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7  
8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10  
11 FREDDIE PRINZE JR., an individual, ) No. TAC 33-03  
12 )  
13 Petitioner, )  
14 vs. )  
15 )  
16 RIC BEDDINGFIELD, an individual, and ) DETERMINATION OF  
THE RIC BEDDINGFIELD COMPANY, INC., ) CONTROVERSY  
17 a California corporation, )  
18 )  
19 Respondent. )

20 The above-captioned matter, a petition to determine  
21 controversy under Labor Code §1700.44, came on regularly for  
22 hearing on April 2, 2004, in San Francisco, California, before  
23 the undersigned attorney for the Labor Commissioner, assigned to  
24 hear the matter. Petitioner appeared and was represented by  
25 attorney Martin D. Singer, and Respondent appeared and was  
26 represented by attorney Michael Chodos. Based on the evidence  
27 presented at this hearing and on the other papers on file in this  
28 mater, the Labor Commissioner hereby adopts the following  
decision.

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1 FINDINGS OF FACT

2 1. FREDDIE PRINZE JR. (hereinafter "Prinze" or  
3 "Petitioner") is an actor, and has appeared in various motion  
4 pictures and television shows. Prinze has been a California  
5 resident since August 1994.

6 2. Respondent RIC BEDDINGFIELD, at all times relevant  
7 herein, has been a personal manager of various actors and  
8 actresses. Respondent THE BEDDINGFIELD COMPANY, INC., is a  
9 corporation that was established and is controlled by Ric  
10 Beddingfield, its chief executive officer, as the business entity  
11 through which he provides personal management services to actors  
12 and actresses. The Beddingfield Company was first incorporated  
13 in Nevada in 1993, but its corporate status was revoked in 2002.  
14 However, in 1999, prior to the Nevada revocation, The  
15 Beddingfield Company was incorporated in California. At all  
16 times relevant herein, Respondents have conducted their business  
17 in the County of Los Angeles, State of California. Neither  
18 Respondent was licensed by the State Labor Commissioner as a  
19 talent agency at any time prior to August 2003.

20 3. At the encouragement of Molli Benson, Prinze's acting  
21 coach, Prinze telephoned Ric Beddingfield before moving from New  
22 Mexico to California in August 1994. During this telephone  
23 conversation, Beddingfield said would try to get acting work for  
24 Prinze, and that he would set up meetings with casting directors  
25 for that purpose. Upon Prinze's arrival in Los Angeles, he met  
26 with Beddingfield, and on August 26, 1994, Prinze and Ric  
27 Beddingfield, as president of The Beddingfield Company, Inc.,  
28 executed a written agreement under which Beddingfield and Molli

1 Benson were to act as Prinze's personal managers for a period of  
2 two years (with two additional one year terms, absent notice of  
3 termination as provided in the agreement), for which Prinze  
4 agreed to pay a sum equal to 15% of all gross compensation earned  
5 in the entertainment industry during the term of the agreement,  
6 and subsequent to expiration of the agreement as to any  
7 engagements that were entered into or substantially negotiated  
8 during the term of the agreement. Paragraph 12 of this agreement  
9 provided that "the service of Molli Benson are [sic] essential to  
10 this agreement and ... she shall personally supervise my career  
11 as provided herein during the term of the agreement.... In the  
12 event that any ... occurrence materially frustrates this intent,  
13 I may elect to terminate the term of the agreement...."

14 Paragraph 5 of the agreement asserted; "You have advised me that  
15 you are not a 'talent agency,' but rather are active solely as a  
16 personal manager, that you are not licensed as a 'talent agency'  
17 under the Labor Code of the State of California. You have at all  
18 times advised me that you so not agree to do so, and you have  
19 made no representations to me, either oral or written, to the  
20 contrary."

21 4. Around the time of signing this agreement, Prinze had a  
22 discussion with Beddingfield about whether he needed a talent  
23 agent. Beddingfield told Prinze he didn't need a talent agent at  
24 this stage of his career, and Prinze did not obtain the services  
25 of a licensed talent agency until June 1995. Instead,  
26 Beddingfield himself took the necessary steps to try to find  
27 auditions for Prinze. In September 1994, Prinze auditioned for a  
28 role in the motion picture "Clueless." That audition was

1 obtained through the efforts of Beddingfield.<sup>1</sup>

2 5. Shortly thereafter, certain unacceptable behavior on the  
3 part of Molli Benson caused Prinze to decide to terminate the  
4 parties' written agreement, and on November 1, 1994, Prinze sent  
5 a letter to Beddingfield terminating the August 26, 1994  
6 agreement.

