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6

7
8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 LENA KATINA, an individual,

CASE NO. TAC 43106

12 Petitioner,

DETERMINATION OF CONTROVERSY

13 vs.
14

15 TRISTRAM BUCKLEY, an individual,
16

17 **I. INTRODUCTION**
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19 The above-captioned matter, a Petition to Determine Controversy under Labor Code
20 section 1700.44, came on regularly for hearing in Los Angeles, California, before the undersigned
21 attorney for the Labor Commissioner assigned to hear this case. Petitioner LENA KATINA, an
22 individual, (hereinafter, to as "KATINA") appeared and was represented by Michael D.
23 Kuznetsky of Kuznetsky Law Group, P.C. TRISTRAM BUCKLEY, an individual and a licensed
24 California attorney, (hereinafter "BUCKLEY") represented himself.

25 The above-captioned matter, a Petition to Determine Controversy under Labor Code
26 §1700.44, came on regularly for hearing in Long Beach, California, on October 6, 2017, before
27 the undersigned attorney for the Labor Commissioner assigned to hear this case. The matter was
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1 taken under submission after post-trial briefing.

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

4 II. FINDINGS OF FACT

5
6 1. KATINA performed as part of a duo group known internationally as
7 t.A.T.u.. t.A.T.u. sold millions of records worldwide appearing on both *The Tonight Show* and
8 *The Jimmy Kimmel Show*. In 2011, the duo broke up and Katina embarked on a solo career under
9 the name "The Project" (hereinafter KATINA).

10 2. In or around March 2012, KATINA orally agreed to engage BUCKLEY as
11 KATINA's personal manager in exchange for originally 5%, then 10% and ultimately 20%
12 commission for engagements booked by BUCKLEY. BUCKLEY stipulated that he has never
13 been a California licensed talent agent, although he is a California licensed attorney.

14 3. BUCKLEY made many representations as to what he would do on KATINA's
15 behalf, including, promises to book shows and promises to seek a record deal for KATINA.

16 4. In or around March of 2012, the parties entered into an oral agreement whereby
17 BUCKLEY would act as KATINA's talent manager in exchange for a commission structure
18 capped at 20% for shows booked directly by BUCKLEY.

19 5. Immediately, BUCKLEY instructed KATINA to refer all requests for live
20 performances and personal appearances directly to him. KATINA did as she was told and all
21 offers were routed directly to BUCKLEY.

22 6. In addition to handling all of the offers for live performances and personal
23 appearances, BUCKLEY's services to KATINA, included reshaping her public image. In
24 furtherance of that endeavor, BUCKELY worked with KATINA on hair and make-up, fashion,
25 choreography, stage presence, and retaining a Spanish vocal coach and other typical
26 responsibilities normally handled by a talent manager. In addition, BUCKELY tightly controlled
27 KATINA's social media accounts and increased her social media exposure and following.
28

1 7. In or around March 2012, KATINA traveled back to Russia and performed there
2 for several months. During KATINA's time in Russia, BUCKLEY became frustrated with
3 managing KATINA from 12 time zones away ultimately leading to a breakdown in the parties'
4 relationship.

5 8. In or around March of 2013, KATINA terminated the management agreement, and
6 according to BUCKLEY, KATINA refused to pay BUCKLEY commissions associated with the
7 earnings from performances in Russia not previously disclosed to BUCKLEY. In addition,
8 BUCKLEY accused KATINA of many other subversive acts leading to BUCKLEY'S filing of a
9 civil complaint against KATINA.

10 9. On or around April 26, 2013, BUCKLEY filed a 100-page complaint in the
11 County of Los Angeles Superior Court, LASC Case No. BC510762, alleging fraudulent
12 inducement; breach of contract; quantum meruit; unjust enrichment; tortious interference with
13 contractual relations; interference with economic advantage; violation of the Labor Code;
14 defamation and criminal threats/assault (hereinafter "Buckley Lawsuit").

