

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

8

STATE OF CALIFORNIA

9

10 GIOVANNI MARRADI; and NEWCASTLE) TAC No. 47-03
ENTERTAINMENT; INC.,)
11)
Petitioners,)
12)
vs.)
13)
MICHAEL MARESCH,) DETERMINATION OF CONTROVERSY
14)
Respondent.)
15)

16 The above-captioned matter, a petition to determine
17 controversy under Labor Code §1700.44, came on regularly for
18 hearing on January 28, 2005 in San Francisco, California, before
19 the Labor Commissioner's undersigned hearing officer.
20 Petitioners were represented by attorneys Allen Hyman and
21 Christine Coverdale. Respondent failed to appear at the hearing.
22 Based on the evidence presented at this hearing and on the other
23 papers on file in this matter, the Labor Commissioner hereby
24 adopts the following decision.

25

FINDINGS OF FACT

26 1. Petitioner GIOVANNI MARRADI was trained as a classical
27 pianist. He immigrated to the United States in 1977, and since
28 that time, earned his living by performing, playing the piano in

1 restaurants and hotels, and composing, arranging, and recording,
2 new music, with many of his compositions commercially available
3 on CDs that he produced. From 1980 to 1997, he resided in Las
4 Vegas, Nevada. In November 1997, he moved to Rancho Santa Fe,
5 California, and he has resided there through the present.

6 2. MARRADI testified that in 1998 he formed NEWCASTLE
7 ENTERTAINMENT, INC., as an entertainment company with a record
8 division, and that he is the sole shareholder. (In the petition,
9 it was incorrectly designated as NEW CASTLE ENTERTAINMENT, INC.
10 According to the website maintained by the California Secretary
11 of State, it is a Nevada corporation, based in Del Mar,
12 California, operating under the name NEWCASTLE ENTERTAINMENT
13 INC., doing business in California as NEC NEWCASTLE
14 ENTERTAINMENT.)

15 3. MARRADI met respondent MICHAEL MARESCH in Las Vegas in
16 1995, and they entered into a business relationship that year,
17 under which MARESCH performed accounting and bookkeeping
18 services, handled purchase orders for MARRADI's CDs, and started
19 MARRADI's website. Under this oral agreement, MARRADI paid 5% of
20 his net profits to MARESCH for these services. MARRADI paid
21 MARESCH pursuant to this agreement from 1995 until the agreement
22 was amended or replaced by a subsequent oral agreement, made in
23 September 1998.

24 4. In 1997, MARRADI appeared on television for QVC,
25 performing live and promoting his CD collection. Around that
26 time, MARESCH expressed an interest in taking on greater
27 responsibilities, and proposed that he start serving as MARRADI's
28 "manager," for which his payments would increase from 5 to 15% of

1 MARRADI's net profits. MARESCH came to California around
2 Christmas 1997, to discuss this proposal, and during this
3 discussion, MARRADI stated that "if you can get me performances,
4 I'd consider it." In early 1998, MARESCH contacted the Home
5 Shopping Network, QVC's main competitor, to attempt to obtain a
6 contract for MARRADI to appear on the Home Shopping Network. By
7 September 1998, MARESCH concluded negotiating an agreement, on
8 behalf of MARRADI and NEWCASTLE ENTERTAINMENT, for MARRADI to
9 perform music and sell CDs on the Home Shopping Network. Under
10 the terms of this agreement, the Home Shopping Network purchased
11 a substantial number of MARRADI's CDs prior to his appearance on
12 the Network, for resale to customers. Around the time of the
13 conclusion of these negotiations, in September 1998, MARRADI
14 agreed to use MARESCH as his manager, and to pay him 15% of all
15 net profits.

16 5. In 1999, MARESCH obtained three performance engagements
17 for MARRADI at the Stardust Hotel in Las Vegas. MARESCH
18 contacted the Stardust Hotel to propose these engagements. That
19 same year, MARESCH obtained a performance engagement for MARRADI
20 at Ruth Eckard Hall in Tampa, Florida. Also, in 1999, MARESCH
21 attempted to negotiate for MARRADI to perform in Prague, Czech
22 Republic. In 2001, MARESCH attempted to obtain performance
23 engagements for MARRADI in Japan. During the period from 1999
24 through the middle of 2001, no one other than MARESCH was helping
25 MARRADI to obtain performance engagements. During that period,
26 MARRADI was not represented by any other talent agency. Sometime
27 in the latter half of 2001, MARRADI terminated MARESCH's
28 services.

