

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
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(Endorsed)

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Labor Commissioner
State of California

BY R. Raymundo, Clerk

9 BEFORE THE LABOR COMMISSIONER

10 STATE OF CALIFORNIA

11 FRANK BEVERLY, individually and
12 on behalf of "MAZE",

13 Petitioner,

14 vs.

15 MARIANO RAYMUNDO, a/k/a RAYMUNDO
16 d/b/a LIGHTHOUSE MANAGEMENT; GORDON
17 KNEKO and LARRY KARP,
18 Respondents,

19 MARIANO RAYMUNDO, a/k/a RAY
20 RAYMUNDO, d/b/a LIGHTHOUSE MANAGEMENT,
21 GORDON KNEKO and LARRY KARP,

22 Cross-Petitioners,

23 vs.

24 FRANK BEVERLY, LEON FISHER,
25 PECLÉ PUBLISHING CO., PECLÉ
26 PRODUCTIONS and CAPITOL RECORDS, INC.

27 Cross-Respondents,

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1 The above-entitled controversy came on regularly for
2 hearing before the Labor Commissioner of the State of California,
3 before RICHARD N. DINALLO, Attorney for the DIVISION OF LABOR
4 STANDARDS ENFORCEMENT, Department of Industrial Relations, State
5 of California, and Special Hearing Officer, appointed under the
6 provisions of Section 1700.4 of the Labor Code of the State of
7 California, on September 28, 1978. Petitioner was present with
8 his attorneys Thomas M. Di Franco, Kopp and Di Franco, and
9 respondents were present with their attorneys, Terry Steinhart of
10 Cohen and Steinhart. Witnesses were sworn and examined, and
11 documentary evidence was introduced; and the matter having been
12 argued and submitted for decision and after deliberation thereon,
13 the following determination and award is made:

14 THE FACTS

15 Petitioners first met Respondents sometime around
16 September of 1975. In November of 1975, Respondents applied
17 for an Artists' Manager license through the Offices of the State
18 Labor Commissioner. The contract submitted for approval was
19 modified by Mrs. Marie M. Monti who, at all times relevant herein,
20 was Area Administrator in Charge of Special Programs and
21 Licensing. That Contract was admitted into evidence as Plaintiff'
22 Exhibit 1.

23 On January 20, 1976, Respondents were licensed to
24 act as Artists' Managers, which license was valid through March 3
25 1977, and at all times relevant herein.

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1 Considerable dispute arose and conflicting testimony
2 was adduced during the hearing as to when the Artists' Manager
3 Contract was executed by the parties. On the basis of all the
4 evidence adduced, however, the Labor Commissioner finds that
5 Petitioners signed an agreement on January 2, 1976, and
6 Respondents, sometime thereafter, but, in any case, Respondents
7 chose to alter the January 2nd date on Petitioner's #4 admitted
8 into evidence to January 20th so as to coincide with the date
9 that the license was issued.

10 Furthermore, notice from Mrs. Monti indicating that
11 the license had been issued could not have been sent earlier
12 than the date of its issuance. Of this, we take Official Notice.
13 Accordingly, Respondents' insertion of the January 20th date
14 is conclusive to this Officer, that the Agreement (Petitioner's
15 #4) was not mutually executed by the parties subsequent to the
16 licensing date. Moreover, the only contract approved by the
17 Labor Commissioner was Petitioner's #1, at least as far as the
18 parties to this controversy are concerned. That agreement was
19 never executed by the parties. Rather, other agreements were,
20 to wit: Petitioner's #3,4,5 and 6 — the latter of which was
21 the agreement of October 29, 1976.

22 Sometime around May of 1976, a dispute arose between
23 the parties wherein a meeting occurred between them and Mrs.
24 Monti. Upon presenting the Petitioner's #4 and #5 to her, as
25 they were informed that these agreements materially differed
26 from the one submitted for approval dated November 4, 1975
27 (Petitioner's #1), and this Hearing Officer so finds.

1 On May 29, 1976, a Petition to Determine Controversy
2 was filed seeking a resolution of the rights and obligations
3 among the parties. During the pendency of these proceedings,
4 the evidence revealed that under threat of interfering with
5 a recording contract being negotiated between Petitioners and
6 Capitol Records, Inc., Cross-Respondents named herein, Respondents
7 induced Petitioners to execute yet another unapproved contract
8 dated October 29, 1976, which purported to be a "settlement
9 agreement," wherein the parties' relationship would terminate,
10 save that Respondents would continue to be entitled to certain
11 royalties or commissions, which would include sums derived from
12 the contract being then negotiated between Petitioners and Capitol
13 and which was apparently later executed in November of 1976.