15 10. In defense of the Buckley Lawsuit, KATINA filed the instant petition to determine
16 controversy on April 20, 2016¹, alleging the BUCKLEY violated the Talent Agencies Act
17 (hereinafter "the Act").

18 11. In her Petition, KATINA seeks a determination that (1) BUCKLEY violated the
19 Act; (2) BUCKLEY'S alleged agreement with KATINA is illegal, unenforceable void *ab initio*;
20 (3) awarding KATINA's costs and attorney fees incurred; (4) and that KATINA is entitled to
21 such other and further relief in their favor as the Labor Commissioner may deem just and proper.

22 12. Specifically, KATINA alleges that BUCKLEY violated the Act by repeatedly
23 procuring, offering, negotiating, promising and attempting to procure engagements or
24 employment for KATINA without a California talent agency license and therefore in violation of
25

26 ¹ BUCKLEY argues the Petition is time barred by the one-year statute of limitations under Labor Code
27 section 1700.44. It is well established that the statute of limitations does not apply to petitions filed as a defense to an
28 action. *Styne v. Stevens* 26 Cal.4th 42, 51-54. Moreover, BUCKLEY obtained an Entry of Default Judgment against
KATINA while she was out of the country. KATINA discovered the default judgement in February 2016, filed the
instant Petition on April 20, 2016, and moved to set aside the default judgment. The judgement was set aside by the
court on September 9, 2016. The Petition is therefore timely.

1 the Act.

2 **Offers, Promises and Procurement Efforts**

3 *Live Performance in Indonesia*

4 13. BUCKLEY attempted to procure a show in Indonesia for KATINA. BUCKLEY
5 sent an email to KATINA, among other, stating, "I am trying to book a show in Indonesia (10,000
6 euros plus accommodations) and need a contract . . ." BUCKLEY received the offer for the show,
7 including the proposed contract, and was the first person to advise KATINA about the Indonesian
8 show. In relaying the show contract offer to KATINA by email, BUCKLEY wrote, "Here's the
9 current offer as it is now from Indonesia." He also discussed the show with KATINA over
10 multiple emails and conversations.

11 14. BUCKLEY negotiated all aspects of the show, including the fee, accommodations,
12 flights, and the technical and hospitality riders. The show contract sets forth that (1) BUCKLEY
13 is listed as the "Agent/Management," (2) "The manager the right [*sic*] to terminate the agreement
14 if the Promoter deposit between [*sic*] January 15th – January 29th 2012 [*sic*]," and (3) had a
15 signature line for BUCKLEY. Following these negotiations, BUCKLEY wrote, "I've done a deal
16 for a show in Indonesia." In that email, BUCKLEY's signature appears on the show contract.

17 *Live Performance at West Hollywood's Halloween Parade*

18 15. KATINA performed live in West Hollywood's Halloween parade on October 31,
19 2012. This paid performance was handled entirely by BUCKLEY and it was BUCKLEY that
20 communicated with the show organizers. KATINA was paid approximately \$500 for the
21 performance, which BUCKLEY accepted and collected on her behalf. This is admitted by
22 BUCKLEY in his the Buckley Lawsuit:

23
24 Second, the Plaintiff secured a performance for the Plaintiff on one
25 of the main stages on Halloween night on Santa Monica Boulevard
26 in Hollywood where half a million people would be in attendance
of what is known as the Halloween Parade and the largest
Halloween celebration in the world. (pg. 43 ¶ 368)

27 ///

1 ***Live Performance in Bahrain***

2 16. BUCKLEY attempted to procure a show for KATINA in Bahrain. BUCKLEY
3 wrote to KATINA , “Just to keep you posted, been emailing about a performance in Bahrain. No
4 numbers set yet for this possible show in the end of January. I will keep you posted. He also told
5 KATINA that he was “talking about setting up a show in Bahrain.”