7 6. Despite this written notice of termination,  
8 Beddingfield, without any further involvement of Benson,  
9 continued to provide management services to Prinze, under the  
10 terms of the "terminated" agreement. Beddingfield also continued  
11 to seek employment opportunities for Prinze, and through  
12 Beddingfield's efforts, Prinze obtained an audition for a role on  
13 "Family Matters," a series on the Warner Brothers television  
14 network. As a result of this audition, Prinze obtained the role,  
15 as reflected by an agreement with Warner Brothers dated November  
16 14, 1994. Also, through Beddingfield's efforts, Prinze obtained  
17 an audition for a role on "The Watcher," a television series on  
18 UPN produced by Paramount Pictures. As a result of this  
19 audition, Prinze obtained the role, as reflected by an agreement  
20 with Paramount dated January 30, 1995.<sup>2</sup>

21 \_\_\_\_\_  
22 • <sup>1</sup> Beddingfield's testimony that he did not set up this  
23 audition is not credible. The records of the film's casting  
24 director, Marcia Ross, list Beddingfield as Prinze's agent.  
25 Prinze credibly testified that Beddingfield told him about this  
26 audition, and until auditioning, he had never met or spoke to  
27 Marcia Ross.

28 <sup>2</sup> Here too, we discredit Beddingfield's testimony that he  
did not do anything to obtain these auditions, and that he merely  
acted as a conduit to Prinze for casting directors who were  
calling him requesting Prinze's services. At this very early  
stage in Prinze's acting career, it is simply impossible to  
believe that unsolicited offers were coming to him. These were  
not leading actor roles, but limited term supporting actor roles

1           7. On September 1, 1995, Respondents and Prinze entered  
2 into a new written personal management services contract for a  
3 period of two years, with automatic extensions of two additional  
4 one year periods unless either party provided a written notice of  
5 termination during a specified window period. The contractual  
6 terms were exactly the same as those of the initial agreement,  
7 except that under this new agreement, there was no mention of  
8 Molli Benson.

9           8. On October 2, 1995, Prinze executed various written  
10 agreements with The Gersh Agency (hereinafter "Gersh"), a  
11 licensed talent agency, under which Gersh, through its talent  
12 agent, Peter Young, agreed to serve as Prinze's sole and  
13 exclusive talent agent for the theatrical, motion picture, and  
14 television and radio broadcasting industries, for which Prinze  
15 agreed to pay commissions to Gersh on his earnings resulting from  
16 work in those industries. Gersh had been providing talent agency  
17 representation to Prinze for a three to four months prior to the  
18 execution of this written agreement. Gersh's involvement with  
19 Prinze was sparked by Beddingfield's efforts to obtain talent  
20 agency representation for Prinze, as Beddingfield had apparently  
21 concluded that Prinze had reached the stage in his career where

22 \_\_\_\_\_  
23 - not the type of roles that would have a casting director  
24 initiate contacts with a personal manager to obtain the services  
25 of a particular actor. Beddingfield's claim that a TV Guide  
26 article about Prinze sparked this sort of interest in him on the  
27 part of casting directors may well be true, but the fact that the  
28 article was published in December 1994 means that the article  
could not have had anything to do with the audition for "Family  
Matters," which took place a month earlier. Instead, we credit  
Prinze's testimony that Beddingfield received "breakdowns" or  
"sides" of scripts for various roles which were up for audition,  
and that Beddingfield then contacted the casting directors to set  
up auditions for Prinze.

1 such representation would be desirable, and on June 1, 1995,  
2 Beddingfield sent a letter to Young to schedule an appointment at  
3 Gersh. After meeting with Prinze, Young agreed to begin  
4 providing talent agency services for a trial period, and this led  
5 to the written agreement a few months later.

