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BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

NAOMI ROCHON BEAUDOIN, Petitioner, vs. GUILLERMO MACALPIN, an individual; MALCALPIN MANAGEMENT LLC, a California Limited Liability Company, Respondents	CASE NO. TAC 48086 **DETERMINATION OF CONTROVERSY**

I. INTRODUCTION

The above-captioned matter, a Petition to Determine Controversy under Labor Code section 1700.44, came on regularly for hearing in Los Angeles, California, before the undersigned attorney for the Labor Commissioner. Petitioner NAOMI ROCHON BEAUDOIN, an individual, (hereinafter, "BEAUDOIN") appeared and was represented by Anthony Giles, Esq. GUILLERMO MACALPIN, an individual and MALCALPIN MANAGEMENT LLC, a California Limited Liability Company, (hereinafter referred collectively as "MALCALPIN") represented himself and his company.

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

II. FINDINGS OF FACT

1. BEAUDOIN is an actor, host and online personality. MACALPIN is a talent manager.

2. BEAUDOIN hosted an online news program for IGN Entertainment Inc. ("IGN") and delivered a daily one-hour live and scripted broadcast. IGN is a video game and entertainment media website. The program was successful and garnered a large online audience. In or around 2013, MACALPIN intent on capitalizing on BEAUDOIN'S popularity made many representations as to what he could do on BEAUDOIN's behalf, including, promises to capitalize on her online popularity into mainstream movies and television.

3. In 2013, BEAUDOIN orally agreed to engage MACALPIN as her personal manager in exchange for 10% commission on BEAUDOIN'S gross income related to services provided by MALCALPIN. In or around December 3, 2015, the parties formalized their agreement in a written contract.

4. It was stipulated between the parties that MACALPIN never obtained a California talent agency license.

5. MACALPIN's aspirations for BEAUDOIN exceeded the parties' management relationship. MACALPIN, intent on using BEAUDOIN's online popularity, entered into a tangled web of business ventures, including a production company partnership (hereinafter "partnership agreement"), an entrepreneurial agreement, and an Intellectual Property agreement with BEAUDOIN.

6. BEAUDOIN derived her primary source of income from hosting the IGN one-hour online news program. IGN garnered a large online audience and BEAUDOIN's popularity was significant. Seeking to capitalize on BEAUDOIN's popularity, MACALPIN immediately began to submit BEAUDOIN for other hosting engagements and roles in television and film.

7. In 2015, MACALPIN renegotiated BEAUDOIN's IGN annual salary. In addition, MACALPIN obtained several employment opportunities for BEAUDOIN, including a Playboy photoshoot shoot, an appearance in a feature film, a three-day trade show hosting engagement in the gaming industry, and a variety of endorsement deals for companies including Pizza Hut, Dell, Sony, Shock Top and many other gaming related companies that compensated BEAUDOIN for using their products online. MACALPIN negotiated all of these deals on BEAUDOIN'S behalf.

8. MACALPIN credibly pointed out the management efforts he made on BEAUDOIN's behalf, including loaning her money, allowing her to live with his family, and assisting BEAUDOIN in a variety of personal matters. MACALPIN also testified that he both attempted to and procured all of the entertainment engagements referenced above throughout the parties' relationship.

9. In or around 2016, the relationship between the parties began to unravel. BEAUDOIN terminated the management agreement and according to MACALPIN, BEAUDOIN ceased paying commissions on the IGN contract re-negotiated by MACALPIN. MACALPIN also alleges BEAUDOIN breached the partnership agreement. In response to the termination and MACALPIN's perceived breach of the partnership agreement, MACALPIN filed two civil lawsuits against BEAUDOIN. The first lawsuit filed on October 16, 2017, was a small claims action for BEAUDOIN's failure to pay commissions on income earned in connection with the IGN deal. The second lawsuit filed by MALCALPIN on January 8, 2018, was a $100,000.00 breach of the partnership agreement filed in Los Angeles Superior Court.

