

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 State of California
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6 BEFORE THE LABOR COMMISSIONER

7 OF THE STATE OF CALIFORNIA

8
9 NORTON STYNE,) Case No. TAC 33-01
Petitioner,)
10 vs.) DETERMINATION OF
CONTROVERSY
11)
12 CONNIE STEVENS, an individual; CONNIE)
STEVENS FOREVER SPRING - THE BEAUTY)
13 SYSTEM, INC., a California)
corporation; CONNIE STEVENS FOREVER)
14 SPRING II - THE BEAUTY SYSTEM INC., a)
Nevada corporation; and DOES 1 through)
15 50, inclusive,)
Respondent.)
16)
17)

18 INTRODUCTION

19 This Talent Agency Controversy comes by way of remand
20 from the California Supreme Court in *Styne v. Stevens* (2001) 26
21 Cal.4th 42.

22 The above-captioned petition was filed on November 15,
23 2001 by NORTON STYNE (hereinafter "Petitioner"), requesting the
24 Labor Commissioner deny jurisdiction and determine there is no
25 controversy under the Talent Agencies Act.

26 CONNIE STEVENS, an individual; CONNIE STEVENS FOREVER

1 SPRING - THE BEAUTY SYSTEM, INC., a California corporation; CONNIE
2 STEVENS FOREVER SPRING II - THE BEAUTY SYSTEM INC., a Nevada
3 corporation; and DOES 1 through 50, inclusive, (hereinafter
4 respondent), filed her response on December 10, 2001. Respondent
5 argues she acted in the capacity as an "artist"; the petitioner
6 acted as an unlicensed talent agency in violation of Labor Code
7 §1700.5¹; and consequently, the alleged oral agreements by Styne
8 are void *ab initio* and unenforceable for all purposes.

9 After several scheduled hearing dates, the parties
10 stipulated to submit the case via deposition transcripts,
11 reporter's transcripts from trial and Appendixes in Lieu of the
12 Clerk's Transcripts from the appeal. Respondent is represented by
13 Patricia L. Glazer and Elizabeth G. Chilton of Christensen, Miller,
14 Fink, Jacobs, Glazer, Weil & Shapiro, LLP; Petitioner is
15 represented through his attorneys Deborah Drooz, Barry B. Langberg
16 and Mitchell J. Langberg of Strook & Strook & Lavan LLP.

17 Briefing was completed on June 9, 2003. Due
18 consideration having been given to the documentary evidence and
19 briefs submitted, the Labor Commissioner adopts the following
20 determination of controversy.

21
22 FINDINGS OF FACT

23
24 1. Connie Stevens is a renowned entertainer, well known
25 for singing, acting and dancing in movies and television.

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

1 Throughout her career, Norton Styne, was both her "very good
2 friend" and personal manager. As Stevens' personal manager,
3 Styne's duties included, arranging concert details, including
4 hiring dancers, make-up, wardrobe, lighting and booking shows.
5 Additionally, Styne would act as Stevens "buffer" when Stevens
6 denied access to the general public or persons presenting business
7 opportunities.

8 2. As Stevens' movie roles, concerts and public
9 appearances waned and earnings decreased, Stevens sought Styne to
10 rejuvenate her career. Styne promised he would seek every
11 entertainment opportunity on Stevens' behalf, so that she could
12 emerge from financial difficulties. Styne soon thereafter
13 discovered the gaining popularity of direct television sales of
14 merchandise and initiated conversations with the president of the
15 Home Shopping Network's (HSN or Network) entertainment division,
16 Kenneth Yates. Mr. Yates explained to Styne the tremendous
17 financial opportunity the Network could offer celebrities of
18 Stevens' caliber. Styne quickly explained the HSN concept to
19 Stevens who immediately instructed Styne to pursue all Network
20 opportunities. Essentially, a primary function of the HSN's
21 entertainment division was to hire celebrities to endorse and sell
22 a line of products via a television infomercial directly to the
23 public.