6 ***TV Interview and Live Performance on NBC Tonight Show***

7
8 17. BUCKLEY offered, promised, and attempted to procure both a television
9 interview and a live performance for KATINA on the NBC Tonight Show. This is admitted by
10 BUCKLEY in the Buckley Lawsuit:

11
12 As part of his [Mr. Buckley’s] campaign to repair Tatu’s [sic] past
13 spoke with the Tonight Show Producer at length after sending her a
14 long letter that she deemed “compelling” in an effort to book Katina
and Volkova once again on the Tonight Show.

15 After speaking with the Plaintiff, the Producer stated she was
16 receptive to the idea of booking the Katina and Volkova on the
17 Tonight Show, a huge opportunity for Katina and Tatu [sic] and one
that could prove extremely profitable given the millions of viewers.
(pg. 23 ¶¶ 168, 169)

18 ***Live Performance on The Voice UK***

19 18. BUCKLEY attempted to procure a performance for t.A.T.u to appear on the
20 television show called The Voice UK.

21 ***Live Performance at a Club in Las Vegas***

22 19. BUCKLEY procured a paid live performance for KATINA at a club in Las Vegas.
23 In addition, he negotiated and collected the fee for the performance.

24 ***Tour in Brazil and Australia***

25 20. BUCKLEY attempted to procure a paid tour of live performances for KATINA in
26 Brazil and Australia, including the tour’s negotiations. This is admitted in the Buckley Lawsuit:

27
28 Beginning in March of 2012, Plaintiff began coordinating a concert
and CD signing tour that would have taken Katina to Rio De

1 Janeiro, Buenos Ares, Sao Paulo, Sidney and Melbourne. (pg. 58 ¶
2 520)

3 ***Live Performance on German Television Show "RTL"***

4 21. The German T.V. show "RTL" originally reached out to t.A.T.u. to inquire about
5 booking them. BUCKLEY then contracted RTL and negotiated a performance for KATINA
6 instead. BUCKLEY negotiated a fee from RTL and collected it on KATINA'S behalf. This is
7 admitted in the Buckley Lawsuit:

8 RTL did not want Katina for but rather, expected Tatu, but Volkova
9 became unable to attend.

10 Rather than suffer a cancelation of what would have been Katina's
11 most important appearance to date, the Plaintiff artfully and
successfully negotiated a resolution.

12 The result was Defendant Katina's most important TV solo
13 appearance to date in her solo career with a Western European
audience of more than four million people. (pg. 75 ¶¶ 693-695)

14
15 ***Live Performance in Poland***

16 22. BUCKLEY communicated with promotors in Poland in an attempt to book
17 KATINA for a live performance, and received an offer.

18 ***Photo Shoot and Interview on French T.V.***

19 23. BUCKLEY set up a photoshoot and television interview for KATINA.
20 BUCKLEY handled all communications, negotiated and collected the fee.

21 ***Acting Role Involving Nudity in a Horror Film***

22 24. On KATINA'S behalf, BUCKLEY negotiated with representatives of a horror
23 film, attempting to procure a role for her as an actress in the movie. BUCKLEY's
24 communications with theses representatives included negotiations over the hours to shoot, what
25 country KATINA would be shot in, the monetary offer, and the amount of nudity that KATINA
26 would agree to. BUCKLEY also attempted to negotiate a \$100,000 acting fee.

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1 ***Live Performance at Televised Euro 2012 Tournament***

2 25. BUCKLEY told KATINA on “plenty” of occasions that he was negotiating a live
3 performance for the Euro 2012 tournament for KATINA. This is admitted in the Buckley
4 Lawsuit:

5 The greatest opportunity of Katina’s career presented itself when
6 the organizers of the Euro 2012 were interested in booking Katina
7 for their event in Poland.

8 The Euro 2012 was a European football tournament that set the
9 record for both the highest aggregate attendance (1,444,896) and
10 was viewed by an estimated 150,000,000 people around the world,
11 per match.

