

1 MAX D. NORRIS, ESQ. (SBN 284974)
STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
3 300 OCEANGATE, SUITE 850
Long Beach, California 90802
4 Telephone: (562) 590-5461
Facsimile: (562) 499-6438

5 Attorney for the Labor Commissioner
6
7

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

11 TREVOR HALL, an individual,

12 Petitioner,

13 vs.

14 PAUL STEPANEK, an individual; PAUL
15 STEPANEK MANAGEMENT, a Nevada
Corporation,

16 Respondents.
17

CASE NO. TAC 46165

**DETERMINATION OF
CONTROVERSY**

18 **I. INTRODUCTION**

19 The above-captioned matter, a Petition to Determine Controversy under Labor Code section
20 1700.44, came on regularly for hearing in Los Angeles, California on June 5, 2018 (hereinafter,
21 referred to as the "TAC Hearing"), before the undersigned attorney for the Labor Commissioner
22 assigned to hear this case. Petitioner TREVOR HALL, an individual (hereinafter, referred to as
23 "HALL") appeared and was represented by Jordan Susman, Esq. of HARDER LLP. Respondents
24 PAUL STEPANEK, an individual; and, PAUL STEPANEK MANAGEMENT, a Nevada
25 Corporation (herein after collectively "STEPANEK") appeared and was represented by Donald V.
26 Smiley, Esq. of LAW OFFICES OF DONALD V. SMILEY. The matter was taken under
27 submission on June 29, 2018 after the parties submitted post-hearing briefs.
28

1 STEPANEK procured work for HALL in violation of the Talent Agencies Act (hereinafter, referred
2 to as “TAA”).

3 7. The allegations put forward by HALL are based off of emails introduced by counsel
4 for HALL which HALL had received from STEPANEK. These emails may have seemed like
5 STEPANEK was acting as a talent agent without further context, but at hearing WOLFE and
6 STEPANEK credibly testified that they spoke multiple times per day by telephone about all of
7 HALL’s bookings. While one can see where HALL, without this context, may have suspected
8 STEPANEK of unlawful procurement, the evidence presented at hearing showed that STEPANEK
9 never acted without the direction and authorization of WOLFE.

10 8. HALL did not testify at the hearing leaving much of STEPANEK and WOLFE’s
11 testimony unrebutted and HALL’s documentary evidence unsupported.

12 III. ISSUES

13
14 1. Has STEPANEK acted as an unlicensed talent agent and therefore violated the TAA
15 in relation to HALL’s performances, or, is STEPANEK exempt from having acted as an unlicensed
16 talent agent under the safe harbor exemption pursuant to Labor Code section 1700.44(d) due to
17 WOLFE’s involvement here?

18 2. If STEPANEK violated the TAA, is the appropriate remedy to void the entire
19 MANAGEMENT CONTRACT *ab initio* or sever the offending practices under *Marathon*
20 *Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974?

21 IV. LEGAL ANALYSIS

22 Labor Code section 1700.4(a) defines “talent agency” as:

23
24 [A] person or corporation who engages in the occupation of procuring, offering,
25 promising, or attempting to procure employment or engagements for an artist or
26 artists, except that the activities of procuring, offering, or promising to procure
recording contracts for an artist or artists shall not of itself subject a person or
corporation to regulation and licensing under this chapter.

27 Labor Code section 1700.4(b) defines “artist” as:

1 [A]ctors and actresses rendering services on the legitimate stage and in the
2 production of motion pictures, radio artists, musical artists, musical organizations,
3 directors of legitimate stage, motion picture and radio productions, musical
4 directors, writers, cinematographers, composers, lyricists, arrangers, models, and
5 other artists and persons rendering professional services in motion picture,
6 theatrical, radio, television and other entertainment enterprises.

7 HALL is an “artist” within the meaning of Labor Code section 1700.4(b).

8 Moreover, Labor Code section 1700.5 provides that “[n]o person shall engage in or carry
9 on the occupation of a talent agency without first procuring a license therefor from the Labor
10 Commissioner.” It is undisputed that STEPANEK did not possess a talent agency license during
11 the relevant period he served as personal manager for HALL.

12 A person may counsel and direct artists in the development of their professional careers, or
13 otherwise “manage” artists – while avoiding any procurement activity (procuring, promising,
14 offering, or attempting to procure artistic employment or engagements) – without the need for a
15 talent agency license. In addition, such person may procure non-artistic employment or
16 engagements for the artist without the need for a license. (*Styne v. Stevens* (2001) 26 Cal.4th 42).

17 An agreement that violates the licensing requirements of the TAA is illegal and
18 unenforceable. “Since the clear object of the Act is to prevent improper persons from becoming
19 [talent agents] and to regulate such activity for the protection of the public, a contract between an
20 unlicensed [agent] and an artist is void.” (*Buchwald v. Sup. Ct.* (1967) 254 Cal.App.2d 347, 351).