24 3. The HSN not only retailed products on television
25 but the entertainment division also had the ability to develop
26 other forms of marketing to raise the Network's awareness,
27 including the ability to produce records and organize concert

1 tours. Consequently, Styne sought all opportunities with the HSN
2 on behalf of Stevens including, discussions with HSN executives
3 about record deals, concert tours and the possibility of Stevens
4 becoming a spokesperson for HSN products.

5 4. In February of 1989, Styne arranged a meeting with
6 Stevens and HSN executives in Los Angeles. At that meeting Stevens
7 first discussed the idea of a restorative skin care line that she
8 and other business associates were developing. Stevens indicated
9 she was primarily interested in, not acting as a celebrity
10 spokesperson for another's product, but instead desired to sell her
11 own product directly to viewers. HSN was clearly interested in
12 Stevens' concept and Stevens left the meeting eager to continue the
13 creative process of product development.

14 5. While Stevens continued to develop her line of skin
15 care products, Styne continued to seek other entertainment related
16 employment opportunities on behalf of Stevens with HSN. Styne and
17 Yates deliberated in great detail on concerts, and record deals.
18 In fact detailed concert budgets were projected, drafted and
19 discussed. These efforts by Styne to obtain entertainment
20 engagements on behalf of Stevens were ultimately rendered
21 unsuccessful as Stevens skin care products quickly became the focal
22 point of the HSN-Stevens relationship.

23 6. In June of 1989, Stevens finalized her product
24 line. The Home Shopping Network quickly purchased \$1,000,000.00
25 worth of Stevens' product line, incorporated under the name,
26 *Forever Spring, Inc.*, to retail directly to the public. The
27 agreement between HSN and Stevens provided that Stevens "will

1 appear on HSN at her expense until all product sells out." In
2 short, Stevens manufactured and packaged the product, and then sold
3 the product wholesale to HSN. Stevens was then obligated to use
4 her best efforts on television to sell the product directly to
5 consumers on behalf of HSN. The infomercial aired and Stevens' on-
6 air personality was tremendously received by the viewing public.
7 Forever Spring, Inc., and the HSN profits soared beyond
8 expectations.

9 7. During the infomercial, Stevens introduced and
10 described her products, received live phone calls and answered
11 questions regarding the products as well as inquiries into her
12 entertainment background. The public was clearly enamored with
13 Stevens' easy on-camera persona.

14 8. The parties disagree as to Styne's financial
15 participation with *Forever Springs, Inc.* But, it is clear that
16 Stevens regularly compensated Styne directly from *Forever Springs*
17 profits for the first several years of the successful corporation.
18 Styne contends he was promised 10% of *Forever Springs, Inc.*
19 profits, which Stevens vehemently denies. In 1994, Styne sought
20 unpaid profits from Stevens. When Stevens failed to respond to
21 Styne's demands, Styne accused Stevens of breaching two oral
22 agreements promising 10% of the *Forever Springs, Inc.*

23 9. In January of 1996, Styne filed a breach of contract
24 lawsuit against Stevens seeking more than \$4,000,000.00 in unpaid
25 profits. That proceeding is stayed pending the results of this
26 Talent Agent Controversy Determination.

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CONCLUSIONS OF LAW

1. The Labor Commissioner has primary and exclusive jurisdiction to hear and determine controversies, arising between an artist and a talent agent, pursuant to Labor Code section 1700.44(a).

The issues are:

A) Whether Connie Stevens acted as an "artist" when selling products on the Home Shopping Network?

B) Whether Styne acted as an unlicensed talent agent when attempting to seek entertainment engagements on behalf of Stevens with the Home Shopping Network, and if so;

C) Whether Styne's unlawful conduct permeates and therefore taints the alleged oral agreements conferring 10% of Forever Springs, Inc. profits to Styne?

IS STEVENS AN ARTIST?

2. Labor Code §1700.4(b) defines "artists"

"'Artists' means actors and actresses rendering services on the legitimate stage in the production of motion pictures, radio artists, musical artists...and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises."

