

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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9 Special Hearing Officer for the Labor Commissioner

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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

ELLIS HALL,

Petitioner,

vs.

GARY GRAY dba PARKERGRAY
MANAGEMENT, MORIO PARKER dba
PARKERGRAY MANAGEMENT,

Respondent.

CASE NO.: TAC-28510

DETERMINATION OF
CONTROVERSY

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on February 24, 2015 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner ELLIS HALL (hereinafter "petitioner") appeared personally and was represented by attorney Steven J. Eyre. Respondents GARY GRAY dba PARKERGRAY MANAGEMENT and MORIO PARKER dba PARKERGRAY MANAGEMENT (hereinafter "respondents") appeared personally and were represented by attorney Christopher J. Skorina.

This proceeding arises out of the Petition to Determine Controversy filed by petitioner with the Labor Commissioner on August 20, 2012. The petition alleges that

1 respondents entered into a representation agreement with petitioner, pursuant to which
2 respondents sought to act and acted as an unlicensed talent agent in violation of Labor
3 Code section 1700.5, a provision of the Talent Agencies Act (TAA), Labor Code section
4 1700 et seq. The petition seeks a declaration that the contract is void and unenforceable,
5 and an order requiring respondent to repay all of the commissions collected by respondent
6 under the contract during the year preceding the filing of the petition. Due consideration
7 having been given to the evidence presented at the hearing and to the documents and
8 other papers on file in this proceeding, the Labor Commissioner now renders the
9 following decision.

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11 **FINDINGS OF FACT**
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13 1. Petitioner is a singer and jazz musician, who has had an extensive
14 and prestigious career in the music industry.

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16 2. On February 5, 2011, petitioner entered into a management
17 agreement with the respondents, who were operating under the name Parker Gray
18 Management.

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20 3. Pursuant to the management agreement, respondents agreed to
21 provide services relating to the management of petitioner's artistic career in exchange for
22 the payment of a commission fee of 20% of petitioner's income as an artist.

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24 4. Through his testimony and the documents he submitted at the
25 hearing, petitioner identified 16 instances between October, 2011 and June, 2012 in
26 which he was engaged to perform as an artist at various specified venues. Petitioner's
27 description of how these engagements were arranged was extremely amorphous, and it
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1 was evident that petitioner had essentially no personal knowledge of respondents having
2 played any sort of procurement role in bringing about those engagements. Petitioner
3 acknowledged that booking agents were involved in negotiating many of the
4 engagements, and explained that respondents had been involved in facilitating back and
5 forth communications between the booking agents and petitioner and that in many
6 instances it was respondents who notified petitioner that an engagement had been
7 finalized. Beyond that, however, petitioner had no personal knowledge of respondents
8 having played any sort of active role in the negotiation of these engagements and simply
9 ascribed that role to them based on his own personal belief.

10
11 5. Petitioner also identified a recording contract that he entered into
12 during this period, and he testified that it was respondents who secured and negotiated
13 that contract for petitioner.

14
15 6. Respondents testified that all of the engagements identified by
16 petitioner had been negotiated and booked by booking agents. One of these, Shelly
17 Fuerte, was involved in negotiating and booking several of the engagements, and had
18 been working as an agent for petitioner prior to the time that respondents became
19 petitioner's manager. Respondents explained that their role with respect to these
20 engagements was to convey information back and forth between the booking agent and
21 petitioner, which is precisely what petitioner expected and wanted. All decisions about
22 what engagements and terms were acceptable were made by petitioner and then relayed to
23 the booking agent. Commission fees of 10% of the engagement contract were always
24 paid to the booking agent.

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26 7. Both respondents testified to the very extensive and supportive
27 management duties they performed in fulfilling their role as petitioner's manager. It is
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1 not necessary to catalogue these various duties because it is undisputed that respondents
2 provided these extensive managerial services to petitioner.