10. As part of MACALPIN's legal strategy, MACALPIN admittedly withheld approximately $60,000.00 of BEAUDOIN's earnings as a set-off to the failed partnership agreement. MACALPIN received these earnings while acting as BEAUDOIN's manager under the management agreement. Notably, MACALPIN filed the small claims action and named himself as the individual plaintiff, failing to name the management company, MACALPIN MANAGEMENT LLC, as a party. In addition, MACALPIN admitted to co-mingling funds between his personal accounts and the management company's accounts.

11. In defense of the MACALPIN lawsuits, BEAUDOIN filed the instant petition to

determine controversy on June 23, 2017, alleging the MACALPIN violated the Talent Agencies Act (hereinafter "the Act").

12. In her Petition, BEAUDOIN seeks a determination that: (1) MACALPIN violated the Act; (2) MACALPIN'S alleged agreement with BEAUDOIN is illegal, unenforceable and void *ab initio*; (3) an order that BEAUDOIN is entitled to recover all sums held by MALCALPIN as a set off and received by MALCALPIN within one-year of the filing of the Petition; (4) interest, and (5) an award of costs and attorney fees incurred.

13. Specifically, BEAUDOIN alleges that MACALPIN violated the Act by repeatedly procuring, offering, negotiating, promising and attempting to procure engagements or employment for BEAUDOIN without a California talent agency license.

III. LEGAL DISCUSSION

Issues

1. Has MACALPIN acted as an unlicensed talent agent and therefore violated the Talent Agencies Act?

2. Is MACALPIN individually liable for violations of the Act?

Analysis

The first issue is whether MACALPIN operated as a "talent agency" within the meaning of Labor Code section 1700.4(a). Labor Code section 1700.4(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."

BEAUDOIN, a popular online personality and aspiring television and motion picture actor, is an "artist" within the meaning of Labor Code section 1700.4(b). Labor Code section 1700.5 provides that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license....from the Labor Commissioner." It was stipulated that MACALPIN did not possess a talent agency license during the relevant period.

An agreement that violates the licensing requirements of the Act is illegal and unenforceable. "Since the clear object of the Act it 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 v. Superior Court* (1967) 245 Cal.App.2d 347, 351.

A. Promises, Offers, Attempts and Procurement

As demonstrated by the evidence contained in the record, MACALPIN not only promised to procure employment, but he offered, attempted and actually procured employment or engagements for BEAUDOIN throughout MACALPIN's representation of BEAUDOIN. Promises, offers and attempts to procure employment without a talent agency license are violations of the Act. MACALPIN obtained several employment opportunities for BEAUDOIN, including a Playboy photoshoot shoot, an appearance in a feature film, a three-day trade show hosting engagement in the gaming industry, and a variety of endorsement deals for companies including Pizza Hut, Dell, Sony, Shock Top and many other gaming related companies that compensated BEAUDOIN for using their products online. MACALPIN negotiated all of these deals on BEAUDOIN'S behalf.

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 MACALPIN acted in the capacity of a talent agency within the meaning of Labor Code section 1700.4(a) and it is clear that MACALPIN procured employment without a license in violation of Labor Code section1700.5 in his efforts to represent BEAUDOIN.

B. Is MACALPIN individually liable for violations of the Act?

In determining whether MACALPIN should be held individually liable, we must look to whether he completely disregarded corporate formalities and obligations and should therefore be held liable as the corporation's alter ego. "There is not a litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case. There are, nevertheless two general requirements: '(1) that there be such unity of

interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." *Greensan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 511.

Here, MACALPIN disregarded all corporate formalities. MACALPIN admittedly used a self-help remedy to satisfy a perceived debt by withholding more than $60,000.00[1] of BEAUDOIN's earnings while representing BEAUDOIN as her manager, for an entirely different lawsuit unrelated to this action. The law simply does not allow this. MALCALPIN also admitted he commingled his personal funds with his corporate funds. Moreover, MACALPIN filed a small claims lawsuit against BEAUDOIN for failing to pay his earned commissions related to services provided by MACALPIN MANAGEMENT LLC. In that lawsuit, MACALPIN named only himself as an individual and not MACALPIN MANAGEMENT LLC as the plaintiff. In short, MACALPIN, the individual, failed to distinguish between his personal and corporate finances and failed to distinguish any separation between himself and his limited liability company. It was clear that MACALPIN MANAGEMENT LLC and MACALPIN, the individual, were one in the same.