6 9. Much of the testimony at this hearing concerned three  
7 jobs which were obtained in 1996, during the period of time that  
8 Prinze was represented by both Gersh and Beddingfield. First  
9 there is Prinze's role on the ABC afterschool special, "Too Soon  
10 For Jeff," for which he auditioned in March 1996, with production  
11 about a month later. Next, his successful audition for a role in  
12 the motion picture, "The House of Yes," in June 1996. Finally,  
13 there is his successful audition, and subsequent role in a motion  
14 picture, "Sparkler," with filming in October 1996. Prinze  
15 testified that he learned of the auditions for each of these  
16 roles from Beddingfield, not Young; that for each, Beddingfield  
17 sent him the script to prepare for the audition and told him when  
18 and where to appear for the audition. Prinze did not have other  
19 knowledge as to how these auditions had been obtained and did not  
20 claim that Beddingfield had anything to do with negotiating the  
21 terms of his employment following the auditions. Beddingfield  
22 testified that all three of these auditions were obtained by  
23 Young/Gersh, and that "it would have been totally inappropriate  
24 for me to submit Prinze for jobs instead of the more powerful  
25 Gersh Agency." Young could not recall anything about "Sparkler,"  
26 but testified that he procured the auditions for Prinze for "Too  
27 Soon for Jeff" and "the House of Yes." Young also testified that  
28 whenever he obtained an audition for Prinze, he would then call

1 and/or fax Beddingfield and relay information about the audition  
2 to him, and that it was Beddingfield's role to contact Prinze  
3 with necessary information about the audition. There is nothing  
4 inconsistent about any of this testimony, and considering all of  
5 it together, we find that all three of these auditions were  
6 obtained through the efforts of Young/Gersh, not Beddingfield,  
7 and that Beddingfield played no role in negotiating the terms of  
8 these jobs.

9 10. In 1997, Prinze terminated Gersh as his talent agency,  
10 and entered into an agreement with Creative Artists Agency  
11 ("CAA") to serve as his talent agency. In 2002, Prinze  
12 terminated CAA and signed with another talent agency.

13 11. On January 16, 1998, Prinze and Beddingfield entered  
14 into another written personal management services agreement,  
15 despite the fact that their prior agreement of September 1, 1995  
16 was then still in effect, as the first of the two automatic one  
17 year renewals would have taken effect on September 1, 1997, as  
18 neither party had sent any notice to the other party terminating  
19 the agreement. The new agreement of January 16, 1998 was similar  
20 in all respects to the prior agreement, except instead of an  
21 initial two year term followed by two one year extensions, the  
22 1998 agreement provided for an initial three year term followed  
23 by two automatic one year extensions subject to notification of  
24 termination to prevent either automatic extension.

25 12. On February 16, 2000, Prinze and Beddingfield entered  
26 into another written personal management services agreement,  
27 despite the fact that their prior agreement of January 16, 1998  
28 was then still in effect. The new agreement of February 16, 2000

1 was similar in all respects to the prior agreement, except for an  
2 indication below Prinze's signature line that Prinze was the  
3 president of Hunga Rican, Inc. Nothing else in the agreement  
4 made any reference to Hunga Rican, which had been set up in 1997  
5 as Prinze's loan-out company.<sup>3</sup>

6 13. In December 2000, Prinze obtained a lead acting role on  
7 the motion picture "Scooby-Doo." In August 2001, following the  
8 filming of Scooby-Doo, Prinze terminated Respondents' services.  
9 By a letter dated March 22, 2003, Beddingfield noted that Prinze  
10 was about to perform in the shooting of the motion picture  
11 "Scooby-Doo 2," and asserted that "your original contract for  
12 Scooby Doo included the option picture you are about to film. As  
13 CAA is commissionable on this agreement, so am I." Beddingfield  
14 testified he personally delivered this letter to Prinze's mother,  
15 and Prinze testified that he never received this letter. In any  
16 event, on April 24, 2003, Respondents sent an invoice to Prinze's  
17 accountant, for \$675,000 purportedly due to Respondents as their  
18 15% commission on Prinze's \$4,500,000 earnings for his role in  
19 the film "Scooby Doo 2," pursuant to the terms of the parties'  
20 February 16, 2000 personal management agreement. Sometime  
21 thereafter, Respondents initiated an arbitration against Prinze  
22 seeking payment of these commissions.

23 14. On August 25, 2003, Prinze filed the instant petition to  
24 determine controversy, seeking a determination that Respondents  
25 violated the Talent Agencies Act (Labor Code §1700 et seq.) by  
26

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27 <sup>3</sup> Loan out companies are set up primarily for tax reasons to  
28 "loan out" the services of the artist to whatever production  
companies purchase the artist's services.

