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7  
8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10  
11 JEREMY SOULE aka ARTISTRY ENTERTAINMENT, ) No. TAC 21-03  
12 )  
Petitioner, )  
13 )  
vs. )  
14 )  
ROBERT E. RICE, an individual dba ) DETERMINATION OF  
FOUR BARS ENTERTAINMENT, ) CONTROVERSY  
15 )  
Respondent. )  
16 )

17 The above-captioned matter, a petition to determine  
18 controversy under Labor Code §1700.44, came on regularly for  
19 hearing on June 9, 2004, in San Jose, California, before the  
20 undersigned attorney for the Labor Commissioner, assigned to hear  
21 the matter. Petitioner appeared and was represented by attorneys  
22 Edward R. Hearn and Susan E. Kabanek, and Respondent appeared in  
23 pro per. Based on the evidence presented at this hearing and on  
24 the other papers on file in this mater, the Labor Commissioner  
25 hereby adopts the following decision.

26 FINDINGS OF FACT

27 1. Petitioner Jeremy Soule is a music composer, and during  
28 the past ten years, he has been employed by various video game

1 production companies as a composer of music for video games. For  
2 each video game for which he composed the musical score, Soule is  
3 credited as the composer both on-screen and inside the booklet  
4 that accompanies the video.

5 2. For the past 12 years, Respondent Robert E. Rice has  
6 owned and operated a business known as Four Bars Entertainment,  
7 located in Santa Clara County, California. According to Rice,  
8 this business provides "promotion and publicity for composers in  
9 the video game industry." While asserting that he does not act  
10 as a talent agent for any composers, Rice testified that he  
11 started this business "because I saw opportunities for lots of  
12 work in the video industry for composers," and "I wanted to take  
13 the best composers I could find and bring them to the forefront  
14 of the industry." Rice testified that the work he did "got  
15 enormous publicity for composers, and enormous exposure for them  
16 throughout the industry." According to Rice, "there is a saying  
17 in the video game industry - 'when you need music for a video  
18 game, call Bob [Rice].'" Rice described his function as "playing  
19 cupid between composers and the industry."

20 3. Rice has never been licensed by the State Labor  
21 Commissioner as a talent agency.

22 4. In January 2000, Soule and Rice entered into an oral  
23 agreement whereby Rice would provide "representation and  
24 management services" to Soule, for which Rice would receive a  
25 commission on amounts received by Soule for his work in the video  
26 game industry. Prior to entering into this agreement, Rice  
27 worked "in-house" for a video game manufacturer, composing music  
28 for video games. He was interested in becoming independent, and

1 selling his services as a composer to video game manufacturers on  
2 a project by project basis, as he believed that would be more  
3 lucrative. Rice promised Soule that he'd be able to "get you  
4 plenty of work," that Rice would handle all the necessary  
5 contacts and would then negotiate the best deals possible for  
6 Soule, so that Soule could spend all of his time composing music  
7 while Rice would "do everything else to make you a star." Rice  
8 delivered on that promise, making numerous telephone calls and  
9 sending e-mails to video game producers on behalf of Soule, and  
10 through these efforts, Rice obtained work on various projects for  
11 Soule and negotiated employment agreements to compose music for  
12 video games, as a result of which, Soule's earnings increased  
13 dramatically.<sup>1</sup>

14 5. The list of video games for which Soule composed music,  
15 during the period from January 2000 to late 2002, as a result of  
16 employment obtained and negotiated by Rice, included NCAA Final  
17 Four, NCAA Gamebreaker, Disney's Beauty and the Beast,  
18 Interplay's Giant Citizen Kabuto, Interplay's Ice Wind Dale,  
19 Balder's Gate-Dark Alliance, and Hearts of Winter. Rice  
20 attempted, without success, to obtain work for Soule doing the  
21 musical composition for various other video games, including  
22 Twisted Metal Blade and Robin Hood.

23 6. The video game producers that hired Soule were

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24  
25 <sup>1</sup> We credit Soule's testimony on this issue, and find that  
26 Rice engaged in pervasive efforts to obtain work, and to  
27 negotiate employment contracts for Soule. Rice's testimony that  
28 he undertook such efforts "only on rare occasions, on an isolated  
basis," is belied by the documentary evidence presented at this  
hearing, which leave no doubt that procurement and negotiation of  
employment contracts were at the very heart of the services Rice  
provided to Soule and other composers that he represented.

