, WOLF admitted having represented Petitioner as his client
11 (R. T. 157, 465); that he could get ST. LOUIS a record deal
12 (R. T. 76). He, in fact, attempted to "get a distribution deal"
13 with A & M Records (R. T. 478), Capitol Records (R. T. 479),
14 Elektra, R. S. O. and Portrait Record Companies (R. T. 481).
15 He negotiated a record whereby Petitioner and Ann-Margaret would
16 jointly perform (R. T. 484). Similarly, WOLF engaged a liaison
17 between Petitioner and Stockard Channing (R. T. 485).

18 ISSUES

- 19 1. WAS PETITIONER ST. LOUIS AN "ARTIST" FOR
20 PURPOSES OF THE ACT?
21 2. WERE RESPONDENTS "MANAGERS" WITHIN THE
22 MEANING OF THE ACT? IF SO, DID THEY UNLAW-
23 FULLY PERFORM SERVICES OF ARTISTS'-MANAGERS?
24 3. WAS WOLFHEAD PRODUCTIONS, INC. THE "ALTER
25 EGO" OF HOWARD B. WOLF?
26 4. MAY THE PREVAILING PARTY BE AWARDED
27 ATTORNEY FEES?
- 26 /// ///
27 /// ///

1 his career and further, offered and subsequently did promise,
2 attempt to procure, and did procure employment for his admitted
3 client, as an admitted manager, as amply borne out by the facts
4 heretofore cited.

5 Further, the evidence illustrates that Respondent
6 WOLF was acting throughout the course of dealings with Petitioner
7 in bad faith, as his admission of his possible unlawful conduct
8 during the hearing bears witness -- together with his superseding
9 the original August 4th agreement on two or three subsequent
10 occasions as further substantiation. Believing himself to be
11 unlawfully acting as an artists' manager, he attempted to cloak
12 his conduct, first by substituting a widely-used professional
13 managers' agreement and then, still feeling justifiably insecure,
14 creating a corporation (WOLFHEAD) whose apparent exclusive
15 function was to sell the product of Petitioner's talent to third
16 party record companies for a 50% commission. Clearly, Respondent's
17 inculpatory conduct is consistent with one acting in
18 malum prohibitum and, therefore, inconsistent with mere negligent
19 folly. Here, we need not ferret out an illegality which is so
20 blatantly unlawful on its face.

21 Further, even assuming, arguendo, that Petitioner
22 knew at the time of his entering into the various agreements with
23 Respondent that such contracts were unlawful, artists cannot
24 generally be in pari delicto since they are a member of the
25 class for whose benefit the Act was passed. supra, Buchwald at 351

26 Respondents, having stipulated that they were never
27 licensed by the Labor Commissioner, and further that the contracts

1 between the artist and manager never approved, we find that
2 HOWARD B. WOLF and HOWARD WOLF, individually and doing business as
3 WOLF AND ASSOCIATES acted unlawfully as artists' managers as
4 a matter of law.

5 Further, we find that Respondent, WOLFHEAD PRODUCTIONS,
6 INC. was the "alter ego" of WOLF, by the very criteria submitted
7 in his own brief as recited in Associated Vendors, Inc. v. Oakland
8 Meat Co., 210 C.A. 2d 825; 26 Cal. Rptr. 806 (1962):

9 1. Commingling of funds: WOLF admitted depositing
10 commissions payable to him as Petitioner's manager to the WOLFHEAD
11 account.

12 2. Diversion of funds: WOLF admitted placing personal
13 funds into the corporate account to place them out of reach
14 of a potential creditor.

15 3. Confusion of records of two separate entities:
16 WOLF admitted using stationery of WOLFHEAD and WOLF AND ASSOCIATES
17 interchangeably in reference to billings (Mocambo engagement).

18 4. Dominion and control of two entities: WOLF solely
19 owned WOLF AND ASSOCIATES and was sole shareholder and President
20 of WOLFHEAD.

21 5. Use of same business location which was clearly
22 established by the record.

23 6. Use of corporation as a mere shell and conduit
24 for single venture or business of an individual: The evidence
25 established that Petitioner was WOLFHEAD'S sole "raison d'etre."
26 The corporate purpose was to sell recordings of Petitioner to
27 outside record companies.

1 7. Failure to maintain arm's length relationship
2 among related entities. (see No. 1 above).

3 8. Use of corporate entity to procure labor for anothe
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5 9. Diversion of assets to the detriment of creditors
6 or manipulation of assets and liabilities between entities so
7 as to concentrate the assets in one and liabilities in another
8 and to create a shield against personal liability. (see No. 2).

9 10. Use of corporate status as a subterfuge of illegal
10 transactions: as discussed herein, we find that WOLFHEAD, as
11 discussed herein, unlawfully functioned as an artists' manager.

12 And while "the equities in any given case are the
13 controlling factors," the rule serves to operate unfortunately
14 against its invoker. We are pressed to find a more flagrant
15 attempt to unlawfully create a corporate shield than the one
16 here involved. No reason was professed for the corporation's
17 creation than to produce business and remuneration to be derived
18 from the pandering of Petitioner's talent. No distinction logical
19 or in experience exists between WOLFHEAD and any other manager.
20 The fact that it was ostensibly a "production company" does
21 not insulate it from its correlative, if not superlative, function
22 and purpose. That purpose, we find, was to direct and advise
23 the artist in the development of his professional career and
24 to attempt to, and in fact accomplish, procuring employment.
25 And while that employment is, perhaps, unorthodox, it is neverthe-
26 less "the putting of one to work." See the American Heritage
27 Dictionary (1973). And even if WOLFHEAD'S concretizing deals with

1 outside record companies did not constitute procuring employment
2 for petitioner, it indirectly accomplished the same effect,
3 since Petitioner's remuneration was contingent upon its success.
4 In any case, WOLF, as manager, directly procured the liaison
5 between Petitioner and WOLFHEAD to perform work, labor and
6 services. The mere fact that money was to be filtered through
7 the corporate framework does not render the reality of an employ-
8 ment any the less efficacious.

