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2 Department of Industrial Relations,
3 State of California
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10
11 **BEFORE THE STATE LABOR COMMISSIONER**
12 **OF THE STATE OF CALIFORNIA**
13

14 WILLIAM WEBB,
15
16 Petitioner,

) CASE NO. TAC 36-03
)
) ORDER DISMISSING PETITION

17 v.

18 ROBERT LEWIS ROSEN and ROBERT
19 LEWIS ROSEN ASSOCIATES, LTD.,
20
21 Respondents.

22 **INTRODUCTION**

23 On October 3, 2003, Petitioner William Webb (hereinafter "Webb" or "Petitioner") filed
24 a Petition to Determine Controversy with the California State Labor Commissioner's office
25 against Respondents Robert Lewis Rosen and Robert Lewis Rosen Associates, Ltd.(hereinafter
26 "RLR" or "Respondents"). By his Petition, Webb sought a determination (1) that Respondents
27 are not entitled to any manager's fees Webb received from FOX Sports Productions, Inc. and
28 Madison Square Garden Networks, due to the fact that RLR failed to comply with the California
Talent Agencies Act; and (2) that Respondents be required to disgorge any monies received in

1 satisfaction of a judgment entered by the United States District Court for the Southern District
2 of New York in Case No. 03 Civ. 6338 (HB).

3 On January 30, 2004, Respondents filed a Motion Requesting the Dismissal of Webb's
4 Petition based on a number of grounds including that the Petition is barred by the one year
5 statute of limitations found in Labor Code §1700.44 and the doctrines of res judicata and
6 collateral estoppel. Petitioner filed an opposition to the motion in August, 2004 and a reply was
7 thereafter filed in September, 2004.

8 FINDINGS OF FACTS

9 It is undisputed that Petitioner was, at all times relevant, a resident of the state of New
10 Jersey. RLR, although at times doing business out of Rosen's vacation home in Palm Desert,
11 California, maintained its offices in New York City, New York.

12 In 1986, Webb and RLR entered into a written contract, attached to the Petition as
13 Exhibit "A", which provides that the Agreement is covered by New York law and that any
14 controversy shall be submitted to arbitration in New York. A written extension of this
15 agreement, from 1997 to 2001, was entered into by the parties in May 1997. The written
16 extension on RLR letterhead lists RLR's address as New York and Webb's address as New
17 Jersey.

18 In April 2001, RLR demanded arbitration of a dispute concerning his manager fees. The
19 dispute proceeded to arbitration, with Petitioner participating, and an award in RLR's favor was
20 issued on July 31, 2003. Thereafter, RLR filed an action in United States District Court for the
21 Southern District of New York to confirm the award. The award was confirmed on November
22 24, 2003. In the proceedings for the confirmation of the arbitration award, Webb, for the first
23 time, sought a stay of the proceedings pending a determination by the California Labor
24 Commissioner on his Petition that RLR is not entitled to fees based on its unlicensed talent
25 agency activity. The court, noting that Webb filed the Request for a Stay prior to filing the TAC
26 Petition, denied the stay and confirmed the arbitration award. Webb also filed an action against
27 RLR in United States District Court in New York for unjust enrichment and breach of the

1 faithless servant doctrine. Webb's claims were denied on June 24, 2004.

2 The great majority of activities, including the negotiation and signing of the management
3 contract occurred in New York and New Jersey. The parties agreed that New York law was to
4 apply. However, RLR did send a letter to FOX Sports in Los Angeles and there was some
5 negotiation and correspondence with RLR at its address in California.

6 CONCLUSIONS OF LAW

7 Although the parties raise a number of issues in their papers, the Labor Commissioner
8 finds the issue of res judicata and statute of limitations dispositive.

9 In his Petition, Webb seeks to collaterally attack the New York District Court's judgment
10 in favor of RLR by seeking disgorgement of any monies that may be paid pursuant to that
11 judgment. After a final judgment has been rendered in an action, a new action based on the
12 same cause of action or defense is merged into the judgment and the judgment acts as a bar to
13 the new action. *See Woulridge v. Burns* (1968) 265 Cal.App.2d 82, 84. In a collateral attack,
14 the judgment is presumed valid. Evidence Code Section 666. *See also Garcia v. Bonilla*, TAC
15 4-02. The judgment must be void on its face. Webb has not shown that the New York judgment
16 is void or voidable. Given the fact that California has little interest in the underlying cause of
17 action, since Webb is not a California resident and the procurement activity in California was
18 minimal, if at all, the Labor Commissioner finds that the New York judgment is valid and
19 binding.¹

20 It appears to the Labor Commissioner, that Webb, having lost in the New York and
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22 ¹It must also be noted that New York law differs from California law with respect to
23 allowable unlicensed talent agent activities. Where California does not allow any incidental
24 procurement, New York specifically provides that it is allowable. Given the fact that the parties
25 executed the contract in New York and agreed to be bound by New York law and the fact that
26 the California contacts, although they may be sufficient for jurisdiction, are minimal, a conflict
27 of laws analysis would result in a finding that New York had a greater interest.

1 arbitral forums, is seeking to relitigate the issue of whether the commissions are due to RLR.
2 We find Respondent's argument that Webb's Petition is time-barred also persuasive. Although
3 Webb argues that it is raising the issue of the Talent Agencies Act as a defense to the action by
4 RLR, and thus may be raised at any time, in fact RLR's action was commenced in April 2001,
5 more than 2 years prior to the filing of the Petition. As pleaded in the Petition, Webb is not
6 raising the Act as a defense but instead is seeking disgorgement of any monies that may be
7 received pursuant to the judgment.

8 Labor Code Section 1700.44 provides that the Petition must be brought within one year
9 of the violation. In this instance, the alleged violation is the demand for arbitration of the
10 controversy regarding the commissions, i.e. its action to recover unpaid commissions. As such,
11 Webb had one year from April 2001 within which to file his Petition. Since the Petition was
12 filed in October 2003, the Petition is time-barred and must be dismissed.

13 ORDER

14 The Petition is hereby dismissed.

15
16 Dated: June 29, 2007

Anne Stevason/EOE

ANNE STEVASON
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For the Labor Commissioner