1 employing him to compose new music for the specific games being  
2 created. These producers were not purchasing recorded music that  
3 Soule had previously composed and recorded. Typically, after  
4 Rice secured an agreement for Soule to provide his services as a  
5 composer, the video game producer would send a prototype of the  
6 game to Soule, so that Soule could begin working on the musical  
7 score. In this regard, the nature of the work performed by  
8 Soule, and the manner in which he performed this work, was no  
9 different than the work performed by a person composing a musical  
10 score for a motion picture.

11 7. The video game industry has become a multibillion dollar  
12 industry. In 2001, video game sales in the United States  
13 exceeded \$9.4 billion, eclipsing the \$8.4 billion domestic box  
14 office for motion pictures. Several large talent agencies in  
15 California have formed video game units to offer their clients  
16 specialized services. Over the past twenty years, the video game  
17 industry has grown from nothing to become a major element of the  
18 entertainment industry, offering significant employment  
19 opportunities to a variety of creative artists.

20 8. On one occasion, in July 2002, Rice contacted the vice  
21 president of music for a major film company, in an effort to  
22 obtain work for Soule as a music composer in the motion picture  
23 industry.

24 9. By late 2002, the relationship between Soule and Rice  
25 soured, and Soule terminated Rice's services. On August 22,  
26 2002, Soule made his final payment of commissions to Rice. Over  
27 the prior two years, Soule paid approximately \$60,000 to Rice in  
28 commissions pursuant to the terms of their oral agreement.



1 motion picture, theatrical, radio, television and other  
2 entertainment enterprises." By the express language of this  
3 statute, the term "artists" includes composers rendering  
4 professional services in entertainment enterprises. There is no  
5 question that Soule is a composer. The question before us is  
6 whether video games are included within the term "other  
7 entertainment enterprise." The Talent Agencies Act does not  
8 define "other entertainment enterprises," but obviously, the term  
9 is meant to add to the previously enumerated sectors of the  
10 entertainment industry. The dictionary definition of  
11 "entertainment" is "the act of entertaining." *The American*  
12 *Heritage Dictionary, Fourth Edition* (2000). To entertain is "to  
13 hold the attention of its customers with something amusing or  
14 diverting." *Id.* Enterprises in this context are "business  
15 organizations." *Id.* Putting the terms together, an  
16 entertainment enterprise includes any business that has as its  
17 product or service something that holds the attention of its  
18 customers with something amusing or diverting. The video game  
19 industry unquestionably fall within that category. Moreover, the  
20 fact that there is no meaningful difference between the work of a  
21 composer hired to compose a musical score for a motion picture,  
22 and the work of one hired to compose the score for a video game,  
23 compels the conclusion that in either case, the composer is an  
24 artist within the meaning of the Act. We therefore find that  
25 Soule is an "artist" within the meaning of Labor Code §1700.4(b).

26       2. Labor Code section 1700.4(a) defines "talent agency" as  
27 "a person or corporation who engages in the occupation of  
28 procuring, offering, promising, or attempting to procure

1 employment or engagements for an artist or artists, except that  
2 the activities of procuring, offering or promising to procure  
3 recording contracts for an artist or artists shall not of itself  
4 subject a person or corporation to regulation and licensing under  
5 this chapter." The evidence here is overwhelming that Rice  
6 engaged in the occupation of procuring, offering, promising or  
7 attempting to procure artistic employment for Soule and other  
8 musical composers. Moreover, the nature of the employment sought  
9 did not fall into the recording contract exemption, as that  
10 exemption does not apply to the hiring of a composer to compose a  
11 musical score. Consequently, we conclude that Rice engaged in  
12 the occupation of a "talent agency," within the meaning of Labor  
13 Code §1700.4(a).

14 3. Labor Code §1700.5 provides that "[n]o person shall  
15 engage in or carry on the occupation of a talent agency without  
16 first procuring a license . . . from the Labor Commissioner."  
17 ~~The Talent Agencies Act is a remedial statute; its purpose is to~~  
18 protect artists seeking professional employment from the abuses  
19 of talent agencies. For that reason, the overwhelming judicial  
20 authority supports the Labor Commissioner's historic enforcement  
21 policy, and holds that "[E]ven the incidental or occasional  
22 provision of such [procurement] services requires licensure."  
23 *Styne v. Stevens* (2001) 26 Cal.4th 42, 51.