1 procuring employment without a talent agency license, that as a  
2 consequence the parties' February 16, 2000 personal management  
3 agreement is void *ab initio* and unenforceable, so that  
4 Respondents have no rights thereunder, and that Respondent is not  
5 entitled to any amounts from Prinze for the alleged value of  
6 services rendered by Respondents on behalf of Prinze. Further,  
7 Prinze seeks an order for an accounting from Respondents of all  
8 monies, or things of value, received by Respondents in connection  
9 with any services provided to Prinze, or in connection with the  
10 agreement between the parties, and an order requiring Respondent  
11 to reimburse Prinze for all such amounts, plus 10% interest  
12 thereon.

13 LEGAL ANALYSIS

14 1. Petitioner is an "artist" within the meaning of Labor  
15 Code §1700.4(b).

16 2. Labor Code §1700.4(a) defines "talent agency" as "a  
17 person or corporation who engages in the occupation of procuring,  
18 offering, promising, or attempting to procure employment or  
19 engagements for an artist or artists, except that the activities  
20 of procuring, offering or promising to procure recording  
21 contracts for an artist or artists shall not of itself subject a  
22 person or corporation to regulation and licensing under this  
23 chapter." The term "procure," as used in this statute, means "to  
24 get possession of: obtain, acquire, to cause to happen or be  
25 done: bring about." *Wachs v. Curry* (1993) 13 Cal.App.4th 616,  
26 628. Thus, under Labor Code §1700.4(a), "procuring employment"  
27 is not limited to initiating discussions with production  
28 companies regarding employment; rather, "procurement" includes

1 any active participation in a communication with a potential  
2 purchaser of the artist's services aimed at obtaining employment  
3 for the artist, regardless of who initiated the communication.  
4 *Hall v. X Management* (TAC No. 19-90, pp. 29-31.) To be sure, a  
5 person does not engage in the procurement of employment for an  
6 artist by merely taking a phone call or receiving a fax from a  
7 casting director where the casting director provides information  
8 about an acting role, and then advising the artist of the  
9 information that was received from the casting director about the  
10 potential employment, leaving it to the artist (or the artist's  
11 licensed talent agent) to contact the casting director to set up  
12 an audition for the role. But calling and then speaking to a  
13 casting director to set up an audition for a role, or otherwise  
14 contacting a casting director for the purpose of obtaining a role  
15 for an artist, brings us into the realm of "procurement," as that  
16 term is used in Labor Code §1700.4(a).

17 3. Based on the evidence herein, we conclude that  
18 Respondents acted as a talent agency within the meaning of Labor  
19 Code §1700.4(a) by procuring the auditions and/or employment for  
20 Prinze for acting roles on "Clueless," "Family Matters," and  
21 "The Watcher," during the period of September 1994 to January  
22 1995. The evidence does not support petitioner's contention that  
23 Respondents acted as talent agents on any occasion after January  
24 1995.

25 4. Labor Code §1700.5 provides that "[n]o person shall  
26 engage in or carry on the occupation of a talent agency without  
27 first procuring a license . . . from the Labor Commissioner."  
28 The Talent Agencies Act is a remedial statute that must be

1 liberally construed to promote its general object, the protection  
2 of artists seeking professional employment. *Buchwald v. Superior*  
3 *Court* (1967) 254 Cal.App.2d 347, 354. For that reason, the  
4 overwhelming weight of judicial authority supports the Labor  
5 Commissioner's historic enforcement policy, and holds that "even  
6 the incidental or occasional provision of such [procurement]  
7 services requires licensure." *Styne v. Stevens* (2001) 26 Cal.4th  
8 42, 51. "The [Talent Agencies] Act imposes a total prohibition  
9 on the procurement efforts of unlicensed persons," and thus, "the  
10 Act requires a license to engage in any procurement activities."  
11 *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th  
12 246, 258-259; see also *Park v. Deftones* (1999) 71 Cal.App.4th  
13 1465 [license required even though procurement activities  
14 constituted a negligible portion of personal manager's efforts on  
15 behalf of artist, and manager was not compensated for these  
16 procurement activities].

