STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement
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Attorney for the Labor Commissioner

BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

NATHANIEL STROMAN (pka Earthquake), Petitioner, vs. NW ENTERTAINMENT, INC. dba NEW WAVE ENTERTAINMENT as successor in interest to BARRY KATZ MANAGEMENT, INC., Respondent.	CASE NO. TAC 38-05 **DETERMINATION OF CONTROVERSY**

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on April 10, 2006 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner NATHANIEL STROMAN (pka Earthquake), (hereinafter, referred to as "petitioner"), appeared through his attorneys Hayes F. Michel and Travis P. Brennan of

Proskauer Rose LLP. Respondent NW ENTERTAINMENT, INC. dba NEW WAVE ENTERTAINMENT as successor in interest to BARRY KATZ MANAGEMENT, INC., (hereinafter, referred to as "respondent"), appeared through its General Counsel and Head of Business Affairs, David B. Stern.

Based on the evidence presented at this hearing and on the other papers on file in this matter, the Labor Commissioner hereby adopts the following decision.

FINDINGS OF FACT

1. Petitioner is a professional comedian who performs on stage and television.

2. Since approximately 2004, respondent has been the successor in interest to BARRY KATZ MANAGEMENT, INC., who previously served as petitioner's personal manager.

3. At no time has respondent been licensed as a talent agency by the State of California.

4. On or about January, 2000, petitioner and BARRY KATZ MANAGEMENT, INC., entered into an oral agreement wherein BARRY KATZ MANAGEMENT, INC. agreed to act as petitioner's personal manager in exchange for a management commission fee (See Paragraph 4 of Petitioner's Exhibit 3).

5. On September 29, 2004, respondent, in its capacity as successor in interest to BARRY KATZ MANAGEMENT, INC., filed an action in the superior court against petitioner for (1) Breach of Oral Contract, (2) Reasonable/Agreed Value, (3) Account Stated, and (4) Open Book Account (hereinafter, referred to as "superior court action").

6. In support of a default judgment obtained in the superior court action, respondent submitted a declaration under penalty of perjury by its President, Alan Baral. At paragraphs 6-8 of the declaration, Mr. Baral makes the following admissions:

> "6. *During the course of said manager relationship in the year 2000,* ***KATZ secured employment for STROMAN*** *wherein KATZ earned*

commissions of $10,100.00. To date, none of the earned commission fees for 2000 have been paid.

7. *During the course of said manager relationship in the year 2001,* ***KATZ secured employment for STROMAN*** *wherein KATZ earned commissions of $23,650.00. To date, none of the earned commission fees for 2001 have been paid.*

8. *During the course of said manager relationship in the year 2002,* ***KATZ secured employment for STROMAN*** *wherein KATZ earned commissions of $19,128.00. To date, none of the earned commission fees for 2002 have been paid."*

[Emphasis added.]

7. Respondent argued at the hearing that petitioner has a history of not honoring his financial commitments. In support of this argument, respondent submitted as Exhibit A, a copy of a deposition subpoena in an unrelated (divorce) action between petitioner and his ex-wife to show that petitioner is not paying his ex-wife under their divorce agreement. Respondent also argued that when it acquired BARRY KATZ MANAGEMENT, INC., one of the outstanding collection items listed for the management company was the unpaid commissions due it from petitioner. Consequently, in its capacity as successor in interest to BARRY KATZ MANAGEMENT, INC., on September 29, 2004, it hired a collection attorney to file the superior court action against petitioner for the purpose of collecting the unpaid commissions. Lastly, in support of its assertion that petitioner does not honor his financial commitments, respondent testified that petitioner was represented by the Gersh Talent Agency during the relevant time period and that the Gersh Agency would not agree to appear as a witness for respondent in this case because it did not want to jeopardize its own talent agency controversy filed against petitioner for non-payment of commissions.