1
2 3. It is clear that Stevens has been an "artist" as
3 defined in the statute for most of her life. The petitioner
4 contends "once an artist not always an artist" and argues Stevens
5 is now a business woman simply selling products wholesale to the
6 Home Shopping Network. The petitioner goes to great lengths to
7 distinguish Stevens' show-business life from her business
8 enterprise life.

9 4. Since the inception of the original underlying
10 lawsuit, both parties have changed their position as to whether
11 Stevens acted in an entertainment capacity while selling *Forever*
12 *Springs, Inc.* As a result, the testimony of both parties on this
13 issue is equally unavailing. A close analysis of the infomercial
14 is a better approach. The Labor Commissioner concludes that
15 Stevens show-business life and her wholesale business enterprise
16 life are "inextricably intertwined." Stevens used her name,
17 personality, charm and charisma to sell the product on television.
18 Moreover, the original \$1,000,000 purchase order by the Home
19 Shopping Network of Stevens' products required Stevens to appear on
20 television as a condition of the sale. Specifically, the purchase
21 order required her to appear on television until all the products
22 sold out. The testimony of Kenneth Yates also indicated that the
23 Network was interested in Stevens' products if Connie Stevens, sold
24 the product on their network. In fact, the HSN "assumed" that
25 Stevens would appear and the Network controlled the number of her
26 appearances.

27 5. A review of Stevens' infomercial indicated a rough

1 script was followed, entertaining stories were told and interaction
2 with the buying public was engaged. A totality of the
3 circumstances supports the conclusion that Stevens was acting as an
4 artist when selling the *Forever Springs, Inc.* skin care line on the
5 Home Shopping Network.

6 6. The petitioner argued that Stevens created and owned
7 the product and was therefore selling her own idea directly to the
8 public. Therefore, according to Styne, she was not acting as a
9 spokesperson or an "artist" for another, but instead was acting as
10 any business person promoting their own product. He likens
11 Stevens' sale of skin cream to that of Paul Newman selling salad
12 dressing. First, if Paul Newman was required to sell his dressings
13 via television commercials, he too would be acting as an "artist"
14 during the production of his commercials. And second, this
15 argument is bellied by the fact that the HSN purchased Stevens'
16 products prior to the products being sold directly to the public
17 and therefore HSN held title to the product. The agreement
18 according to Stevens, allowed a return of the product only if the
19 product was defective merchandise.

20 7. In short, Stevens created the product, sold it to
21 the HSN and therefore sold the product for the HSN, collecting her
22 profits on the front end. If the product sold out, another HSN
23 order would be placed. Therefore, the incentive to provide the
24 greatest salesmanship toward the product benefited both Stevens and
25 the HSN. Stevens had an obligation to sell and she used her life
26 long experience in the entertainment industry to do exactly that.

27 8. Finally, the statutory goal of protecting artists

1 is furthered when the act is liberally applied. Buchwald v.
2 Superior Court 254 Cal.App.2d 347 at 354 states, "Remedial statutes
3 should be liberally construed to effect their objects and suppress
4 the mischief at which they are directed (Lande v. Jurisich, 59
5 Cal.App.2d 613, 616-617 [139 P.2d 657]; 45 Cal.Jur.2d, Statutes, §
6 182, p. 681)... Statutes must be given a reasonable and common
7 sense construction in accordance with the apparent purpose and
8 intention of the lawmakers-one that is practical rather than
9 technical, and that will lead to wise policy rather than to
10 mischief or absurdity." (45 Cal.Jur.2d, Statutes, § 116, pp.
11 625-626.)

12 9. Here, Styne promoted his client as an artist and
13 when all was said and done, Stevens acted as an artist on
14 television. To conclude, Stevens was as an "artist" within the
15 meaning of sec. 1700.4(b) when appearing on the HSN.

