

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 State of California
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5
6 BEFORE THE LABOR COMMISSIONER
7 OF THE STATE OF CALIFORNIA
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10 NATALIE HINDS p/k/a MACY GRAY,) Case No. TAC 18-00
Petitioner,)
11 vs.) DETERMINATION OF
CONTROVERSY
12)
13 LORI LEVE, d/b/a LORI LEVE)
MANAGEMENT,)
14 Respondents.)
15)

16
17 INTRODUCTION

18 The above-captioned petition was filed on June 20, 2000,
19 by NATALIE HINDS p/k/a "MACY GRAY", (hereinafter Petitioner, or
20 "GRAY"), alleging that LORI LEVE dba LORI LEVE MANAGEMENT,
21 (hereinafter Respondent or "LEVE"), acted as an unlicensed talent
22 agency in violation of §1700.5¹ of the California Labor Code.
23 Petitioner seeks a determination voiding *ab initio* the management
24 agreement entered into between the parties, and requests
25 disgorgement of all sums respondent earned for purported management
26

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

1 services.

2 Respondent filed her answer with this agency on August 1,
3 2000, maintaining various affirmative defenses including, *inter*
4 *alia*, lack of jurisdiction, statute of limitations, estoppel and
5 waiver. A hearing was scheduled before the undersigned attorney,
6 specially designated by the Labor Commissioner to hear this matter.
7 The hearing commenced on January 31, 2001, in Los Angeles,
8 California. Petitioner was represented by Stephen D. Rothschild of
9 King, Purtich, Holmes, Paterno & Berliner, LLP; respondent appeared
10 through her attorney Henry D. Gradstein of Gradstein, Luskin & Van
11 Dalsem. Due consideration having been given to the testimony,
12 documentary evidence, arguments and briefs presented, the Labor
13 Commissioner adopts the following Determination of Controversy.

14
15 FINDINGS OF FACT

16 1. In January of 1998, Macy Gray was searching for a
17 personal manager to guide her suddenly flourishing musical career.
18 Gray was introduced to Leve in January of 1998 and soon thereafter
19 Gray accepted Leve's proposal to act as her personal manager,
20 albeit on a six-month trial basis. Under the terms of the oral
21 contract for Leve's personal services, Leve would be compensated by
22 15% of Gray's earnings, 7 1/2% paid directly to Leve and the
23 remaining 7 1/2% placed in a trust account for Gray's benefit. If
24 at the end of the six month period, the parties mutually agreed
25 that the relationship would continue, the monies held in the trust
26 account would be transferred to Leve.

27 2. On July 30, 1998, Leve wrote Gray's transactional
28 attorney, Jill Berliner, asserting her perceived new position as

1 Gray's "official" manager, seeking the contents of the trust
2 account. On September 10, 1998, Ms. Berliner transferred the
3 amounts held in trust to Leve who then received her entire 15%
4 commission directly thereafter.

5 3. The gravamen of petitioner's claim include two
6 engagements allegedly procured by Leve during the initial six-month
7 probationary period. On February 16, 1998, Gray performed an
8 engagement at the Los Angeles nightclub *Luna Park*. This
9 performance was created by the respondent. Leve contacted the
10 owner of the club, her friend, and requested whether she could
11 utilize the club in order to "showcase²" her new client for the
12 purpose of securing a recording contract. Leve invited various
13 executives from several record companies hoping Gray's live
14 performance would arouse interest and prompt a record deal. That
15 is exactly what occurred. As a direct result of the *Luna Park*
16 showcase, Gray signed with Epic records in or around April of 1998.
17 Gray did not receive compensation from *Luna Park* and consequently,
18 Leve did not receive a commission. It was determined through
19 credible testimony of both parties that the sole purpose of this
20 event was to secure a recording contract.

21 4. The second engagement allegedly procured by the
22 respondent included a June 28, 1998 performance at a small venue
23 named *The Mint*. Gray had performed at *The Mint* several times and
24 in the past booked her own engagements with Jed the owner of the
25 club. The president of Epic Records, Gray's new label, thought a

26 ² To "showcase" an artist, contemplates a live performance intended to
27 accomplish a specific desired result. The performance is not for immediate
28 profit, but rather for a deferred benefit, i.e., publicity, securing a recording
contract, seeking a talent agent and/or a myriad of other purposes.

