

1 **STATE OF CALIFORNIA**
Department of Industrial Relations
2 Division of Labor Standards Enforcement
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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
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11 REGINALD HAYES,) CASE NO. TAC 33-02
12)
13 Petitioner,) **DETERMINATION OF CONTROVERSY**
14 vs.)
15)
16 MARATHON ENTERTAINMENT, INC., A)
17 California Corporation, RICK SIEGEL,)
18 Individually and dba as RICK SIEGEL)
19 MANAGEMENT,)
Respondent.)

20 The above-captioned petition was filed by REGINALD HAYES (hereinafter, "petitioner") on
21 September 30, 2002. Petitioner alleges that respondents Marathon Entertainment Inc., a California
22 Corporation and Richard Siegel, an individual (hereinafter collectively referred to as "respondents")
23 violated the Talent Agencies Act (hereinafter, also referred to as the "Act") by acting in the capacity
24 of a talent agent without being licensed, in violation of Labor Code section 1700.5.

25 Petitioner seeks a determination that the oral agreement between the parties violates
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1 California law and is void and subject to revocation; that respondents and each of them have violated
2 the Talent Agencies Act by failing to procure a license; that respondents and each of them have
3 illegally collected commissions from petitioner; that respondents and each of them have further
4 violated the Talent Agencies Act by demanding further illegal commission payments from petitioner;
5 that respondents and each of them be enjoined from any further illegal attempts to collect
6 commissions or to force petitioner to pay monies under the illegal agreement and that respondents
7 and each of them, pursuant to Labor Code section 1700.44(c), be required to disgorge monies
8 unlawfully obtained from petitioner for the period of time including but not limited to one year prior
9 to respondent Marathon Entertainment's filing of a complaint for damages in the Los Angeles
10 Superior Court.

11 In their response to the petition, respondents argue that the petition is barred by the
12 applicable statute of limitations; that they were not at any time relevant, doing business in the
13 capacity of a "Talent Agent"; that their conduct did not at any time relevant constitute
14 "procurement"; and to the extent their conduct is found to be procurement of employment,
15 respondents' conduct was at all relevant times in conjunction with a licensed talent agent.

16 The matter came on for hearing on November 20, 2003, before Edna Garcia Earley, Special
17 Hearing Officer, in Los Angeles, California. Petitioner appeared through his attorney, Chase Mellen,
18 III, Esq. Respondents appeared in pro per. Called as a witness by petitioner was petitioner Reginald
19 C. Hayes. Called as witnesses by respondents were respondent Richard Siegel and Gabrielle
20 Allabashi.

21 The matter was taken under submission at the close of the hearing. Based upon the testimony
22 and evidence received at this hearing, the Labor Commissioner adopts the following determination of
23 controversy.

24 FINDINGS OF FACT

25 Respondents, who stipulated to not being licensed talent agents, came to know petitioner
26 through petitioner's former talent agent Gabrielle Allabashi. Ms. Allabashi was petitioner's talent
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1 agent while employed by licensed talent agency Gold-Marshak. Ms. Allabashi left Gold-Marshak in
2 1999 and obtained employment with respondents as a personal manager in September 1999. In
3 approximately December 1999 / January 2000, Ms. Allabashi persuaded petitioner to sign with
4 respondents as a client. It was at this time that the parties entered into an oral contract. According
5 to respondent Richard Siegel's testimony, the terms of the oral contract were that respondents
6 "would try and do everything they could to change petitioner's plateau as an actor and that they
7 would try and maximize the quality and quantity of his opportunities and in exchange, petitioner
8 would pay the company 15% of his entertainment related earnings." Respondents represented
9 petitioner until petitioner terminated the relationship in the Fall of 2000.

10 Both respondent Siegel and Ms. Allabashi testified that they often procured employment
11 opportunities for clients that were not represented by talent agents, which is illegal. However, with
12 respect to a client who was represented by a licensed talent agent, respondent Siegel and Ms.
13 Allabashi testified that all procurement was done in conjunction with the talent agent. And, in fact,
14 that was the case with petitioner who at all times relevant, was represented by licensed talent agents
15 Gold-Marshak. Respondent Siegel and Ms. Allabashi's testimony revealed that because of
16 Ms. Allabashi's close relationship with her former employer Gold-Marshak, all procurement activities
17 made on behalf of petitioner were done with the permission of and in conjunction with Gold-
18 Marshak. Ms. Allabashi testified that she spoke with agents from Gold-Marshak all day long, every
19 day and that she could not recall any instances where she sought to procure employment for
20 petitioner without first having discussed it with Gold-Marshak.