16
17 **DID STYNE ACT AS A TALENT AGENT?**

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19 10. Petitioner maintains he did not act as a talent
20 agent when initiating discussions between Stevens and the HSN.
21 Styne, states, the HSN deal may have been derived from Styne, but
22 not "procured" by Styne.

23 11. Labor Code §1700.4(a) defines "talent agency" as:
24 "a person or corporation who engages in the occupation of
25 procuring, offering, promising, or **attempting** to procure employment
26 or engagements for an artist or artists" [emphasis added] In
27 Waisbren v. Peppercorn Production, Inc (1995) 41 Cal.App.4th 246,

1 the court held that any single act of procuring employment subjects
2 the agent to the Talent Agencies Act's licensing requirements,
3 thereby upholding the Labor Commissioner's long standing
4 interpretation that a license is required for any procurement
5 activities, no matter how incidental such activities are to the
6 agent's business as a whole. The term "procure", as used in this
7 statute, means to get possession of: obtain, acquire, to cause to
8 happen or be done: bring about." Wachs v. Curry (1993) 13
9 Cal.App.4th 616, 628.

10 12. Also, in 1982, AB 997 established the California
11 Entertainment Commission. Labor Code §1702 directed the Commission
12 to report to the Governor and the Legislature as follows:

13 "The Commission shall study the laws and
14 practices of this state, the State of New
15 York, ~~and other entertainment capitals of the~~
16 United States relating to the licensing of
17 agents, and representatives of artists in the
18 entertainment industry in general, . . . , so as
19 to enable the commission to recommend to the
20 Legislature a model bill regarding this
21 licensing."

22 13. Pursuant to statutory mandate the Commission
23 studied and analyzed the Talent Agencies Act in minute detail. The
24 Commission concluded in their report:

25 "[I]n searching for the permissible limits to activities
26 in which an unlicensed personal manager or anyone could
27 engage in procuring employment for an artist without
being license as a talent agent, . . . there is no such
activity, there are no such permissible limits, and that
the prohibitions of the Act over the activities of anyone
procuring employment for an artist without being licensed
as a talent agent must remain, as they are today, total.
Exceptions in the nature of incidental, occasional or
infrequent activities relating in any way to procuring
employment for an artist cannot be permitted: one either

1 is, or is not, licensed as a talent agent, and, if not so
2 licensed, one cannot expect to engage, with impunity, in
3 any activity relating to the service which a talent agent
4 is licensed to render. There can be no 'sometimes'
talent agent, just as there can be no 'sometimes' doctor
or lawyer or any other licensed professional."
(Commission Report p. 19-20)

5 14. Here, Styne's efforts on behalf of Stevens went far
6 beyond incidental or infrequent activities in an effort to obtain
7 employment with the HSN, ultimately leading to the HSN deal.
8 Initially, Styne on behalf of Stevens approached HSN to pitch
9 Stevens as a spokesperson for HSN. Moreover, Styne had many
10 discussions with HSN executives regarding the production of a
11 Stevens record followed by Stevens' concerts attended by and for
12 HSN members. In furtherance of those conversations, Styne
13 submitted budgets and spreadsheets for a record album and concert
14 appearances.

15 15. This behavior is exactly what a licensed talent
16 agent is permitted to do and exactly the behavior an unlicensed
17 manager is prohibited from doing. Applying Waisbren, it is clear
18 respondent acted as a talent agency within the meaning of Labor
19 Code §1700.4(a) by initiating contact with HSN executives and
20 following up those contacts with many efforts to secure concert
21 performances.

22 16. The distinction the petitioner attempts to make
23 between "deriving" and "procuring" the HSN relationship with
24 Stevens is misguided, as all that is needed for licensure under the
25 statute is an attempt to procure, which is clearly satisfied.
26 Therefore, Styne acted as a talent agent when pursuing employment
27

1 opportunities on Stevens' behalf with Kenneth Yates of the Home
2 Shopping Network.