1 6. This petition to determine controversy was filed with
2 the State Labor Commissioner on November 26, 2003. MARRADI has
3 not make any payments to MARESCH, pursuant to either the 1995
4 agreement or the 1998 agreement, at any time during the period
5 from one year prior to the date of the filing of this petition to
6 the present. Petitioners allege that there is a pending superior
7 court action between the parties (San Diego Superior Court Case
8 No. GIN024316), in which MARESCH is asserting a claim for monies
9 owed pursuant to these agreements, while petitioners assert that
10 MARESCH's claim is unenforceable because the agreements are void
11 as a matter of law, in that MARESCH acted as a talent agent
12 without possessing the required license, in violation of the
13 Talent Agencies Act. A review of the Labor Commissioner's
14 licensing data base confirms that MARESCH has never been licensed
15 by the Labor Commissioner as a talent agency.

16 7. MARESCH was personally served with the petition to
17 determine controversy on January 27, 2004. MARESCH failed to
18 file an answer. A notice of hearing, scheduling the hearing for
19 August 17, 2004, was served on MARESCH on July 23, 2004.
20 Pursuant to request from Daniel Pinto, attorney for MARESCH in
21 the superior court action, and representative for MARESCH in this
22 proceeding, the hearing was continued to November 3, 2004.
23 Following another request from Pinto, the hearing was continued
24 again to January 28, 2005, pursuant to notices of hearing served
25 on October 29, 2004.

26 LEGAL ANALYSIS

27 1. Petitioner GIOVANNI MARRADI is an artist within the
28 meaning of Labor Code section 1700.4(b).

1 2. Labor Code section 1700.4(a) defines "talent agency" as
2 "a person or corporation who engages in the occupation of
3 procuring, offering, promising, or attempting to procure
4 employment or engagements for an artist or artists." Labor Code
5 §1700.5 provides that "[n]o person shall engage in or carry on
6 the occupation of a talent agency without first procuring a
7 license . . . from the Labor Commissioner." The Talent Agencies
8 Act is a remedial statute; its purpose is to protect artists
9 seeking professional employment from the abuses of talent
10 agencies. For that reason, the overwhelming judicial authority
11 supports the Labor Commissioner's historic enforcement policy,
12 and holds that "[E]ven the incidental or occasional provision of
13 such [procurement] services requires licensure." *Styne v.*
14 *Stevens* (2001) 26 Cal.4th 42, 51. The evidence presented here
15 leaves no doubt that Respondent MICHAEL MARESCH acted as a
16 "talent agency" within the meaning of Labor Code §1700.4(a), and
17 that by doing so, violated Labor Code §1700.5.

18 3. MARESCH's efforts, commencing in early 1998, to obtain a
19 contract for MARRASDI to appear on the Home Shopping Network
20 ("HSN") constituted "procurement" within the meaning of the
21 Talent Agencies Act. In *Styne v. Stevens* (TAC No. 33-01),
22 following remand from the California Supreme Court, we held that
23 by soliciting and negotiating the agreement under which actress
24 Connie Stevens performed in "infomercials" for the HSN, Stevens'
25 manager, Norton Styne, engaged in employment procurement
26 activities requiring licensure as a talent agent. We rejected
27 Styne's argument that because Stevens was pitching her own skin
28 care products on these infomercials, she was not really

1 "employed" by HSN. The reason we rejected Styne's argument was
2 because under the HSN/Stevens agreement, HSN first purchased
3 \$1,000,000 of Stevens' product line for resale to the public, and
4 thereafter, these products were promoted by Stevens in her
5 infomercials. This decision turned on the fact that HSN had
6 legal title to the product when Stevens performed the
7 infomercials. Had legal title not already passed from Stevens to
8 HSN, Stevens would merely have been advertising a product that
9 she herself owned, i.e., she would not be performing on behalf of
10 a third party, so that the Talent Agencies Act would not have
11 applied. But because Stevens was performing acting services in
12 connection with the production of infomercials to sell a product
13 owned by HSN, her manager's efforts constituted employment
14 procurement under the Act. With this framework in mind, the
15 petitioners herein presented evidence that MARRADI's appearances
16 on HSN came *after* HSN purchased a substantial amount of MARRADI's
17 CDs for resale to the public, in the exact same way that HSN
18 purchased Connie Stevens' skin care products before she appeared
19 on HSN infomercials. With the *Stevens* decision as a guide, we
20 therefore conclude that MARESCH's efforts to set up these
21 appearances on HSN, and to negotiate a contract between MARRADI
22 and HSN, constituted employment procurement within the meaning of
23 Labor Code §1700.4(a). Thus we conclude that MARESCH was acting
24 as a talent agent in early 1998, prior to the September 1998
25 amendment of the initial agreement between MARRADI and MARESCH.
26 And of course, from 1999 to 2001, MARESCH acted as a talent agent
27 with procurement or attempts to procure engagements in Las Vegas,
28 Florida, the Czech Republic, and later, Japan.