21 With respect to specific procurement of employment opportunities sought on behalf of
22 petitioner, the testimony established that petitioner's role in the television series *Girlfriends* was
23 obtained first by Sue Wall, petitioner's talent agent at Gold-Marshak and then 'hammered in' by Ms.
24 Allabashi, in conjunction with Gold-Marshak. Additionally, while the appointment for *Room Full of*
25 *Mirrors: The Jimi Hendrix Story* was obtained by Ms. Allabashi, the testimony indicated that it was
26 done in conjunction with Harry Gold, the Gold-Marshak talent agent covering this project. Other
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1 auditions that petitioner was sent out on were: *The Learning Curve, Will and Grace, People Who*
2 *Fear People, Who's Your Daddy and Winterdance*. The testimony disclosed that while respondents
3 had some role in getting these auditions for petitioner, it was done at the request of and in
4 conjunction with Gold-Marshak.

5 Thus, the procurement opportunities done on behalf of petitioner by respondents, in this case
6 appear to have been done in conjunction and at the request of Gold-Marshak.

7 CONCLUSIONS OF LAW

8 1. Labor Code section 1700.44(c) provides, "no action or proceeding shall be brought
9 pursuant to this chapter with respect to any violation which is alleged to have occurred more than
10 one year prior to commencement of the action or proceeding." Respondents argue that this petition
11 is barred by Labor Code section 1700.44(c) because it was brought more than a year after
12 respondents' demand for purported unpaid commissions. Respondents filed a court action in the
13 Los Angeles Superior Court to recover said unpaid commissions. Consequently, petitioner filed the
14 instant petition with the Labor Commissioner raising the Act as a defense. As such, the statute of
15 limitations contained in Labor Code section 1700.44(c) does not bar the petition since "a defense
16 may be raised at any time, even if the matter alleged would be barred by a statute of limitations if
17 asserted as the basis for affirmative relief." *Styne v. Stevens* (2001) 26 Cal.4th 42, 109 Cal.Rptr.2d
18 14. Petitioner's claim is not barred by Labor Code section 1700.44(c), but petitioner's claim for
19 disgorgement of monies paid by petitioner to respondents, is limited to one year from the date the
20 Petition was filed.

21 2. Respondents argue that petitioner has no standing to enforce the act as an 'employer'
22 since the Labor Code only serves to protect 'employees'. Respondents ignore the fact that there
23 exists an entire statutory scheme in the Labor Code specifically set up to protect "artists" as defined
24 in Labor Code section 1700.4(b). Statutes must be given a reasonable and common sense
25 construction in accordance with the apparent purpose and intention of the lawmakers..." *Buchwald v.*
26 *Katz* (1967) 254 Cal.App.2d 347, 355 citing to 45 Cal.Jur.2d, Statutes, §116, pp. 625-626. Here,
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1 the California legislature has determined that the act of "procuring employment" for artists is an
2 occupation necessitating regulatory oversight and statutory protection. Respondents' argument that
3 petitioner has no standing because he hired respondents to be his personal managers and
4 subsequently fired them, completely ignores the legislature's intent to protect "artists". As stated
5 below, petitioner is an "artist" as defined in Labor Code section 1700.4(b) and therefore has standing
6 to enforce the Talent Agencies Act.

7 3. Respondents argue that petitioner is not an "artist" within the meaning of the
8 Talent Agencies Act because he did not render professional services directly to respondents. Labor
9 Code section 1700.4(b) defines "artists" as "actors and actresses *rendering services on the legitimate*
10 *stage and in the production of* motion pictures, radio artists, musical artists, musical organizations,
11 directors of legitimate stage, motion picture and radio productions, musical directors, writers,
12 cinematographers, composers, lyricists, arrangers, models and other artists and persons rendering
13 professional services in motion picture, theatrical, radio, *television* and other entertainment
14 enterprises." [Emphasis added]. Nowhere in the code does it require the artist to render services
15 *directly to* respondents. In this case, petitioner is an actor who has rendered services in television.