12 This was a huge opportunity for Katina, the kind of opportunity that
13 could have catapulted her career from relative obscurity.

14 However, the Defendants directly interfered with the Plaintiff’s
15 efforts to secure the performance. (pg. 50 ¶¶ 444-447)

16 ***Live Performance on the Televised OE Awards in the Ukraine***

17 26. BUCKLEY received and negotiated an offer for KATINA to perform on the OE
18 Awards, a Ukrainian television program. This is admitted in the Buckley Lawsuit, which reads in
19 pertinent part:

20 The Plaintiff facilitated Katina’s appearance on the OE Awards,
21 scheduled for April of 2013, scheduling her to appear and perform
22 on the show, in the Ukraine’s version of the MTV Music Video
23 awards. (The show would later be cancelled as, according to
24 published reports, the government would be using the facility. (pg.
25 55 ¶ 495)

26 ***Live Performance in Kiev***

27 27. BUCKLEY attempted to book a show for KATINA in Kiev, where he negotiated a
28 fee of \$8,000. This is supported in the Buckley Lawsuit, which reads:

 Katina was also scheduled to perform at a club that same weekend
 in Kiev and to be paid \$8,000 for the appearance, of which 20%
 would be the Plaintiff’s fee. (pg. 55 ¶ 496)

Live Performance in Mexico City and Lima

 28. BUCKLEY attempted to book a shows for KATINA in Mexico City and Lima.
This is supported in the Buckley Lawsuit:

1 The tour would have been financially profitable and extremely
2 effective promotion for Katina, while additional cities such as Lima
3 and Mexico City were under consideration. (pg. 58 ¶ 522)

4 III. LEGAL DISCUSSION

5 Issues

- 6 1. Has BUCKLEY acted as an unlicensed talent agent and therefore violated the
7 Talent Agencies Act?
- 8 2. Does the Recording Contracts exemption from the Talent Agencies Act at Labor
9 Code 1700.4(a) apply.
- 10 3. If BUCKLEY violated the Act, is the appropriate remedy to void the entire contract *ab*
11 *initio* or sever the offending practices under *Marathon Entertainment, Inc. v. Blasi* (2008) 42
12 Cal.4th 974.

13 Analysis

14 One issue is whether based on the evidence presented at this hearing, did BUCKLEY
15 operate as a “talent agency” within the meaning of Labor Code section 1700.4(a). Labor Code
16 section 1700.4(a) defines “talent agency” as “a person or corporation who engages in the
17 occupation of procuring, offering, promising, or attempting to procure employment or
18 engagements for an artist or artists.”

19 KATINA, a musical performer, is an “artist” within the meaning of Labor Code section
20 1700.4(b). Labor Code section 1700.5 provides that “[n]o person shall engage in or carry on the
21 occupation of a talent agency without first procuring a license....from the Labor Commissioner.”
22 It was stipulated that BUCKLEY did not possess a talent agency license during the relevant
23 period, although he is a licensed California attorney.

24 In contrast, a person may counsel and direct artists in the development of their
25 professional careers, or otherwise “manage” artists – while avoiding any procurement activity
26 (procuring, promising, offering, or attempting to procure artistic employment of engagements) –
27 without the need for a talent agency license. In addition, such person may procure non-artistic
28

1 employment or engagements for the artist, without the need for a license. *Styne v. Stevens* (2001)
2 26 Cal.4th 42.

3 An agreement that violates the licensing requirements of the Talent Agencies Act is illegal
4 and unenforceable. "Since the clear object of the Act it to prevent improper persons form
5 becoming [talent agents] and to regulate such activity for the protection of the public, a contract
6 between and unlicensed [agent] and an artist is void." *Buchwald v. Superior Court* (1967) 245
7 Cal.App.2d 347, 351.

8 **A. Promises, Offers, Attempts and Procurement**

9 As demonstrated by the totality of the evidence contained in the record, BUCKLEY not
10 only promised to procure employment, but he offered, attempted and actually procured
11 employment or engagements for KATINA throughout his representation of KATINA. Promises,
12 offers and attempts to procure employment without a talent agency license are violations of the
13 Act.

