DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
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BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

CALVIN BROADUS, Petitioner, vs. SHARITHA KNIGHT, dba KNIGHTLIFE MANAGEMENT, INC., Respondent.	Case No. TAC 50-97 DETERMINATION OF CONTROVERSY

INTRODUCTION

The above-captioned petition was filed on September 8, 1997 by CALVIN BROADUS a.k.a. "SNOOP DOGGY DOGG" (hereinafter "Petitioner"), alleging that SHARITHA KNIGHT dba KNIGHTLIFE MANAGEMENT, INC.,(hereinafter "Respondent"), was acting in the capacity of a talent agency without possessing the required California talent agency license pursuant to Labor Code §1700.5[1]. Petitioner seeks from the Labor Commissioner a determination voiding a 1993 management agreement *ab initio* and requests

[1] All statutory citations will refer to the California Labor Code unless otherwise specified.

disgorgement of all commissions paid to respondent arising from this agreement.

Respondent was personally served with a copy of the petition on September 21, 1997. Respondent filed his answer with this agency on September 23, 1997. A hearing was scheduled before the undersigned attorney, specially designated by the Labor Commissioner to hear this matter. The hearing commenced as scheduled on May 28, 1999, in Los Angeles, California. Petitioner was represented by Bert H. Deixler and James E. Lutz of McCambridge, Deixler & Marmaro; respondent appeared through her attorney Byron Michael Purcell of Ivie, McNeill & Wyatt. Due consideration having been given to the testimony, documentary evidence and arguments presented, the Labor Commissioner adopts the following determination of controversy.

FINDINGS OF FACT

1. The parties stipulated the respondent has never been licensed by the State Labor Commissioner as a talent agency.

2. The parties entered into an exclusive management agreement executed on September 3, 1993. This agreement conferred signatory power of attorney upon respondent and provided, *inter alia,* that respondent would use best efforts to advise and counsel petitioner in his pursuit of success in the entertainment industry. The agreement also contained an exculpatory clause at sec. 3, stating in pertinent part:

> "Artist agrees that Manager is not expected to, nor shall Manager procure or secure employment for Artist. Manager is not to perform any services which, standing alone

shall constitute Manager a talent agent or artist's manager, and Manager has not agreed or promised to perform such services except to the extent permitted by any applicable laws. Artist agrees to utilize proper talent or other employment agencies to obtain engagements and employment or other employment agencies to obtain engagements and employment for Artist **after first submitting the names thereof to Manager,** and not to engage or retain any talent or other employment agency of which Manager may reasonably disapprove in writing."

3. Shortly after execution of the management agreement, and throughout 1994, negotiations to engage petitioner's services at a variety of venues ensued. The primary issue is whether respondent negotiated the series of concert dates on petitioner's behalf in violation of §1700.5.

4. Petitioner testified, he did not have a talent agent until late 1994 or early 1995, at which time he hired International Creative Management (ICM) to perform talent agency responsibilities. Testimony reflected, and no impeachment evidence introduced[2], that from the execution of the 1993 Personal Management Agreement until late 1994, no licensed talent agency, or any other representative other than respondent, conducted negotiations on petitioner's behalf.

5. Specifically, petitioner alleges respondent negotiated the terms and conditions via an "artist agreement" for a February 10, 1994 London performance. In support, petitioner provided the agreement, attached to a January 26, 1994 telefax

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[2] Section 3 of the 1993 Personal Management Agreement provides that the petitioner must submit the names to respondent of any employment agencies used on behalf of the petitioner to book engagements. Notwithstanding this provision, respondent did not provide one individual or agency other than ICM at the end of 1994, that was used by the petitioner for the concerts in issue.

cover sheet directed to respondent from the London promoter, "Styles of Rampage". The fax requested respondent's signature and necessary bank information, ostensibly for the petitioner's compensation to be directly deposited into respondent's account. The promoter typed in the words, "[i]ts a pleasure doing business with you", affixed to the telefax cover sheet. The respondent filled in the information and faxed the signed agreement the next day.

6. Respondent argues, albeit with no evidentiary support, that "Styles of Rampage" was a licensed talent agent in London. Therefore, even had respondent discussed negotiations with "Styles", this activity falls within the narrow exemption contained at §1700.44(d). This section provides, "it is not unlawful for a person...which is not licensed...to act in conjunction, and at the request of, a licensed talent agency in the negotiation of an employment contract." Respondent's analysis is flawed. The Legislature understood the realities of the industry and therefore allowed manager involvement in this very limited capacity. §1700.44(d) understands that managers and agents must often work together in promoting an artist, and promulgated this section with this in mind. This section would allow managers to discuss employment opportunities for their clients without incurring liability, so long as the manager was working in conjunction with a licensed agent. This allows limited negotiations by a manager while preserving and protecting the fiduciary duty contemplated by the legislature in drafting the protective mechanisms of the Talent Agencies Act. Here, there is no evidence that "Styles" was acting

on behalf of petitioner. Conversely, the evidence demonstrated "Styles of Rampage" was the promoter of the show acting solely in his best interest by signing the artist to a one time engagement. Even if "Styles" was a California licensed talent agency, which he is not[3], there is no evidence of a fiduciary duty between "Styles" and petitioner and hence, 1700.44(d) is inapplicable.