14 The evidence further revealed that Petitioners neither
15 instigated nor participated in these negotiations pertaining
16 to Capitol, but did, however, contribute a considerable sum
17 towards the creation of a master tape from which Petitioner's
18 first album was being recorded. The evidence further revealed
19 that the October 29th agreement (Petitioner's #6) was executed
20 by the Petitioners under threat by Respondent Raymundo that he
21 would inform Capitol that he had some interest in the money to be
22 received by Petitioners, and that such a complicating factor might
23 very well have caused a breakdown in negotiations between
24 Petitioners and Capitol Records.

25 As a further attempt to secure a "hostage" or bargaining
26 advantage with Petitioners in attempting to have Petitioners
27 sign the October 29th agreement, Respondents attempted to purchase

1 the master tape previously referred to. Mr. Raymundo admitted
2 during the hearing that he wanted the tape for "security."
3 At the time Petitioners signed the October agreement (which
4 was prepared by Respondents' attorney), they were emphatically
5 discouraged by Mr. Raymundo from having Petitioners' attorney
6 review the document before execution.

7 ISSUES

8 IS AN AGREEMENT EXECUTED BY THE PARTIES,
9 WHICH IS NOT APPROVED BY THE LABOR
10 COMMISSIONER, VOID?

11 II

12 IF THE CONTRACT BETWEEN THE PARTIES IS
13 VOID, IS THE MANAGER NEVERTHELESS ENTITLED
14 TO RESTITUTION FOR SUMS EXPENDED OR FUTURE
15 COMMISSIONS OR FEES?

16 III

17 DOES THE LABOR COMMISSIONER HAVE JURISDIC-
18 TION OVER A PARTY WHO IS NEITHER AN ARTIST
19 NOR A MANAGER?

20 IV

21 DOES THE LABOR COMMISSIONER HAVE THE POWER
22 TO AWARD EXEMPLARY DAMAGES?

23 DECISION AND AWARD

24 I

25 IS AN AGREEMENT EXECUTED BY THE PARTIES,
26 WHICH IS NOT APPROVED BY THE LABOR
27 COMMISSIONER, VOID?

28 We begin with the premise that "no person shall engage
29 in or carry on the occupation of an Artists' Manager without
30 first procuring a license therefor from the Labor
31 Commissioner...." Labor Code, Section 1700.5 (emphasis supplied).

1 The evidence previously discussed, clearly illustrates that
2 if for no other reason, since the parties entered into an Artists'
3 Manager's agreement prior to the issuance of the license, eo
4 wit: January 20, 1976, that agreement is invalid.

5 Moreover, the agreement entered into was never approved
6 by the Labor Commissioner as required by Labor Code, Section
7 1700.23. Further, contracts which violate the act are void
8 (emphasis supplied). Buchwald v. Superior Court, 254 C.A. 2d 347,
9 351; 62 Cal. Rptr. 364 (1967). And despite the fact that
10 Petitioners themselves entered into an illegal agreement,
11 "artists, being of the class for whose benefit the Act was passed,
12 are not ordinarily considered to be in pari delicto." (citations
13 omitted) id.

14 Accordingly, the Labor Commissioner finds that because
15 the Respondents attempted to operate under an agreement which
16 was not first approved by the Labor Commissioner, any recitations
17 or covenants therein contained which would otherwise entitle
18 Respondents to fees or commissions or any money whatsoever are
19 null and void.

20 The first agreement signed by the parties in January
21 of 1976 being void, the subsequently executed "rider" (Petitioner's
22 #5) is also void, since it, too, was not approved by the Labor
23 Commissioner.

24 With regard to the October 29th agreement, since it
25 is undisputed that it was not approved either, its passage flows
26 in the same tide as that of its predecessors, and for this reason,
27 the Labor Commissioner need not pass on whether it was void

1 or voidable on the grounds of duress or undue influence.

2 Respondents contend that they suffered detriment,
3 because in signing the October agreement, they forebore from
4 seeking to enforce the Management agreement of January. But it is
5 well established that "If the claim threatened to be enforced
6 is worthless, a promise not to attempt to enforce or to refrain
7 from making trouble concerning it is not a consideration recogniz
8 by the law as valuable." City Street Improvement Company v.
9 F.E. Pierson, 181 Cal. 640, 651 (1919).

10 Accordingly, the October "settlement or termination"
11 agreement, having as its origin the void January 1976 agreement,
12 it then too, is tainted with the same quill, as it were: Respon-
13 dents could not have relinquished that which they never had,
14 since under no theory under the law of this State could they
15 have prevailed under the void January agreement or its subsequent
16 rider. Petitioners attempt protection under an umbrella-the
17 fabric of which exists on that of another's.

18 Not having, therefore, relinquished anything, Responden
19 attempting to secure benefits from an agreement whereby all
20 of their obligations to Petitioners were terminated and which
21 is not based upon services or work previously performed -- fails
22 for lack of consideration, and is void. id.