1 showcase displaying Gray's musical talents for the executives at
2 Epic was a good idea. The respondent and petitioner both testified
3 that the intent behind *The Mint* showcase was not only to display
4 Gray's talents, but moreover to attract a talent agent. In pursuit
5 of that goal, Leve invited Epic executives, Gray's transactional
6 team and scores of agents from various high profile music industry
7 talent agencies. The show accomplished the desired result and Gray
8 was signed by Mitch Rose of CAA the next day.

9 5. In preparation for *The Mint* showcase, Leve contacted
10 Jed and discussed the date and time of the show, audio concerns,
11 and questioned Jed about *The Mint's* ticket policy. This discussion
12 revealed that Gray would be required to sell a minimum of five
13 tickets at \$5.00 a piece and the band would then receive \$4.00 of
14 every ticket sold after the initial five. Leve conveyed the ticket
15 policy to Gray, who immediately accepted. *The Mint's* maximum
16 occupancy was 125 persons. The show was sold out and Gray received
17 \$665.00 in compensation. Leve received a \$99.76 commission for
18 this event.

19 6. In April of 1998, Gray began recording her album,
20 "On How Life Is". Consequently, Gray expended her creative energy
21 to the production of the album and thought minimally about her
22 representation. Gray testified that during the production of the
23 album she received a call from Leve after the six-month
24 probationary period. Gray maintained she wasn't sure whether she
25 wanted to continue the relationship with Leve and instead wanted to
26 focus on completing the album. Gray did not terminate the
27 relationship, and conversely allowed the relationship to continue
28 under the same terms, except Leve was now receiving a 15%

1 commission directly. When Leve attempted to have the terms and
2 conditions of the relationship memorialized in an October 2, 1998
3 letter, petitioner did not accept, reject or counter Leve's written
4 proposal. Gray testified in October of 1998, she began to
5 experience concern over whether she wanted to continue with Leve as
6 her manager. Gray testified that Leve didn't get along with the
7 band and according to Gray, Leve didn't participate in some of the
8 creative aspects normally associated with the duties of a manager.
9

10 7. On November 16, 1998, Gray terminated Leve. Soon
11 thereafter, Gray discontinued commission payments to Leve and has
12 since failed to remit commission payments for the sales of "On How
13 Life Is", which to date has sold over six million copies. On
14 September 1, 1999, Leve filed suit in the Los Angeles Superior
15 Court against Gray for breach of contract and unjust enrichment,
16 Case No. BC 216122. That case is stayed pending the determination
17 of this petition.

18
19 CONCLUSIONS OF LAW

20
21 1. The primary issue is whether based on the evidence
22 presented at this hearing, did the respondent operate as a "talent
23 agency" within the meaning of Labor Code §1700.4(a). Specifically,
24 has the Respondent acted as an unlicensed talent agency by
25 procuring the *Luna Park* or *The Mint* engagements? Labor Code
26 §1700.4(a) defines "talent agency" as:

27 "a person or corporation who engages
28

1 in the occupation of procuring,
2 offering, promising, or attempting
3 to procure employment or engagements
4 for an artist or artists, except
5 that the activities of procuring,
6 offering, or promising to procure
7 recording contracts for an artist
8 shall not of itself subject a
9 person...to regulation and licensing
10 under this chapter."

11
12 2. The parties stipulated that the petitioner is an
13 "artist" within the meaning of Labor Code §1700.4(b), and that the
14 respondent has never held a talent agency license.
15

16 LUNA PARK

17 3. It was clearly established that the intent behind
18 the *Luna Park* showcase was to procure a recording contract for
19 Gray. In furtherance of that intent, Leve invited a host of label
20 executives. Leve surmised that when record companies witnessed
21 Gray's live performance, they would assuredly offer her a deal. As
22 a direct result of the showcase, Epic Records did.

