

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 BY: THOMAS S. KERRIGAN, State Bar No. 36003
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4 Special Hearing Officer
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8 **BEFORE THE LABOR COMMISSIONER**

9 **STATE OF CALIFORNIA**
10

11 GARY MYRICK,) CASE NO. TAC 2-98
12)
Petitioner,) DETERMINATION OF CONTROVERSY
13)
vs.)
14)
DAVID WEAVER)
15)
Respondent.)
16)

17 The above-entitled controversy came on regularly for hearing before
18 the Labor Commissioner, Division of Labor Standards Enforcement, State of
19 California by Thomas S. Kerrigan, serving as Special Hearing Officer under
20 the provisions of Labor Code Section 1700.44.

21 Petitioner Gary Myrick [hereinafter referred to as "Myrick"]
22 appeared in this matter through Attorney Dinah Perez. Respondent David
23 Weaver [hereinafter referred to as "Weaver"] appeared in propria persona.

24 Myrick, a musician and composer, alleges that he entered into a
25 written contract with Weaver, entitled "Personal Management Agreement" on
26 or about March 20, 1996. That contract provided that Weaver would counsel
27 and advise Myrick, but would not procure employment for him. Myrick

1 alleges, however, that Weaver did, in fact, solicit and procure
2 performance engagements for him in 1996, and, furthermore, that Weaver
3 demanded and received \$11,300.00 in commissions in February of 1997.
4 Myrick seeks a decision finding the written agreement void and further
5 seeks recovery of the aforementioned commissions.

6 In a written response to the Petition, Weaver admits that he entered
7 into the written agreement in question with Myrick, but otherwise denies
8 the material allegations thereof.

9 ISSUES

10 The issues in this matter are twofold:

11 1. Did Weaver function as an unlicensed talent agent in violation
12 of the Talent Agencies Act?

13 2. If so, to what relief, if any, is Myrick entitled?

14 DISCUSSION AND FINDINGS

15 Evidence, both oral and documentary, was introduced during a single
16 day of hearing in the case. The key issue addressed by both sides was the
17 specific nature of the relationship between the parties. Weaver conceded
18 that he was not a licensed talent agent.

19 The parties had an existing relationship prior to entering into the
20 written agreement, a relationship that went back at least until early
21 1995. It is uncontroverted that Myrick was a party to an agreement with a
22 licensed talent agent (Rajiworld) in 1995, and with another licensed
23 talent agent (Whitaker Agency) in 1997. Whatever actions Weaver took on
24 Myrick's behalf during these two years, based on the evidence presented at
25 the hearing, appears to have been in conjunction with these licensed
26 talent agents.

27 Both sides agree that during 1996 Myrick was mostly on the road on a
28 concert tour in which Weaver was in no way involved as far as any

1 solicitation, negotiations, or arrangements. There were, however, a few
2 performances by Myrick at Lucille's and Jack's Sugar Shack in 1996. There
3 is a direct dispute in the testimony concerning both the nature of these
4 appearances and the respective roles of the parties in obtaining this
5 work. Weaver says these were noncommercial affairs arranged by Myrick to
6 promote a new CD of his with no payment to Myrick from the club operators.
7 Myrick states that there were cash amounts paid to him by these club
8 operators but he is unable to recall either the dates he played at these
9 venues or the amounts received. Myrick called Saul Davis as a witness.
10 Davis booked talent at Lucille's during the period 1995 to 1997. Though
11 he could not specify the dates, acknowledging that he arranged for over
12 1000 acts during this period, Davis believed he booked Myrick at Lucille's
13 on three or four occasions somewhere between late 1995 and 1996. While he
14 testified that he remembered that Weaver was responsible for soliciting
15 these performances, he admitted on cross-examination that Myrick might
16 have solicited this work directly, since Myrick and Davis had been
17 acquainted prior to this time.

18 The only commissions actually obtained by Weaver during the term of
19 the written agreement are reflected in a check for \$11,300.00 received by
20 him in February of 1997. The parties agree that this check is solely for
21 commissions for television commercials Myrick obtained himself without
22 Weaver's knowledge or participation. Clearly, Weaver had nothing to do
23 with soliciting or negotiating the terms of this employment inasmuch as he
24 only learned of these transactions long after the fact.

25 While the burden of proving a violation of the licensing provisions
26 of the Talent Agencies Act is not a heavy one (*Waisbren v. Peppercorn*
27 *Productions, Inc.* (1995) 41 Cal. App. 4th 246, 255-260;; *Hall v. X*
28 *Management, Inc.* T.A.C. 19-90 at pp. 29-30), that burden still rests with

1 petitioner and must be satisfied by the introduction of competent and
2 credible evidence.

3 After due consideration, the Special Hearing Officer finds that
4 petitioner has failed to sustain his burden of proof with competent and
5 credible evidence. Myrick's testimony was, at best, nebulous with regard
6 to a number of important details. It must be noted that during the course
7 of the hearing he made statements and then retreated from them under
8 cross-examination. Conversely, he allowed many statements of Weaver to go
9 un rebutted. Myrick admitted, moreover, that he would only be "guessing"
10 about dates worked and amounts earned during 1995 and 1996. His testimony
11 accordingly falls short of his burden of persuasion.

12 CONCLUSIONS OF LAW

13 1. Petitioner is an "artist" within the meaning of Labor Code
14 §1700.44(b).

15 2. The Labor Commissioner has jurisdiction to determine this
16 controversy pursuant to Labor Code §1700.44(a).

17 3. Respondent acted in conjunction with licensed talent agents
18 during the years 1995 and 1997 within the meaning of Labor Code
19 §1700.44(d).

20 4. Petitioner has failed to sustain his burden to show that
21 respondent acted as an unlicensed talent agent in violation of Labor Code
22 §1700.5 during 1996.

23 DETERMINATION

24 The Petition is dismissed on the ground that petitioner has made no
25 satisfactory showing of a violation by respondent of the Talent Agencies
26 Act.

27 Dated: January 6, 1999

28 *Thomas Kerrigan*
THOMAS S. KERRIGAN
Special Hearing Officer

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The above determination is adopted in its entirety.

Dated:

1/19/99

J. W. Miller
Labor Commissioner