7. The evidence demonstrated that respondent negotiated a March 5, 1995, concert engagement in Jamaica, New York. Again, respondent signed the "artist engagement contract" on behalf of the petitioner and admittedly, in her own writing, made equipment requests on the face of the document. Though, this in itself is not dispositive of procuring employment, a "Rider to Artist Engagement Contract" was attached referencing Knightlife Management as the "agent" for the petitioner. When asked about this reference, respondent maintained that she received the contract, made handwritten notations, executed it, but had never seen the "Rider" before. It was clear after examining the documents, that they were faxed to respondent simultaneously.

8. On January 27, 1994, respondent negotiated a series of five concerts in Japan. Petitioner produced an exchange of faxes between the Japanese promoter and respondent detailing negotiations including: concert dates; airfare; accommodations; and compensation terms to the artist. Respondent returned a fax stating:

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[3] The Labor Commissioner's Licensing and Registration Unit maintains records of all talent agencies that are, or have been licensed by the State Labor Commissioner. A search of these records reveals that no license has ever been issued to a business operating under the name "Styles of Rampage."

> "Per our conversation, I am sending you this letter to confirm Snoop Doggy Dogg will perform in Japan on April 1-7, 1994 at $100,000 USD for five 35 minutes performances (venues to be announced). To close deal, I require fifty percent ($50,000 USD) in advance. The remaining fifty percent ($50,000 USD) is due upon our arrival in Japan."

When asked about this damaging evidence, Respondent replied, "I didn't create this. I had lots of staff that could have fraudulently used my name." This testimony did not seem likely. It should be noted, not one document contained petitioner's own signature.

9. Documents were produced reflecting a 1993 $160,000.00 payment in commissions to respondent, derived from royalties earned in connection with sale of petitioner's music. Petitioner was signed by the label, "Death Row Records". Respondent did not deny the payment of the commissions but argued she was entitled. Section 11. of the "Personal Management Agreement" provides, "[m]anager shall not be entitled to commissions from the artist in connection with any gross monies or other considerations derived from artist...(ii) from the sale, license or grant of any literary or musical rights to Manager or any person, firm or corporation owned or controlled by Manager." Respondent argues in her post trial brief, "If the personal manager has a record company in which the artist becomes obligated, then the personal manager will receive commissions as the record company and is not entitled to separate commissions as the personal manager." Respondent's analysis is correct, as this activity, commonly called "double dipping", would be a breach of fiduciary duty, a violation of the

Talent Agencies Act, and this Personal Management Agreement. Here, petitioner's record company is "Death Row Records", owned and operated by respondent's ex-husband. When the 1993 commissions were paid, respondent was still married to Death Row's owner. Respondent fails to recognize basic presumptions of California community property law. Indeed, the basic concept of community property is that marriage is a partnership where spouses devote their particular talent, energies, and resources to their common good. Acquisitions and gains which are directly or indirectly attributable to community expenditures of labor and resources are shared equally by the community. In re Marriage of Dekker 17 Cal.App.4th 842, at 850. It is difficult to imagine how in good faith respondent could charge petitioner commissions on royalties derived from record sales where she also owned the record company. Though no evidence was presented with respect to "Death Row Records" profits, one can only assume that respondent benefitted twice at the expense of the petitioner and breached section 11 of the Personal Management Agreement.

CONCLUSIONS OF LAW

1. Labor Code §1700.4(b) includes "musical artists" in the definition of "artist" and petitioner is therefore an "artist" within the meaning of Labor Code §1700.4(b).

2. In a motion brought by respondent in the course of discovery, respondent argues, "based on our understanding of Petitioner's claim and the relevant sections of the Labor Code, no

controversy exists to authorize the jurisdiction of the Labor Commission pursuant to Labor Code section 1700.44(c)." §1700.44(c) provides that "no action or proceeding shall be brought pursuant to [the Talent Agencies Act] with respect to any violation which is alleged to have occurred more than one year prior to the commencement of this action or proceeding.[4]" Here, the petitioner raises the issue of respondent's unlicensed status purely as a defense to the proceedings brought by respondent's action against the petitioner filed in superior court.

3. A statute of limitations is procedural, that is it only affects the remedy, not the substantive right or obligation. It runs only against causes of action and defenses seeking affirmative relief, and not against any other defenses to an action. The statute of limitations does not bar the defense of illegality of a contract, and in any action or proceeding where the plaintiff is seeking to enforce the terms of an illegal contract, the other party may allege and prove illegality as a defense without regard to whether the statute of limitations for bringing an action or proceeding has already expired. Sevano v. Artistic Production, Inc., (1997)TAC No. 8-93 pg.11. Additionally, this issue was brought before the California Court of Appeals in Park v. Deftones 84 Cal.Rptr.2d 616, at 618, which agreed with the Labor Commissioners ruling in Moreno v. Park (1998) TAC No. 9-97, p.4,

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[4] Respondent argues the, "Personal Management Service Agreement" was executed on 9-3-93 for a 3 year period. The Petition was filed on 9-8-97 and "thus any violation must have occurred within the year period prior to filing said Petition or by September 8, 1996...thus it is clear the alleged violation occurred beyond the statute."

stating, "the attempt to collect commissions allegedly due under the agreement was itself a violation of the Act." In that case, as here, the petitioner has brought this case before the Labor Commissioner as a result of respondents superior court action filed on May 29, 1997. Park adds, "it also assures that the party who has engaged in illegal activity may not avoid its consequences through the timing of his own collection action." Park, supra at 618. We thus conclude that §1700.44(c).does not bar petitioner from asserting the defense of illegality of the contract on the ground that respondent acted as a talent agent without a license.