16 In fact, even respondent Richard Siegel, in his testimony admitted that petitioner was an actor:

17 Mellon: At the time when you met him, was Mr. Hayes an actor?

18 Siegel: I thought so. Yes.

19 Mellon: Was he a member of the Screen Actors Guild at the time?

20 Siegel: Yes.

21 Mellon: Had he in fact worked as an actor?

22 Siegel: Sure.

23 Mellon: When he came to see you, it was with respect to your representation or
24 Marathon's representation as an actor?

25 Siegel: Correct.

26 Accordingly, the Labor Commissioner has jurisdiction to determine this controversy pursuant
27 to the provisions of Labor Code section 1700.4(b).

1 4. Labor Code section 1700.5 provides that “no person shall engage in or carry on the
2 occupation of a talent agency without first procuring a license therefor from the Labor
3 Commissioner.”

4 5. Labor Code section 1700.4(a) defines “talent agency” as, “a person or corporation
5 who engages in the occupation of procuring, offering, promising, or attempting to procure
6 employment or engagements for an artist or artists.” The evidence and testimony presented establish
7 that respondents Richard Siegel and Marathon Entertainment Inc., procured or attempted to procure
8 employment or engagements for petitioner Reginald C. Hayes in television pilots and series.
9 Accordingly, respondents acted as talent agents.

10 6. Respondents argue that to the extent that they procured work for petitioner, they did
11 so at the request of and in conjunction with a licensed talent agent. Accordingly, they are exempt
12 from the prohibitions of the law under the provisions of Labor Code section 1700.44(d). The
13 assertion of this defense necessitates careful analysis. To qualify under these express provisions
14 requires the satisfaction of a twofold burden of proof, i.e., the person claiming the exemption must
15 prove the he or she acted both (1) “at the request of,” and (2) “in conjunction” with, a licensed talent
16 agent during the course of the events in question.

17 In this case there was a great deal of testimony that established that respondents as a matter
18 of course, act as talent agents even though they are not licensed, especially when their clients are not
19 represented by a licensed talent agent. While the testimony and evidence presented clearly showed
20 that both respondents procured work for petitioner, respondents were able to show that all
21 procurement activities were done as part of a collaborative effort with Gold-Marshak. In fact, no
22 evidence was presented to contradict respondents’ assertions that Gold-Marshak *requested*
23 respondents to obtain procurement opportunities on behalf of petitioner. Likewise, no evidence was
24 presented to negate respondents’ assertion that they worked *in conjunction* with Gold-Marshak on
25 every procurement activity on behalf of petitioner. It is clear that due to the nature of Ms.
26 Allabashi’s relationship with agents at Gold-Marshak, that the two worked very close together on all
27 projects related to petitioner. While in general, respondents may illegally act as unlicensed talent
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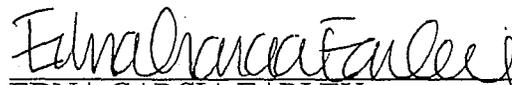
1 agents, no evidence was presented *in this case* that respondents procured any employment
2 opportunities for petitioner *without the request, permission or in conjunction with Gold-Marshak, a*
3 *licensed talent agency.*

4 In sum, respondents acted "in conjunction with, and at the request of a licensed talent
5 agency" within the meaning of Labor Code section 1700.44(d) and therefore their actions in the
6 procurement of employment on behalf of petitioner are not unlawful.

7 **DETERMINATION**

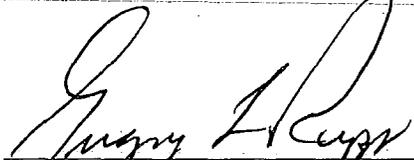
8 Petitioner having failed to sustain its burden of proving that respondents violated Labor Code
9 section 1700.5, the Petition is dismissed with prejudice.

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11 Dated: 1/26/04


EDNA GARCIA EARLEY
Attorney for the Labor Commissioner

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15 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:**

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17 Dated: 1-30-04


GREGORY L. RUPP
Acting Deputy Chief Labor Commissioner