1 4. An agreement that violates the licensing requirement of
2 the Talent Agencies Act is illegal and unenforceable. "Since the
3 clear object of the Act is to prevent improper persons from
4 becoming [talent agents] and to regulate such activity for the
5 protection of the public, a contract between an unlicensed
6 [agent] and an artist is void." *Buchwald v. Superior Court*
7 (1967) 254 Cal.App.2d 347, 351. Having determined that a person
8 or business entity procured, promised or attempted to procure
9 employment for an artist without the requisite talent agency
10 license, "the [Labor] Commissioner may declare the contract
11 [between the unlicensed agent and the artist] void and
12 unenforceable as involving the services of an unlicensed person
13 in violation of the Act." *Styne v. Stevens, supra*, 26 Cal.4th at
14 55. "[A]n agreement that violates the licensing requirement is
15 illegal and unenforceable" *Waisbren v. Peppercorn*
16 *Productions, Inc.* (1995) 41 Cal.App.4th 246, 262. Moreover, the
17 artist that is party to such an agreement may seek disgorgement
18 of amounts paid pursuant to the agreement, and "may . . . [be]
19 entitle[d] . . . to restitution of all fees paid the agent."
20 *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. This remedy of
21 restitution is, of course, subject to the one year limitations
22 period set out at Labor Code §1700.44(c). Here, petitioners do
23 not seek any restitution as no payments were made to the
24 respondent from one year prior to the date of the filing of the
25 petition to determine controversy to the present, so that
26 recovery of payments that were made is barred by the statute of
27 limitations.

28 5. Petitioners seek a determination that both the original

1 and the subsequent 1998 oral agreements are void as a matter of
2 law under the Talent Agencies Act, and that MARESCH has no
3 enforceable rights under these agreements. Initially we should
4 note that the Talent Agencies Act would not apply prior to
5 MARRADI's November 1997 move to California, as until then, no
6 party resided in California, no agreements were made in
7 California, and no work was procured in California -- i.e., there
8 would have been no basis for applying California law. However,
9 upon establishing California residency in November 1997, the
10 Talent Agencies Act became applicable. And in December 1997,
11 within one month of MARRADI's relocation to California, MARESCH
12 offered to procure engagements or employment for MARRADI, thereby
13 violating the Talent Agencies Act. Next, in early 1998 MARESCH
14 commenced his efforts to procure engagements for MARESCH, in
15 violation of the Talent Agencies Act. We therefore conclude that
16 the 1995 oral agreement between MARESCH and MARRADI became void
17 in December 1997 as that is when MARESCH began acting as a talent
18 agent by offering to procure engagements for MARRADI. From that
19 point on, MARESCH has no enforceable rights under that agreement.
20 As to the 1998 agreement, its very purpose was to expand
21 MARESCH's role to undertake employment procurement activities,
22 and the evidence presented leaves no doubt that from 1999 to mid-
23 2001, MARESCH did exactly that. Consequently, the 1998 agreement
24 is void *ab initio*, and MARESCH has no enforceable rights
25 thereunder. In conclusion, petitioners do not owe any amounts to
26 MARESCH purportedly due for services provided after December 1997
27 under the 1995 agreement, and do not owe MARESCH for any amounts
28 purportedly due under the 1998 agreement.

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ORDER

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

1. The 1995 agreement between the parties became void in December 1997, and consequently, from that point on, Respondent has no enforceable rights under that agreement, and petitioners owe nothing to Respondent for any services provided after December 1997 under that agreement.

2. The 1998 agreement between the parties is void *ab initio*, and consequently, Respondent has no enforceable rights under that agreement, and petitioners owe nothing to Respondent for any services provided pursuant to that agreement.

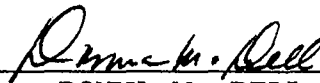
Dated: 6/7/05



MILES E. LOCKER
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 6/10/05



DONNA M. DELL
State Labor Commissioner

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. §1013a)

(Giovanni Marradi; New Castle Entertainment, Inc. v. Michael Maresch)
(TAC 47-03)

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, California 94102.

On June 10, 2005, I served the following document:

DETERMINATION OF CONTROVERSY

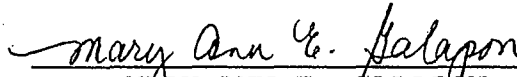
by placing a true copy thereof in envelope(s) addressed as follows:

ALLEN HYMAN, ESQ.
CHRISTINE COVERDALE, ESQ.
LAW OFFICES OF ALLEN HYMAN
10737 Riverside Drive
North Hollywood, CA 91602

DANIEL PINTO, ESQ.
10642 Santa Monica Blvd., Ste. 103
Post Office Box 661444
Los Angeles, CA 90066

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on June 10, 2005, at San Francisco, California.


MARY ANN E. GALAPON