8. Respondent also argued that pleadings filed in the superior court action by its

collection attorney cannot serve as a bar to respondent collecting its unpaid commissions from petitioner.

9. Further, respondent argued that under the Talent Agencies Act, managers can assist in the procurement of work for the artist when there is a licensed talent agency involved. And, in this case, the Gersh Talent Agency was acting as petitioner's agent, not respondent.

10. Lastly, respondent argued that the action is barred by the one year statute of limitations.

LEGAL ANALYSIS

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

2. Respondent is not a licensed talent agency.

3. Labor Code §1700.44(a) provides that in cases of controversy arising under this chapter, the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the matter shall be heard de novo.

4. Paragraphs 6 through 8 of the declaration of Alan Baral in support of the default judgment submitted in the superior court action, constitute admissions that respondent procured work for petitioner. Consequently, because respondent is not a licensed talent agency, it procured such work for petitioner in violation of the Talent Agencies Act.

5. Respondent's argument that petitioner does not honor his financial obligations is not a defense to violation of the Act.

6. Moreover, respondent's argument that this petition is barred by the statute of limitations is misplaced. Labor Code §1700.44(c) provides that "no action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to the commencement of the action or proceeding." The one year statute of limitations provided by Labor Code §1700.44(c) does not apply to

affirmative defenses. See *Styne v. Stevens* (2001) 26 Cal.4th 42. The evidence established that there is a pending superior court action wherein respondent seeks compensation based on the oral contract at issue herein. Petitioner, consequently, is raising the act as an affirmative defense to such action. As such, this action is timely.[1]

7. Furthermore, respondent's argument that admissions made in the superior court action do not preclude it from collecting unpaid commissions is also without merit. Labor Code §1700.5 provides that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license...from the Labor Commissioner." An agreement that violates the licensing requirements of the Talent Agencies Act is illegal and unenforceable. "Since the clear object of the Act is to prevent improper persons from becoming [talent agents] and to regulate such activity for the protection of the public, a contract between an unlicensed [agent] and an artist is void." *Buchwald v. Superior Court* (1967) 254 Cal.App.2d, 347,351. Respondent admitted under penalty of perjury in court filings, in the superior court action, that it procured work for petitioner. In this action, it admitted that at no time has it been licensed as a talent agency by the State of California. No evidence was provided that respondent acted at the request of and in conjunction with any licensed talent agency, including the Gersh Talent Agency, in securing employment for petitioner during the years 2000, 2001 or 2002. See Labor Code §1700.44(d). Accordingly, the oral contract between the parties providing for commissions to be paid by petitioner to respondent, is void *ab initio*.

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[1]While there wasn't any testimony provided at the hearing that the default judgment obtained by respondent against petitioner, in its "superior court action," was set aside, the Labor Commissioner takes judicial notice of the Los Angeles County Court Register for Case No. SC083028 which indicates that the default judgment obtained by respondent has been set aside and the matter remains pending in the superior court. Evidence Code §452(d).

ORDER

For the above-stated reasons, IT IS HEREBY ORDERED that respondent has violated the Talent Agencies Act, Section 1700 et seq. of the Labor Code and that the Agreement between the parties is void *ab initio* and unenforceable. It is also ORDERED that petitioner NATHANIEL STROMAN (pka Earthquake) has no liability thereon to respondent NW ENTERTAINMENT, INC. dba NEW WAVE ENTERTAINMENT as successor in interest to BARRY KATZ MANAGEMENT, INC. and respondent NW ENTERTAINMENT, INC. dba NEW WAVE ENTERTAINMENT as successor in interest to BARRY KATZ MANAGEMENT, INC., has no rights or privileges thereunder and no entitlement to any payments of any kind from petitioner NATHANIEL STROMAN (pka Earthquake).

Dated: July 11, 2006

EDNA GARCIA EARLEY
Special Hearing Officer

Adopted:

Dated: July 11, 2006

ROBERT JONES
Acting State Labor Commissioner