23 4. Labor Code §1700.4(a) exempts from licensing
24 requirements the activities of procuring, offering, or promising to
25 procure recording contracts for an artist. Notably, the
26 legislature did not include an "attempt" to procure a recording
27 contact as an exemption from licensure. This would have created
28 the exception that swallowed the rule. Creative artist's
representatives, as in *Park v. Deftones, infra.*, could always
argue that unlicensed activity was in furtherance of procuring a
recording contract. "Attempt" as defined in *Black's Law Dictionary*
5th Edition means, "an intent combined with an act falling short of

1 the thing intended." Here, the attempt did not fall short of the
2 desired result, and instead materialized into a recording contract.
3 This showcase was no longer an attempt to secure a recording
4 contract when the recording contract was ultimately procured. To
5 "procure" means "to get possession of: obtain, acquire, to cause to
6 happen or be done; bring about." *Webster's New International*
7 *Dict.*, at p. 1809. The sole purpose for this performance was to
8 procure a record deal. That is what occurred, and in this case,
9 the end justifies the means. The respondent's efforts in creating
10 this engagement was an activity to procure a recording contract.
11 Consequently, the procurement of this engagement does not require
12 a license.

13 5. The petitioner cites Park v. Deftones 71 Cal.App.4th
14 1465, which stands for the proposition that a manager who procured
15 more than eighty (80) engagements over several years, and did not
16 take a commission for his involvement was still subject to the
17 Act's licensing requirements. Like Leve, Park argued that securing
18 these performances were attempts to secure a recording contract.
19 The Park court disregarded that argument and held the purpose of
20 the Act is remedial, and its aim goes beyond regulating the amount
21 of fees which can be charged for booking acts. For example, an
22 agent must have his form of contract approved by the Labor
23 Commissioner, maintain his client's funds in a trust fund account,
24 record and retain certain information about his client, and refrain
25 from giving false information to an artist concerning potential
26 employment. Because the Act is remedial, it should be liberally
27 construed to promote its general object. The abuses at which these
28 requirements are aimed apply equally where the personal manager

1 procures work for the artist without a commission, but rather for
2 the deferred benefits from obtaining a recording contract. Park v.
3 Deftones supra, at 1471, 1472.

4 6. Deftones is distinguishable in several respects.
5 First, it is preposterous to embrace Park's argument that more than
6 eighty (80) performances were procured solely for the purpose of
7 securing a record deal. As discussed, 80 performances procured by
8 an artist's representative is precisely the conduct the legislature
9 intended to regulate. Here, evidenced by the invited guests and
10 irrefutable testimony of both parties, the sole intent of the *Luna*
11 *Park* engagement was to secure a record contract, which was
12 accomplished. This was a one shot performance. The concerns
13 addressed in Park, were simply not present here.

14 7. Secondly, the Deftones performances were clearly
15 employment. Gray's unpaid "showcase" cannot be considered
16 employment. Bloomberg v. Butler Labor Commissioner Case No. TAC
17 31-94, states, "[t]he term 'employment', if it is to have any
18 logical meaning within the context used in the Act, implies payment
19 for the services rendered." Moreover, Leve satisfied a primary
20 responsibility to her unsigned musical artist, by creating a record
21 deal enabling Gray to concentrate on her artistic endeavors.
22 Consequently, the *Luna Park* performance was not the procurement of
23 employment or an engagement for an artist within the meaning of the
24 Act because this engagement did not present any issues and/or
25 concerns contemplated by the legislature when drafting the
26 protective mechanisms of the Act. Even, *arguendo*, if *Luna Park* was
27 considered the procurement of an engagement for an artist, this
28 engagement was the procurement of a recording contract and is thus

1 exempt from a licensing requirement. This holding does not create
2 a blanket exemption for all "showcases" attempting to secure a
3 recording contract. Each alleged engagement must be scrutinized on
4 a case by case basis. Here, the intent of the parties, coupled
5 with the invited guests and ultimate outcome, clearly established
6 the sole purpose for this event and demonstrated to the hearing
7 officer that the procurement of this event was not the type of
8 engagement requiring a license.