Finally, even if MACALPIN did not commingle personal and corporate funds and withhold BEAUDOIN's earnings for legitimate corporate reasons, which he did not, he is still personally liable. As state in *Granoff v. Yackle* (1961) 196 Cal.App.2d 253, 257, "it is well settled by the great weight of authority in this country that the officers of a corporation are personally liable to one whose money or property has been misappropriated or converted by them to the uses of the corporation, although they derived no personal benefit therefrom and acted merely as agents of the corporation." The underlying reason for this rule is that an officer should not be permitted to escape the consequences of his individual wrongdoing by saying that he acted on behalf of a corporation in which he was interested." *Id.* Here, MACALAPIN did more than that; he used BEAUDOIN's earnings received by the LLC and converted them for his personal benefit. Consequently, GUILLERMO MACALPIN is individually liable along with

[1] MACALPIN admitted to withholding more than $60,000 of BEAUDOIN'S earnings. Including disgorging commission amounts received within the one year preceding the petition pursuant to labor Code section1700.44(c), the amount awarded is $83,553.84.

MACALPIN MANAGEMENT, LLC for any violations of the Talent Agencies Act committed against BEAUDOIN.

C. Appropriate Remedy for Violations of the Act

In accord with *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 991, the Supreme Court enables the Labor Commissioner to apply the doctrine of severability if she finds MACALPIN violated the Act in any of the identified engagements at issue herein. In *Marathon*, the court recognized the Labor Commissioner may invalidate an entire contract when the Act is violated. The court left it to the discretion of the Labor Commissioner to apply the doctrine of severability to preserve and enforce the lawful portions of the parties' contract where the facts so warrant. As the Supreme Court explained in *Marathon:*

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

In this case, we find that the interests of justice would not be furthered by severance. Specifically, we find MACALPIN regularly offered, promised, attempted, and procured employment and entertainment engagements. MACALPIN controlled every aspect of BEAUDOIN'S career during the period he represented BEAUDOIN as her manager, including all negotiations with third parties.

MACALPIN did engage in many management duties while representing BEAUDOIN, but we conclude MACALPIN violated the Act on many occasions and did so throughout the parties' relationship. We therefore conclude the totality of the illegal acts is not collateral to the main purpose of the parties' management relationship. The illegal acts are so intermingled during MACALPIN's representation that they cannot be disentangled from the lawful acts. Accordingly, we refuse to apply the doctrine of severability. The management agreement is void *ab initio* due to pervasive illegality.

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IV. ORDER

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

1. The management agreement between Petitioner, NAOMI ROCHON BEAUDOIN and Respondent, GUILLERMO MACALPIN, an individual and MACALPIN MANAGEMENT LLC, a California Limited Liability Company is invalid and unenforceable under the Talent Agencies Act.

2. Respondent, GUILLERMO MACALPIN collected and willfully withheld $83,553.84 of Petitioner, NAOMI ROCHON BEAUDOIN's earnings within the one-year statute of limitations prescribed by Labor Code section1700.44(c) and is therefore required to disgorge this amount to NAOMI ROCHON BEAUDOIUN. In addition, GUILLERMO MACALPIN shall pay $16,710.76 in interest calculated at 10% per annum for an award of $100,264.60.

3. GUILLERMO MACALPIN shall pay $5,000.00 in reasonable attorney's fees.

4. GUILLERMO MACALPIN shall remit these amounts within 30 days of this Order.

IT IS ORDERED.

DATED: December 1, 2018

Respectfully submitted,

DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

DATED: December 11, 2018

JULIE A. SU
State Labor Commissioner

PROOF OF SERVICE

(Code of Civil Procedure § 1013A(3))

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

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 Oceangate, Suite 850, Long Beach, CA 90802.

On December 13, 2018, 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:

Anthony D. Giles, Esq.
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Attorney for Petitioner

Guillermo Macalpin
[redacted]

Respondent in pro per

☒ **(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 13th day of December 2018, at Long Beach, California.

LLara

Lindsey Lara
Declarant