17 5. An agreement that violates the licensing requirement of  
18 the Talent Agencies Act is illegal and unenforceable. "Since the  
19 clear object of the Act is to prevent improper persons from  
20 becoming [talent agents] and to regulate such activity for the  
21 protection of the public, a contract between an unlicensed  
22 [agent] and an artist is void." *Buchwald v. Superior Court*,  
23 *supra*, 254 Cal.App.2d at 351. Having determined that a person or  
24 business entity procured, promised or attempted to procure  
25 employment for an artist without the requisite talent agency  
26 license, "the [Labor] Commissioner may declare the contract  
27 [between the unlicensed agent and the artist] void and  
28 unenforceable as involving the services of an unlicensed person

1 in violation of the Act." *Styne v. Stevens, supra*, 26 Cal.4th at  
2 55. "[A]n agreement that violates the licensing requirement is  
3 illegal and unenforceable . . . ." *Waisbren v. Peppercorn*  
4 *Productions, Inc., supra*, 41 Cal.App.4th at 262. Moreover, the  
5 artist that is party to such an agreement may seek disgorgement  
6 of amounts paid pursuant to the agreement, and "may . . . [be]  
7 entitle[d] . . . to restitution of all fees paid the agent."  
8 *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. Restitution, as a  
9 species of affirmative relief, is subject to the one year  
10 limitations period set out at Labor Code §1700.44(c), so that the  
11 artist is only entitled to restitution of amounts paid within the  
12 one year period prior to the filing of the petition to determine  
13 controversy. *Greenfield v. Superior Court* (2003) 106 Cal.App.4th  
14 743.

15 6. On the other hand, this statute of limitations does not  
16 apply to the defense of contract illegality and unenforceability,  
17 even where this defense is raised by the petitioner in a  
18 proceeding under the Talent Agencies Act. "If the result the  
19 [artist] seeks is [is a determination] that he or she owes no  
20 obligations under an agreement alleged by [the respondent] ...  
21 the statute of limitations does not apply." *Styne v. Stevens,*  
22 *supra*, 26 Cal.4th at 53. The Labor Commissioner has exclusive  
23 primary jurisdiction to determine all controversies arising under  
24 the Talent Agencies Act. "When the Talent Agencies Act is  
25 invoked in the course of a contract dispute, the Commissioner has  
26 exclusive jurisdiction to determine his (or her) jurisdiction in  
27 the matter, including whether the the contract involved the  
28 services of a talent agency." *Ibid.* at 54. This means that the

1 Labor Commissioner has "the exclusive right to decide in the  
2 first instance *all the legal and factual issues on which an Act-*  
3 *based defense depends.*" *Ibid.*, at fn. 6, italics in original.  
4 In doing so, the Labor Commissioner will "search out illegality  
5 lying behind the form in which a transaction has been cast for  
6 the purpose of concealing such illegality," and "will look  
7 through provisions, valid on their face, and with the aid of  
8 parol evidence, determine [whether] the contract is actually  
9 illegal or part of an illegal transaction." *Buchwald v. Superior*  
10 *Court, supra*, 254 Cal.App.2d at 351.

11 7. The issue presented here is a difficult one: where a  
12 manager and artist have entered into successive renewals of their  
13 contract during the course of a continuous relationship that  
14 spanned the course of seven years, do the manager's unlawful  
15 attempts to procure employment for the artist in the first year  
16 of that relationship render all subsequent renewals of the  
17 parties' contract void and unenforceable, so as to deprive the  
18 manager of his rights under the final renewal, which was executed  
19 five years after the last instance of unlawful procurement? Does  
20 the "original sin" of long ago unlawful procurement taint the  
21 parties' contractual relationship forever into the future, where  
22 the original contract under which the procurement occurred has  
23 long ago expired and/or been terminated, and replaced with  
24 multiple renewed (albeit virtually identical) versions of this  
25 first contract? There is one published decision that provides  
26 some guidance - *Raden v. Laurie* (1953) 120 Cal.App.2d 778, a case  
27 arising under an earlier version of the Talent Agencies Act,  
28 which nonetheless is worthy of consideration because like the