9
10 **THE MINT**

11 8. In addition to securing a recording contract on
12 behalf of an artist, the primary duties of a manager are, "[i]n
13 essence ... advising, counseling, directing and coordinating the
14 artist in the development of the artist's career. The manager's
15 task encompasses matters of both business and personal
16 significance. ... The manager also serves as a liaison between the
17 artist and other personal representatives, arranging their
18 interactions with, and transactions on behalf of, the artist... By
19 orchestrating and monitoring the many aspects of the artist's
20 personal and business life, the personal manager gives the artist
21 time to be an artist. That is, managers liberate artists from
22 burdensome yet essential business and logistical concerns so that
23 artists have the requisite freedom to discharge their artistic
24 function and to concentrate on their immediate creative task
25 In this regard, the personal manager is an indispensable element of
26 an artist's career." Waisbren v. peppercorn 41 Cal.App.4th 246, 252
27 citing, *O'Brien, Regulation of Attorneys Under California's Talent*
28 *Agencies Act: a Tautological Approach to Protecting Artists* (1992)

1 80 Cal.L.Rev. 471, 481-483.

2 9. Leve's job was to alleviate Gray's logistical
3 representative concerns. To accomplish that, Gray required a
4 licensed talent agent. And that is what Leve did. After Leve
5 secured Gray's recording contract, Gray was free to concentrate on
6 her art, producing her highly celebrated and successful album "On
7 How Life Is". Throughout this time period, Leve did not procure
8 employment for Gray. Instead, she concentrated on securing Gray a
9 competent licensed talent agent, necessary for any future
10 performances, personal appearances or concert tours associated with
11 the album. In pursuit of this goal, Leve again created another
12 "showcase" intended to display Gray's capabilities. This time the
13 "showcase" was created for talent agents. Again, Leve envisioned
14 agents scampering to represent Gray after viewing her live
15 performance.

16 10. The method was similar to that of Luna Park. The
17 issue is whether the compensation received by Leve for her
18 participation in procuring *The Mint*, or the fact that an engagement
19 procured for the intended result of securing a talent agent, which
20 is not exempted within the Act, requires a talent agency license.

21 11. The \$98.00 received by Leve for this one-time show
22 was simply fortuitous. On the one hand, "we recognize the
23 legislature intended to cover those who are compensated for their
24 procurement activities." Waisbren supra pg. 254. While on the
25 other, we do not believe the existence of compensation is
26 dispositive of whether procurement requires licensure. Again, the
27 guest list was provided, disclosing talent agents and Epic
28 employees. The intent of this show was adequately established

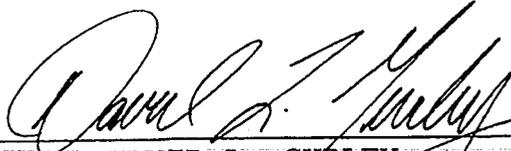
1 through documentary evidence and the testimony of both parties.
2 Gray needed an agent and that is what she received, stemming
3 directly from Leve's conduct. The Labor Commissioner cannot in
4 good conscious punish a manager for being an unlicensed talent
5 agent for coordinating an event created for the purpose of securing
6 a licensed talent agent.

7 12. Waisbren establishes "[t]he clear object of the
8 Talent Agencies Act is to prevent improper persons from becoming
9 talent agents and to regulate such activity for the protection of
10 the public." Waisbren, at 261 *supra*. Leve acted in good faith, is
11 not an improper person and does not require regulation for the
12 protection of the public. Her actions [*The Mint*] were conducted
13 not for the purpose of evading or avoiding the Act, but to comply
14 with it. Leve did her job. She obtained a recording contract and
15 acquired an agent. And she did so in the most expeditious and
16 effective way possible. She highlighted her client's talents
17 through a live performance. The legislature surely did not intend
18 to prohibit a manager from serving her client in this fashion.

19 13. This is not a radical departure, as some might
20 argue, from the historical holdings of the Labor Commissioner. The
21 facts of this case are unique and the holding is fact specific. As
22 discussed, this determination does not conflict with Deftones, nor
23 does it conflict with Waisbren. Waisbren negotiated deals on
24 behalf of Peppercorn for regional television commercials and home
25 video projects as well as a Dick Clark Productions pilot.
26 Waisbren, *supra* pg. 251. Leve's involvement with the two
27 performances do not encroach upon illegal procurement as
28 demonstrated in these Second District Court of Appeals decisions.

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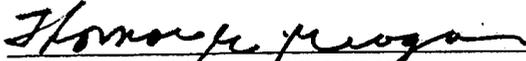
Dated: July 13, 2001



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: JUL 13 2001



TOM GROGAN
Deputy Chief