3 17. Labor Code section 1700.5 provides that "no person
4 shall engage in or carry on the occupation of a talent agency
5 without first procuring a license therefor from the Labor
6 Commissioner." It was stipulated the respondent has never been a
7 licensed talent agent.

8
9 **ARE THE ALLEGED ORAL CONTRACTS VOID AB INITIO?**

10
11 18. Styne's primary argument is that *Forever Springs,*
12 *Inc.* is purely a business enterprise that is separate and distinct
13 from Stevens entertainment earnings and his relationship to Stevens
14 as her personal manager. The petitioner argues his efforts to
15 procure entertainment related opportunities with the HSN were
16 unsuccessful and the promise for 10% of Forever Springs, Inc.
17 profits is unrelated to those attempts. Therefore, Styne contends
18 his procurement efforts should not affect the alleged oral
19 contract. That argument is not convincing. Again, Stevens'
20 business and artistic lives, as well as Styne's efforts for Stevens
21 fall under one umbrella. They are "inextricably intertwined".

22 19. Styne argues, Hyperion v. Toltec TAC 7-99 stands
23 for the proposition that if he attempted to procure employment on
24 behalf of Stevens with the HSN, that determination should not void
25 the oral contract between the parties. Petitioner would have the
26 Labor Commissioner leap to the conclusion that if Styne was
27 successful in procuring employment on behalf of Stevens, it should
be assumed that he would have been compensated by commission under

1 the personal manager contract; this we cannot do. It appears that
2 Styne was compensated for his procurement efforts by the alleged
3 oral contract for 10% profits.

4 20. Hyperion is easily distinguished. In Hyperion, two
5 of four contracts entered into between the parties were held
6 outside of the jurisdiction of the Labor Commissioner. These two
7 contracts involved the artist acting as a "producer". This ruling
8 is consistent with The Labor Commissioner's historical position
9 that a producer not contributing to the creative process of the
10 production, does not act as an "artist" within the meaning of the
11 Act. Here, Stevens' role as an artist is no longer in dispute.
12 Additionally, in Hyperion the parties did not have an overall
13 contract. Each transaction was a distinct and separate deal.

14 21. Here, Styne contends that the oral agreement for
15 10% was "for his assistance in an artist's business transaction".
16 But what was his "assistance"? Simply, it was doing what he had
17 always done, attempting to secure professional employment for an
18 artist acting in her capacity as an artist. It is impossible to
19 separate his unlicensed activity with profits that were ultimately
20 derived from that unlicensed activity.

21 22. Since the clear object of the Act is to prevent
22 improper persons from becoming [talent agents] and to regulate such
23 activity for the protection of the public, a contract between and
24 an unlicensed agent and an artist is void." Buchwald v. Superior
25 Court supra.; Waisbren v. Peppercorn supra, at 261. Under Civil
26 Code section 1667, contracts that are contrary to express statutes
27 or public policy as set forth in statutes are illegal contracts and
the illegality voids the entire contract. The evidence does not

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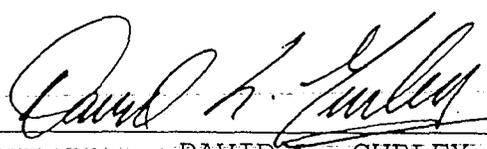
leave a doubt that respondent procured employment for his artist without possessing a talent agency license. Therefore, the alleged oral contracts for profits of *Forever Springs, Inc.* are void *ab initio*.

ORDER

1. For the above-stated reasons, IT IS HEREBY ORDERED that any alleged oral contract entitling Norton Styne to 10% of *Forever Springs, Inc.* is void *ab initio*.

2. The petitioner has no further enforceable rights under this contract.

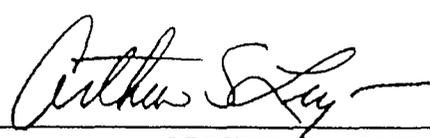
Dated: September 29, 2003



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: September 29, 2003



ARTHUR S. LUJAN
State Labor Commissioner