21 **A. Has STEPANEK Acted as an Unlicensed Talent Agent and Therefore Violated the
22 TAA in Relation to HALL’s Performances, or, is STEPANEK Exempt From
23 Having Acted as an Unlicensed Talent Agent Under the Safe Harbor Exemption
24 pursuant to Labor Code section 1700.44(d) Due to WOLFE’s Involvement Here?**

25 A talent agent is a corporation or person who procures, offers, promises, or attempts to
26 procure employment or engagements for an artist or artists. (See Labor Code § 1700.4(a)). An
27 unlicensed talent agent who performs such activities pursuant to Labor Code section 1700.4(a) is
28 in violation of the TAA. While not specifically defined by the TAA, the different definitions for
employment require an act on behalf of the employed. (See *Malloy v. Board of Education* (1894)
102 Cal. 642, 646; Industrial Welfare Commission Wage Order No. 12-2001 (hereinafter, referred

1 to as “IWC Wage Order No. 12”), section 2(D)-(F); Black’s Law Dictionary (10th ed. 2014)). The
2 Labor Commissioner has ruled, “[p]rocurement could include soliciting an engagement;
3 negotiating an agreement for an engagement; or accepting a negotiated instrument for an
4 engagement.” (*McDonald v. Torres*, TAC 27-04; *Gittelman v. Karolat*, TAC 24-02). Additionally,
5 “[p]rocurement” includes any active participation in a communication with a potential purchaser
6 of the artist’s services aimed at obtaining employment for the artist, regardless of who initiated the
7 communication or who finalized the deal. (*Hall v. X Management*, TAC 19-90).

8 Labor Code section 1700.44(d), an exception to this requirement also known as the safe
9 harbor exemption, provides that “[i]t is not unlawful for a person or corporation which is not
10 licensed . . . to act in conjunction with, and at the request of, a licensed talent agency in the
11 negotiation of an employment contract.” For the safe harbor exemption under Labor Code section
12 1700.44(d) to apply, the manager must: (1) act in conjunction with a licensed talent agent; and (2)
13 act at the request of a licensed talent agent; and (3) such actions are limited to the negotiation of an
14 employment contract. (See *Shirley v. Artists’ Management West, et al.*, TAC 08-01; *Tommy Lister*
15 *v. Tamara Holzman*, TAC 04-00; and *Creative Artists Entertainment Group, LLC v. Jennifer*
16 *O’Dell*, TAC 26-99).

17 The burden of proof in actions before the Labor Commissioner is found at Evidence Code
18 section 115, which states, “[e]xcept as otherwise provided by law, the burden of proof requires
19 proof by a preponderance of the evidence.” Evidence Code §115. “[T]he party asserting the
20 affirmative at an administrative hearing has the burden of proof, including both the initial burden
21 of going forward and the burden of persuasion by preponderance of the evidence . . .” (*McCoy v.*
22 *Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1051-52). “[P]reponderance of the evidence standard . .
23 . simply requires the trier of fact’ to believe the existence of a fact is more probable than its
24 nonexistence.” (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709, fn 6).

25 As discussed above, HALL points to a handful of emails in his possession that when read
26 alone without any further context could lead one to believe that STEPANEK was acting as an
27 unlicensed agent. But the credible testimony of STEPANEK and HALL’s licensed talent agent
28 WOLFE added much needed context here. STEPANEK and WOLFE credibly testified that they

1 were in constant communication in regards to HALL's bookings, speaking multiple times per day
2 by telephone, and that STEPANEK tended to handle all direct communication with HALL. This
3 explains the emails where WOLFE is not carbon copied therein, and thus procurement seems to be
4 happening without his knowledge. STEPANEK and WOLFE further credibly testified that on rare
5 occasions, around a dozen or so times out of roughly three hundred procurements, WOLFE would
6 direct STEPANEK to act at his behest to negotiate employment contracts.

7 HALL did not meet his burden of proof here as the evidence demonstrates HALL had a
8 dedicated agent, WOLFE, who communicated with STEPANEK regularly regarding opportunities
9 for HALL, and on occasion would direct STEPANEK to handle the negotiation of employment
10 contracts. HALL presented no evidence to suggest that his appearances were secured by
11 STEPANEK without WOLFE's direction and knowledge, as he did not testify at the hearing, but
12 only presented the emails discussed above without further context.

13 Based on the evidence presented at hearing, STEPANEK's actions fell within the safe
14 harbor exemption of Labor Code section 1700.44(d). As the TAA was not violated, the question
15 of whether severance is appropriate under *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th
16 974, is moot.

17 For these reasons, we find no violation of the TAA as alleged here.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. ORDER

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

1. The MANAGEMENT AGREEMENTS between Petitioner TREVOR HALL and Respondents PAUL STEPANEK, an individual; PAUL STEPANEK MANAGEMENT, a Nevada Corporation, is not invalid under the Talent Agencies Act.

2. The MANAGEMENT AGREEMENTS between Petitioner TREVOR HALL and Respondents PAUL STEPANEK, an individual; PAUL STEPANEK MANAGEMENT, a Nevada Corporation, is not unenforceable under the Talent Agencies Act.

Dated: ~~August~~ October 9th, 2018



MAX D. NORRIS
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: October 8, 2018



JULIE A. SU
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 Oceangate,
Suite 850, Long Beach, CA 90802.

7 On October 10, 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 Jordan Susman, Esq.
10 HARDER LLP
11 132 South Rodeo Drive, Fourth Floor
Beverly Hills, CA 90212
12 Tel: (424) 203-1600 Fax: (424) 203-1601
jsusman@harderllp.com

Donald V. Smiley, Esq.
LAW OFFICES OF DONALD V. SMILEY, APC
6080 Center Drive, Suite 600
Los Angeles, CA 90045
Tel: (310) 242-6754 Fax: (310) 915-9993
d.smiley@dvsmileylaw.com

13 Attorney for Petitioner

Attorney for Respondents

14 **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection
15 and processing of correspondence for mailing with the United States Postal Service. This
16 correspondence shall be deposited with fully prepaid postage thereon for certified mail with
17 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.

18 **(BY EMAIL SERVICE)** I caused the above-referenced document(s) to be delivered
19 electronically via email to the email address of the addressee(s) set forth above.

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

21 Executed this 10th day of October 2018, at Long Beach, California.

22
23 
24 _____
Lindsey Lara
Declarant