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4 **LEGAL ANALYSIS**
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6 1. Labor Code section 1700.5 provides in relevant part as follows:

7 No person shall engage in or carry on the occupation of a talent agency
8 without first procuring a license therefor from the Labor Commissioner.
9

10 2. Under Labor Code section 1700.4, subdivision (a), “[t]alent agency”
11 is defined in relevant part as follows:

12 “Talent agency” means a person or corporation who engages in the
13 occupation of procuring, offering, promising, or attempting to procure
14 employment or engagements for an artist or artists, except that the activities
15 of procuring, offering, or promising to procure recording contracts for an
16 artist or artists shall not of itself subject a person or corporation to
17 regulation and licensing under this chapter.

18 3. Labor Code section 1700.4, subdivision (b) defines “[a]rtists” in part
19 as follows:

20 “Artists” means . . . musical artists, . . . and other artists and persons
21 rendering professional services in motion picture, theatrical, radio,
22 television and other entertainment enterprises.

23 4. In the present case, the evidence establishes that petitioner was a
24 musical artist within the meaning of section 1700.4, subdivision (b).

25 5. The next, and crucial, question is whether respondents were engaged
26 in the occupation of a talent agency, that is to say, whether they were engaged in
27 procuring or in offering, promising, or attempting to procure employment or engagements
28 for petitioner.

1
2 6. In this case, there has been no assertion or suggestion that
3 respondents offered or promised to procure employment or engagements for petitioner.
4 Rather, the posited issue that needs to be determined is whether the respondents engaged
5 in activities that constituted “procuring . . . or attempting to procure employment” within
6 the meaning of section 1700.4, subdivision (a).

7
8 The term “procure,” as used in Labor Code §1700.4(a),
9 means “to get possession of: obtain, acquire, to cause to
10 happen or be done: bring about.” *Wachs v. Curry* (1993) 13
11 Cal.App.4th 616, 628.

12 7. The burden of proving procurement is on petitioner. In other words,
13 petitioner must show by a preponderance of the evidence that respondents were engaged
14 in acts that were specifically aimed at procuring engagements for petitioner. In this case,
15 petitioner has failed to meet this burden.

16 8. The evidence proffered by petitioner and respondents in this
17 proceeding is very limited. It establishes only that respondents acted as conduits for
18 communications between petitioner and the booking agents who negotiated the various
19 engagements. There is no evidence of any kind that would indicate respondents were
20 actively involved in obtaining the engagements, causing the engagements to happen, or
21 bringing the engagements about. (See *McDonald v. Torres*, TAC 27 – 04 (July 22, 2005)
22 at *6 (“No testimony or evidence was provided by Petitioner to show that Respondent
23 actually initiated, caused to be done, instigated, contrived, or brought about the bookings
24 for [the] shows.”).)

25
26 9. In advancing his position that respondents were engaged in
27 procurement, petitioner is relying entirely on personal belief, surmise, and assumptions.
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1 It is plain that these amount to speculation and do not constitute evidence. Accordingly,
2 petitioner has not met his burden of proving that respondents procured or attempted to
3 procure the 16 engagements identified by petitioner.
4

5 10. As to the recording contract that petitioner identified as having been
6 procured by respondents, Labor Code section 1700.4(a) spells out that such contracts are
7 not subject to the licensing requirements of the TAA.
8

9 **ORDER**

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11 For the reasons set forth above, **IT IS HEREBY ORDERED** as follows:
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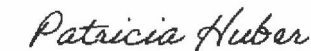
13 The petition for relief is denied as without merit.
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15 Dated: **MARCH 28, 2019**

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18 William A. Reich
Special Hearing Officer
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20 Adopted:

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22 Dated: April 3, 2019

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25 Patricia Huber, Assistant Chief
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) S.S.

I, Lindsey Lara, declare and state as follows:

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

On April 5, 2019, I served the foregoing document described as: **DETERMINATION OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Steven J. Eyre, Esq.
3550 Wilshire Blvd., Suite 1440
Los Angeles, CA 90010

Morio Parker dba Parker Gray Management


Gary Gray dba Parker Gray Management

(BY CERTIFIED MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with fully prepaid postage thereon for certified mail with the United States Postal Service this same day in the ordinary course of business at our office address in Long Beach, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

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

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

Executed this 5th day of April 2019, at Long Beach, California.



Lindsey Lara
Declarant