14 In *Waisbren v. Peppercorn Production, Inc.* (1995) 41 Cal.App.4th 246, the court held
15 that any single act of procuring employment subjects the agent to the Talent Agencies Act's
16 licensing requirement, thereby upholding the Labor Commissioner's long standing interpretation
17 that a license is required for any procurement activities, no matter how incidental such activities
18 are to the agent's business as a whole. Applying *Waisbren*, it is clear BUCKLEY acted in the
19 capacity of a talent agency within the meaning of Labor Code section 1700.4(a) and it is clear that
20 BUCKLEY procured employment without a license in violation of Labor Code §1700.5 in his
21 efforts to represent KATINA.

22 **B. The Recording Contract Exemption**

23 Labor Code 1700.4(a) provides:

24
25 Talent Agency means a person or corporation who engages in the
26 occupation of procuring, offering, promising, or attempting to procure
27 employment or engagements for an artist or artists, **except that the**
28 **activities of procuring, offering, or promising to procure recording**
contracts for an artist or artist shall not of itself subject a person or
corporation to regulation and licensing under this chapter. Talent
agencies may, in addition, counsel or direct artists in the development of
their professional careers. [emphasis added]

1 BUCKELY was extensively engaged in typical management responsibilities, including,
2 reshaping her public image by working on her hair and make-up, fashion, choreography, stage
3 presence, retaining a Spanish vocal coach and many other efforts directed at developing KATINA
4 as a viable solo artist. In addition, BUCKELY controlled KATINA's social media accounts and
5 increased her social media exposure and following. According to BUCKLEY, all of this activity,
6 including all of the attempts to procure engagements with third parties was done in an effort to
7 sign her to a record contract. Consequently, BUCKLEY argues all of the alleged illegal activity
8 is therefore exempt under Labor Code section 1700.4(a). BUCKLEY misinterprets the
9 exemption.

10 The recording contract procurement exception was first placed into the
11 Labor Code in 1982 and allowed for a commission known as the California Entertainment
12 Commission (hereinafter the Commission) to study the efficacy of the exception. The
13 Commission spent two years studying the issue and whether any changes should be made to it.
14 (*Wachs v. Curry* (1993) 13 Cal.App.4th 616, 625.) In affirming the need for the recording
15 contract procurement exception, the commission provided its rationale for its recommendation
16 keeping it in place:

17
18 A recording contract is an employment contract of a different nature from those in
19 common usage in the industry involving personal services. The purpose of the
20 contract is to produce a permanent and re-playable showcase of the talents of the
21 artist. In the recording industry, many successful artists retain personal managers
22 to act as their intermediaries, and negotiations for recording contracts are
23 commonly conducted by a personal manager, not a talent agency Y they may act as
24 their intermediaries, and negotiations for recording contracts are commonly
25 conducted by a personal manager, not a talent agent Y **they may act as a conduit
26 between the artist and the recording company, offering suggestions about the
27 use of the artist or the level of effort which the recording company is
28 expending on behalf of the artist.** (California Entertainment Commission Report
at p.625-626) [emphasis added].

25 Based on limited legislative history it appears the intent of the recording contract
26 exemption was to exempt the act of negotiating recording contracts between artists and the
27 recording companies. BUCKELY argues, all negotiations conducted with third parties are
28

1 exempt if the manager's overriding intent is to secure a record deal. That interpretation is too
2 expansive. Here, no record company is a party to any of BUCKLEY'S procurement efforts.
3 Consequently, we choose not to expand the purview of the Acts exemption to encompass
4 contracts for personal services between artists and non-record company third parties. This would
5 expand the exemption outside the intent of the legislature and the findings of the Commission
6 who studied the Act for more than two years.