9 A "person" for purposes of the Act, may be a corporation.
10 Labor Code, §1700. Further, we reaffirm our holding in Kearny
11 v. Singer, No. MP-429; AM-211-MC that "procurement" includes
12 a negotiation whose directed or logically intended purpose is
13 to market an artist's talent -- whether it be executed or execu-
14 tory. We go further to hold that frustration of that purpose
15 does not preclude one from having violated the Act, since the
16 attempt to procure is sufficient. Theories entitling the violator
17 to recover the reasonable value of services predicated upon
18 equitable theories of quantum meruit have no application where
19 either he who seeks relief has "unclean hands" -- as is the
20 case where bad faith has been established -- or where such relief
21 has not been properly pleaded and not cured by timely amendment.
22 We find both to be the case here. Nothing herein is inconsistent
23 with our holding in Kearny. Only by refusing to place the malcontent
24 in the position he was in before this specie of illegality occurred
25 can the purpose of the Act be served, whose object is to "suppress
26 the mischief at which it is directed." supra, Buchwald.

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1 Respondents contend that their arranging a "showcase"
2 for Petitioner does not constitute a violation under the Act
3 since such an event is performed without compensation to the
4 artist or commission to the manager, and is therefore, not a
5 "procuring of employment" as the term is employed in Labor Code
6 §1700.

7 We hold, however, that since the admitted purpose
8 of a "showcase" is to create publicity for the artist whereby
9 employment is intended to result, such arrangements, when effected
10 or participated in by the manager, constitutes an attempt to
11 procure employment within the confines of the statute, id. Any
12 other rule would permit an unlicensed manager to meddle on the
13 outer periphery of conduct whose only "logical" purpose is to
14 gain financial advantage once such engagements result in events
15 more economically rewarding. Our purpose is to render such tempta-
16 tions untantalizing. Such conduct is not, we hold, so attenuated
17 because it may, in a particular case, fail of further success
18 despite itself. The Act is to be liberally construed to suppress
19 the mischief at which it is directed. Buchwald, supra.

20 The fact that others in the industry deem it expedient
21 to form "production companies" which advise and counsel artists
22 in their career development and offer or attempt to procure
23 employment -- arguendo on a large-scale basis -- constitutes
24 no defense to Respondents. It is unfortunate that some, and
25 not others, are held accountable, but the remedy "does not lie
26 in the exoneration of the guilty at the expense of society." Peop
27 v. Montgomery, 47 C.A. 2d 1, 14; 117 P. 2d 437 (1941).

1 Here, WOLF was WOLFHEAD. So identical were their mutual
2 personalities that WOLF, in dealing with clubs and companies,
3 omitted reference to WOLFHEAD altogether. Rather than comply
4 with the licensing requirements of the law, he sought to sign
5 Petitioner to an exclusive corporate agreement whereby he could
6 derive a far greater sum than he would have been able to commission
7 as a run-of-the-mill manager. The inequity of this kind of exploi-
8 tation is even more pernicious, therefore, than is the case
9 with the usual unlicensed manager who charges no more than the
10 usual 15-20% commission. By virtue of its exclusivity and exploita-
11 tive quality, then, Respondent's corporate device is far more
12 injurious to the artist. And those who create such elaborate
13 structures must suffer all losses occasioned by their collapse.

14 And finally, we conclude that Petitioners may not
15 recover attorneys' fees or travel costs. Even, assuming, that
16 despite the fact that we were to find all contracts between
17 the parties null and void, we could give effect to the attorney
18 fee provisions therein contained, the fact remains that such
19 fees are awardable either where (1) an action is brought to
20 enforce the agreements or (2) where an action is brought to remedy
21 a breach. The present controversy involves neither situation.

22 Accordingly, we need not decide whether Civil Code,
23 §1717 affords mutuality of remedy. No statute having been cited
24 whereby such an award is authorized, and the agreement between the
25 parties not being applicable to the case at bar, each party must
26 bear his own fees. Travel costs are not allowed in any case. We
27 make no determination as to other costs.

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WHEREFORE, the following award is made:

1. All agreements between the parties hereto -- specifically, but not limited to those executed during 1976 -- are declared null and void; that Petitioners have no liability thereunder, and that Respondents have no rights or privileges thereunder; and,

2. An accounting is forthwith ordered by Petitioners of Respondents, whereby Respondents are to collect and submit to Petitioners an itemization of all commissions collected from Petitioners. That Respondents forthwith pay Petitioners all commissions, royalties, and moneys received by Respondents, or any of them, directly or indirectly, pursuant to Exhibits A through E, inclusive, and as may otherwise be shown to be due Petitioners by such accounting; and,

3. That Respondents, and each of them, are denied any reimbursement, claim or offset for any moneys purportedly or actually spent by them, or any of them, on behalf of or in connection with Petitioners or Cross-Respondents or any of them.

DATED: 11/2/78

Richard N. Dinallo
RICHARD N. DINALLO, ESQ.
Special Hearing Officer for
The Labor Commissioner

APPROVED: 11/2/78

Louis Giannini
LOUIS GIANNINI, ESQ.
Chief Counsel and Supervising
Special Hearing Officer of the
Labor Commissioner



ADOPTED: 11/2/78

Albert J. Reyff
ALBERT J. REYFF
Acting Labor Commissioner