1 Talent Agencies Act, this predecessor statute prohibited  
2 employment procurement without a license from the Labor  
3 Commissioner, and like the present-day Act, this statute was  
4 interpreted to make a contract void *ab initio* where procurement  
5 took place without the requisite license. In *Raden*, a manager  
6 entered into a management contract with the actress Piper Laurie  
7 in January 1948. He promised in that contract to procure her  
8 employment and he attempted to do so. However, he did not  
9 possess the required license to engage in procurement activities.  
10 Six months later, in July 1948, the manager entered into a new  
11 contract with Laurie which expressly stated he was not licensed  
12 to procure employment and that he would not do so. *Id.* at 780.  
13 The manager sued for commissions earned under the latter  
14 agreement and Laurie defended on the ground that the July 1948  
15 agreement was rendered void by the unlicensed procurement  
16 activity which the manager promised to do, and had done, under  
17 the parties' prior agreement. Laurie further alleged that the  
18 July agreement was a sham designed to mask the manager's  
19 continuing unlicensed procurement activities. The court  
20 acknowledged that exculpatory language in a management contract  
21 cannot prevent the court from finding that the contract was for  
22 an illegal purpose or that illegal procurement activities  
23 occurred during the term of the contract, if in fact there is  
24 evidence of such intent or illegal conduct. However, the court  
25 upheld the denial of Laurie's motion for summary judgment as it  
26 was based on nothing more than evidence of illegal intent and  
27 unlawful procurement activity under the January 1948 agreement,  
28 holding that it was not evidence of illegal purpose or illegal

1 activity under the July 1948 agreement. *Id.* at 782. *Raden* thus  
2 supports the proposition that a subsequently executed agreement  
3 stands or falls on an analysis of whether there was unlawful  
4 intent in the formation of that subsequent agreement, or unlawful  
5 activity during the term of the subsequent agreement, and that  
6 the unlawful intent and/or activity associated with the earlier  
7 agreement does not automatically "infect" the later agreement.

8       8. Arguably, however, a difference between the facts here  
9 and in *Raden* is that on the record before the court in *Raden*,  
10 there was no evidence that the manager ever acted inconsistently  
11 with the provisions of his written agreement with the artist, in  
12 that the initial agreement there admitted that the manager would  
13 seek to procure employment, an activity unlawful without a  
14 license. Nothing before the court in *Raden* would have allowed  
15 the court to conclude that either the initial or the subsequent  
16 agreement was a subterfuge. Here, in contrast, the initial  
17 agreement (like every renewal since) purported that Respondents  
18 would not act as talent agents, so that here, we must conclude  
19 that at least this initial contract was a subterfuge intended to  
20 mask unlawful conduct. While this raises some concern that  
21 subsequent contracts were also intended as a subterfuge, that  
22 concern is not enough to overcome the evidence that there was no  
23 unlawful activity (so presumably, no unlawful intent) with  
24 respect to the various subsequent renewals.

25       9. There are two cases in which the Labor Commissioner  
26 confronted a similar issue, albeit with different results. Most  
27 recently, in *Gittelman v. Karolat* (TAC No. 24-02), we held that a  
28 single instance of unlawful procurement which took place within

1 the first few months of what turned into a seven-year  
2 relationship between an a personal manager and an artist, was  
3 sufficient to void the parties' initial 1994 contract which was  
4 in effect at the time of the unlawful procurement, but did not  
5 make three subsequent renewals or amendments (executed in 1997,  
6 2000 and 2001) void or unenforceable to the extent that the  
7 manager was only seeking to enforce a right to commissions for  
8 employment that was entered into subsequent to the execution of  
9 the first renewal, where there was no evidence of unlawful  
10 procurement activity during the terms of the renewals, and no  
11 evidence on unlawful intent behind the renewals or amendments.  
12 We explained: "To conclude otherwise, so as to void every  
13 subsequent agreement between the parties because of the one  
14 isolated violation would do nothing to further the remedial  
15 purposes of the Act, and would transform the Act into a vehicle  
16 for injustice." *Id.* at 15. In contrast, in *Nipote v. Lapidés*  
17 (TAC No. 13-99), the Labor Commissioner determined that a single  
18 act of unlawful procurement in December 1994, during the period  
19 of the parties' 1993 written management agreement, was sufficient  
20 to make a subsequent oral agreement that had been entered into in  
21 early 1995 void *ab initio* and unenforceable, with the manager not  
22 entitled to payment of commissions or any other amounts  
23 thereunder. There is, of course, a stark difference between  
24 *Gittelman* and *Nipote* - in the former, the unlawful procurement  
25 activity took place over six years before the execution of the  
26 final renewal or amendment of the parties' agreement, whereas in  
27 the latter, the unlawful procurement activity took place just a  
28 few months prior to execution of the oral agreement at issue

1 therein. The proximity in time between the unlawful procurement  
2 and the execution of the subsequent agreement could allow one to  
3 infer that the subsequent agreement was motivated by an intent to  
4 conceal illegal activity; an inference that cannot be made when  
5 six years and multiple renewals separate the unlawful activity  
6 under the initial agreement from the parties' execution of their  
7 final agreement. The instant case presents facts almost  
8 identical to those of *Gittelman*, and we believe it provides the  
9 analysis that should now be followed.