7 **C. Appropriate Remedy for Violations of the Act**

8 In accord with *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 991,
9 BUCKLEY urges us to apply the doctrine of severability if we find that he violated the Act in any
10 of the identified engagements at issue herein. In *Marathon*, the court recognized that the Labor
11 Commissioner may invalidate an entire contract when the Act is violated. The court left it to the
12 discretion of the Labor Commissioner to apply the doctrine of severability to preserve and
13 enforce the lawful portions of the parties' contract where the facts so warrant. As the Supreme
14 Court explained in *Marathon*:

15 "Courts are to look to the various purposes of the contract. If the
16 central purpose of the contract is tainted with illegality, then the
17 contract as a whole cannot be enforced. If the illegality is collateral
18 to the main purpose of the contract, and the illegal provision can be
19 extirpated from the contract by means of severance or restriction,
20 then such severance and restriction are appropriate." [Citations
21 omitted]. *Marathon, supra* at p.996.

22 In this case, we find that the interests of justice would not be furthered by severance.
23 Specifically, we find that BUCKLEY regularly offered, promised, attempted, and procured
24 employment and entertainment engagements. BUCKLEY was the sole gatekeeper for offers at
25 his instruction. Moreover, BUCKLEY alone determined his role. BUCKLEY chose what
26 engagements to pursue and what engagements to book. BUCKLEY controlled every aspect of
27 KATINA'S career during the 12 months he represented KATINA as her manager, including all
28 negotiations for every performance with third parties.

BUCKLEY did engage in many management duties while representing KATINA, but we
conclude that BUCKLEY violated the Act on many occasions and did so throughout the parties'

1 relationship. We therefore conclude that the totality of the illegal acts is not collateral to the main
2 purpose of the parties' management relationship. The illegal acts are so intermingled during
3 BUCKLEY's representation, that they cannot be disentangled from the lawful acts. Accordingly,
4 we refuse to apply the doctrine of severability. The management agreement is void *ab initio* due
5 to pervasive illegality.

6 **IV. ORDER**

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

8 1. The oral management agreement between Petitioner, KATINA and Respondent,
9 BUCKLEY is invalid and unenforceable under the Talent Agencies Act.

10
11
12 DATED: May 17, 2018

Respectfully submitted,

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14 

15 DAVID L. GURLEY
16 Attorney for the Labor Commissioner

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18
19 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

20
21
22
23 Dated: May 18, 2018



24 JULIE A. SU
25 State Labor Commissioner

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**)
3 **COUNTY OF LOS ANGELES**) S.S.

4 I, Lindsey Lara, declare and state as follows:

5 I am employed in the State of California, County of Los Angeles. I am over the age of
6 eighteen years old and not a party to the within action; my business address is: 300 Occangate,
Suite 850, Long Beach, CA 90802.

7 On May 18, 2018, I served the foregoing document described as: **DETERMINATION**
8 **OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof
enclosed in a sealed envelope addressed as follows:

9 Michael D. Kuznetsky, Esq.
10 Mark D. Kesten, Esq.
11 **KUZNETSKY LAW GROUP, P.C.**
12 6565 Sunset Boulevard, Suite 311
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14 Tristram T. Buckley, Esq.
15 **LAW OFFICES OF TRISTRAM**
16 **BUCKLEY**
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In Pro Persona
Tristram_Buckley@yahoo.com

18 **(BY CERTIFIED MAIL)** This correspondence shall be deposited certified mail, return
19 receipt requested, with the United States Postal Service this same day in the ordinary
20 course of business at our office address in Long Beach, California. I am readily familiar
with the business practice for collection and processing of correspondence for mailing
with the United States Postal Service.

21 **(BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically
22 via e-mail to the e-mail address of the addressee(s) set forth above.

23 **(STATE)** I declare under penalty of perjury, under the laws of the State of
24 California that the above is true and correct.

25 Executed this 18th day of May 2018, at Long Beach, California.

26 
Lindsey Lara
27 Declarant
28