24 4. An agreement that violates the licensing requirement of  
25 the Talent Agencies Act is illegal and unenforceable. "Since the  
26 clear object of the Act is to prevent improper persons from  
27 becoming [talent agents] and to regulate such activity for the  
28 protection of the public, a contract between an unlicensed

1 [agent] and an artist is void." *Buchwald v. Superior Court*  
2 (1967) 254 Cal.App.2d 347, 351. Having determined that a person  
3 or business entity procured, promised or attempted to procure  
4 employment for an artist without the requisite talent agency  
5 license, "the [Labor] Commissioner may declare the contract  
6 [between the unlicensed agent and the artist] void and  
7 unenforceable as involving the services of an unlicensed person  
8 in violation of the Act." *Styne v. Stevens, supra*, 26 Cal.4th at  
9 55. "[A]n agreement that violates the licensing requirement is  
10 illegal and unenforceable . . . ." *Waisbren v. Peppercorn*  
11 *Productions, Inc.* (1995) 41 Cal.App.4th 246, 262. Moreover, the  
12 artist that is party to such an agreement may seek disgorgement  
13 of amounts paid pursuant to the agreement, and "may . . . [be]  
14 entitle[d] . . . to restitution of all fees paid the agent."  
15 *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. Restitution, as a  
16 species of affirmative relief, is subject to the one year  
17 limitations period set out at Labor Code §1700.44(c), so that the  
18 artist is only entitled to restitution of amounts paid within the  
19 one year period prior to the filing of the petition to determine  
20 controversy.<sup>2</sup> *Greenfield v. Superior Court* (2003) 106

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22 <sup>2</sup> As the evidence here shows that Soule paid no commissions  
23 to Rice in the one year period prior to the filing of this  
24 petition, restitution is barred by this statute of limitations.  
25 Soule is incorrect in his contention that *Park v. Deftones* (1999)  
26 71 Cal.App.4th 1465 holds that this one year limitations period  
27 for restitution runs back from the date the unlicensed talent  
28 agent files an action against the artist for payment of  
commissions allegedly owed under an agreement between the artist  
and agent. There was no claim for restitution in *Park*, and  
the only relief sought by the artists in that case was a  
determination that the agreement with their manager was void from  
its inception, and that the manager had no enforceable rights  
thereunder.

1 Cal.App.4th 743.

2 5. On the other hand, this statute of limitations does not  
3 apply to the defense of contract illegality and unenforceability,  
4 even where this defense is raised by the petitioner in a  
5 proceeding under the Talent Agencies Act. "If the result the  
6 [artist] seeks is [is a determination] that he or she owes no  
7 obligations under an agreement alleged by [the respondent] ...  
8 the statute of limitations does not apply." *Styne v. Stevens*,  
9 *supra*, 26 Cal.4th at 53. The Labor Commissioner has exclusive  
10 primary jurisdiction to determine all controversies arising under  
11 the Talent Agencies Act. "When the Talent Agencies Act is  
12 invoked in the course of a contract dispute, the Commissioner has  
13 exclusive jurisdiction to determine his (or her) jurisdiction in  
14 the matter, including whether the the contract involved the  
15 services of a talent agency." *Ibid.* at 54. This means that the  
16 Labor Commissioner has "the exclusive right to decide in the  
17 first instance *all the legal and factual issues on which an Act-*  
18 *based defense depends.*" *Ibid.*, at fn. 6, italics in original.

19 6. Applying these legal principles to the facts of this  
20 case, we conclude that as a consequence of Rice's unlawful  
21 procurement activities, the management agreement between Soule  
22 and Rice is void *ab initio*, that Rice has no enforceable rights  
23 under that agreement, and that nothing is owed to Rice for the  
24 services that he provided to Soule pursuant to that agreement,  
25 regardless of whether Rice is seeking payment for such services  
26 through a claim of breach of contract, or under any other legal  
27 theory, including account stated, open book account, unjust  
28 enrichment or quantum meruit. See *Yoo v. Robi* (2005) 126

1 Cal.App.4th 1089, 1004 n. 30.

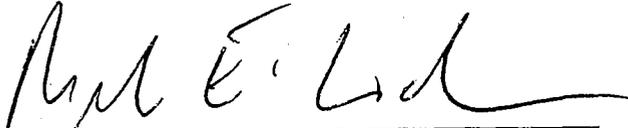
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ORDER

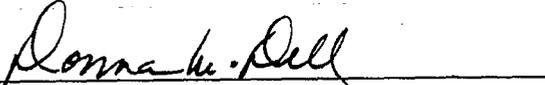
For the reasons set forth above, IT IS HEREBY ORDERED that

1) The management agreement between Soule and Rice is void *ab initio*, Rice has no enforceable rights under that agreement, and nothing is owed to Rice for the services that he provided to Soule pursuant to that agreement.

2) Soule is not entitled to restitution of commissions or any other amounts that were paid to Rice prior to November 11, 2002.

Dated: 10/12/05   
MILES E. LOCKER  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 11/20/05   
DONNA M. DELL  
State Labor Commissioner