10 10. We pause to address two arguments advanced by  
11 petitioner in support of his contention that the unlawful  
12 procurement activities of September 1994 to January 1995 compel  
13 the determination that all of the subsequent contract renewals  
14 are void from their inception. First, petitioner is incorrect in  
15 his assertion that this is how the court of appeal interpreted  
16 the Talent Agencies Act in *Park v. Deftones* (1999) 71 Cal.App.4th  
17 1465. That decision contains absolutely no discussion of this  
18 issue, as the only issues presented in this appeal related to the  
19 statute of limitations and the applicability of the Talent  
20 Agencies Act to procurement which is not commissioned. To be  
21 sure, in that case the parties had entered into successive  
22 written personal management agreements in February 1992, February  
23 1993, and February 1994; and prior to and throughout that time,  
24 from September 1991 to September 1994, there were 84 instances of  
25 unlawful procurement. The court noted that the Labor  
26 Commissioner's determination, which was upheld by the trial court  
27 on summary judgment (where the evidence consisted of a transcript  
28 of the hearing before the Labor Commissioner) concluded that all

1 three of these agreements were void *ab initio* as a consequence of  
2 these unlawful procurement activities. Petitioner's assertion  
3 that there would be no need to consider procurement prior to  
4 January 1994 if such procurement was irrelevant to the validity  
5 of the parties' final contract simply ignores the fact that the  
6 pre-January 1994 procurement was considered in deciding the  
7 validity of the earlier contracts.

8 11. We have given a great deal of consideration to  
9 petitioner's concern that unless subsequent contracts with an  
10 artist are found void as a result of a personal manager's prior  
11 unlawful procurement activities on behalf of that artist, a  
12 personal manager "could flagrantly procure employment without a  
13 talent agency license simply in order to increase his commissions  
14 and then avoid the remedial purpose of the Act by simply having  
15 the artist sign a new [contract]." This concern is adequately  
16 addressed, however, by holding that any purported right to  
17 commissions or other payments pursuant to contract(s) entered  
18 into subsequent to the unlawful procurement activity are not  
19 enforceable to the extent that any such commissions or payments  
20 are based on artistic employment that commenced, or deals that  
21 were substantially negotiated, or services provided by the  
22 personal manager, during the term of the prior contract(s) during  
23 which unlawful procurement activities occurred. This will ensure  
24 that an unlicensed talent agent cannot use the device of  
25 executing a new contract with the artist as a subterfuge to  
26 profit from prior unlawful procurement activities. Finally, we  
27 do not hold that there can never be a case in which a personal  
28 management contract executed subsequent to unlawful procurement

1 activities would be held void in its entirety as a result of the  
2 of the prior unlawful procurement. Factors including the  
3 frequency of the unlawful procurement activities, and the  
4 nearness in time between the last instance of procurement and the  
5 execution of a subsequent contract, may be considered in  
6 determining the appropriate remedy under the Act. Here, however,  
7 we conclude that three instances of unlawful procurement, the  
8 last of which took place in January 1995, do not make a contract  
9 renewal executed five years later void.

10 ORDER

11 For the reasons set forth above, IT IS HEREBY ORDERED that  
12 the parties' personal management contract of February 16, 2000 is  
13 not void *ab initio* or unenforceable under the Talent Agencies  
14 Act, to the extent that Respondents are not seeking commissions  
15 or payments for any artistic employment that commenced, or deals  
16 that were substantially negotiated, or services provided by  
17 Respondents prior to September 1, 1995.

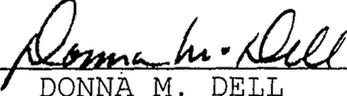
18  
19 Dated: 10/20/05

  
MILES E. LOCKER

Attorney for the Labor Commissioner

21  
22 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

23  
24 Dated: 11/16/05

  
DONNA M. DELL

State Labor Commissioner