23 Respondents further contend that the October agreement
24 was not an Artists' Manager Agreement, but rather, it was a
25 "settlement agreement"; that it sought to terminate the parties'
26 relationship, but that only agreements which look forward to
27 a relationship are covered by the Act.

1 However, it is established that "Remedial statutes
 2 should be liberally construed to effect their objects and
 3 suppress the mischief at which they are directed." (citations
 4 omitted), supra, Ruchwald at 354; Moreover, "it is a fundamental
 5 principle of law that in determining rights and obligations,
 6 substance prevails over form." id., at 355. One cannot accomplish
 7 a subterfuge by labeling a contract one way so as to circumvent
 8 the statute; it is the substance and not the form which governs
 9 id. . . ."the Labor Commissioner, (sic) is free to search out
 10 illegality lying behind the form in which a transaction has been
 11 cast for the purpose of concealing such illegality. (citations
 12 omitted) id.

13 Here, the October 29th agreement attempted to impose
 14 certain rights and obligations which, inter alia, purported to
 15 assign rights to Respondents of fees generated from Petitioner's
 16 recordings without establishing any obligations on the part of the
 17 Respondents. Such a contract smacks of overreaching and uncon-
 18 scionability, and is the very kind of agreement that the Act seeks
 19 to regulate. If Respondents were able to circumvent regulation by
 20 merely calling an agreement with an artist one of "settlement",
 21 the Act could be thwarted in every case where such a facile
 22 characterization were applied. Respondent's contention is accor-
 23 dingly, meritless.

24 Because we find the October 29, 1976 agreement also
 25 void, Respondents are not entitled to any money which otherwise
 26 would have been derived from it. Accordingly, we need not pass on
 27 whether the purported assignment created any rights owing to

1 Respondents, since the foundation upon which it rests suffers the
2 fatality of illegality.

3 II

4 IF THE CONTRACT BETWEEN THE PARTIES IS
5 VOID, IS THE MANAGER NEVERTHELESS ENTI-
6 TLED TO RESTITUTION FOR SUMS EXPENDED OR
7 FUTURE COMMISSIONS OR FEES?

8 All agreements executed by the parties ~~having~~ been found
9 void, Respondents are not entitled to any money whatsoever, nor
10 may they recover sums, albeit expended on behalf of Petitioners in
11 good faith. supra, Ruchwald, at 351.

12 III

13 DOES THE LABOR COMMISSIONER HAVE JURIS-
14 DICTION OVER A PARTY WHO IS NEITHER
15 AN ARTIST NOR A MANAGER?

16 This Tribunal takes Official Notice that the Artists'
17 Manager Act is concerned only with Artists and their Managers.
18 Accordingly, the Labor Commissioner has no jurisdiction over
19 Capitol Records, Inc., since no evidence was adduced at the
20 hearing indicating that it was or functioned in either capacity.

21 Accordingly, Capitol Records, Inc. is hereby dismissed
22 from this proceeding.

23 IV

24 DOES THE LABOR COMMISSIONER HAVE THE
25 POWER TO AWARD EXEMPLARY DAMAGES?

26 The Artists' Manager Act expressly regulates the
27 Artists' Manager:

28 "...under a contract with the Artist
29 by which such person contracts to render
30 services of the nature above-mentioned
31 to such Artist." (emphasis supplied)

1 However, Respondent's Cross-Petition sounds in Tort in that
2 it pleads for exemplary damages on the grounds of an alleged
3 Fraudulent Misrepresentation on the part of the Artist. The
4 Labor Commissioner derives his authority by statute, and the
5 Artists' Manager Act provides no authority to facilitate awards
6 for such actions.. Nor are we aware of any reported case which
7 has gone further than to award amounts as damages for breach
8 of a contract. An award for punitive damages arising from Tort
9 is, therefore, beyond the scope of the Act. Accordingly, the
10 Labor Commissioner has no jurisdiction to make such awards,
11 and the relief requested by Respondents is, therefore, denied.

12 WHEREFORE, the following award is made:

- 13 1. That all agreements executed or not formally executed
14 between Plaintiffs and Respondents between January 1 through
15 September 28, 1978, are void; and,
- 16 2. That Plaintiff is released from any and all obliga-
17 tions or liabilities purporting to have arisen thereunder; and,
- 18 3. That no sums expended by Respondents on Plaintiff's
19 behalf should be recovered by them; and,

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1 4. That pursuant to written stipulation filed with
2 this office on July 21, 1978, attorneys' fees to either party
3 are denied.



JAMES L. QUILLIN, Labor Commissioner
for the State of California

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7 DATED:

8 AUG 22 1978

BY: Richard N. Dinallo

RICHARD N. DINALLO
Special Hearing Officer

9
10 DATED: AUG 22 1978

11 JAMES L. QUILLIN, Labor Commissioner
12 for the State of California

13
14 BY: Beatrice L. Christensen

BEATRICE CHRISTENSEN
Deputy Chief Labor Commissioner