4. The primary issue is whether based on the evidence presented at this hearing, did the respondent operate as a "talent agency" within the meaning of Labor Code §1700.40(a). Labor Code §1700.40(a) defines "talent agency" as, "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists." The statute also provides that "talent agencies may in addition, counsel or direct artists in the development of their professional careers." Labor Code section 1700.5 provides that "no person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." In Waisbren v. Peppercorn Production, Inc (1995) 41 Cal.App.4th 246, the court held that any single act of procuring employment subjects the agent to the Talent Agencies Act's licensing requirement, thereby upholding the Labor Commissioner's long standing interpretation that a license is required for any procurement activities, no matter how incidental such activities

are to the agent's business as a whole. Applying Waisbren, it is clear respondent acted in the capacity of a talent agency within the meaning of Labor Code §1700.4(a).

5. Testimony conflicted greatly on this issue. Respondent proposed an array of arguments including the petitioner has not met his burden of proof. I disagree. In Respondent's analysis of precedent case law, she makes the argument that in all of the published decisions, "the personal manager either admitted to procuring employment for it's artists or that there was 'clear evidence' that the personal manager procured employment for the artist." I can only assume that Respondent's use of the words "clear evidence", is a reference to the clear and convincing evidence standard as the appropriate burden of proof. This is not the burden of proof. The proper burden of proof is found at Evidence Code §115 which states, "[e]xcept as otherwise provided by law, the burden of proof requires proof by preponderance of the evidence." "Preponderance of the evidence" standard of proof requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. In re Michael G. 74 Cal.Rptr.2d 642, 63 Cal.App.4th 700. Here, the petitioner has clearly established by a preponderance of the evidence the respondent procured employment by negotiating performance dates, fees and payment terms on behalf of the petitioner. Though respondent maintained petitioner negotiated all of his employment contracts, that argument was wholly unsupported by the evidence. The overwhelming weight of the evidence presented suggested respondent's actions more than satisfied the minimal standard

described in Waisbren. In fact, the petitioner's credible testimony reflected he had never even seen one of the contracts, and testified, "I did whatever I was told to do. I trusted Sharitha. She was family." All of the contracts were signed by the respondent on behalf of the petitioner. All of the handwritten notations on the face of the contracts were handwritten by the respondent. All the correspondence that was sent between parties were addressed to the respondent. There was no evidence the petitioner used a licensed talent agent. In short, there was no evidence the petitioner was involved in any way with the negotiations of these performances. The testimony clearly reflected the respondent maintained a very influential disposition over the petitioner. The petitioner more than satisfied his burden of proof.

6. Respondent points to the exculpatory clause found within the Personal Management Agreement and argues that the express provision establishes the conduct of the parties. In Buchwald v. Superior Court(1967) 254 Cal.App.2d 347, 351, the court held that because "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 involved a dispute between a musical group and their unlicensed manager. In that case, as here, the management agreement contained similar language prohibiting the manager from negotiating employment. The group argued that the contractual language established, as a matter of law, that the manager was not subject to the Act's requirements. The court rejected that argument and stated, "The court or as here,

the Labor Commissioner, is free to search out illegality lying behind the form in which a transaction has been cast for the purpose of concealing such illegality. [citation.] The court will look through provisions, valid on their face, and with the aid of parol evidence, determine that the contract is actually illegal or part of an illegal transaction." The evidence is clear, that the respondent indeed, procured employment without a license in violation of Labor Code §1700.5.

7. The aforementioned agreement between respondent and petitioner is hereby void *ab initio* and is unenforceable for all purposes. Waisbren v. Peppercorn Inc., supra, 41 Cal.App. 4th 246; Buchwald v. Superior Court, supra, 254 Cal.App.2d 347.

ORDER

For the above-stated reasons, IT IS HEREBY ORDERED that the 1993 contract between respondent SHARITHA KNIGHT dba KNIGHTLIFE MANAGEMENT INC., and petitioner CALVIN BROADUS a.k.a. SNOOP DOGGY DOGG is unlawful and void *ab initio*. Respondent has no enforceable rights under that contract.

Having made no clear showing that the respondent collected commissions within the one-year statute of limitations prescribed by Labor Code §1700.44(c), petitioner is not entitled to a monetary recovery.

Dated: 7/27/99

DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 7/21/99

MARCY SAUNDERS
State Labor Commissioner