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DIVISION OF LABOR STANDARDS ENFORCEMENT  
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5 Attorney for the State Labor Commissioner  
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7  
8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA  
10

11 TANYA TUCKER, ) No. TAC 14-79  
12 Petitioner, ) DETERMINATION  
13 vs. )  
14 FAR OUT MANAGEMENT, LTD., )  
JERRY GOLDSTEIN and STEVE GOLD, )  
15 Respondents. )  
16

17 The above-entitled controversy came on regularly for  
18 hearing before the Labor Commissioner, Division of Labor Standards  
19 Enforcement, Department of Industrial Relations, State of  
20 California, by CARL G. JOSEPH, Industrial Relations Counsel II,  
21 acting as Special Hearing Officer for the DIVISION OF LABOR  
22 STANDARDS ENFORCEMENT, under the provisions of Section 1700.44 of  
23 the Labor Code of the State of California; petitioner TANYA TUCKER  
24 appearing by the law offices of DONALD S. ENGEL of ENGEL & ENGEL,  
25 and respondents FAR OUT MANAGEMENT, LTD., JERRY GOLDSTEIN and  
26 STEVE GOLD appearing by the law offices of BUSHKIN, KOPELSON,  
27 GAIMS, GAINES & WOLF. Evidence both oral and documentary having

1 been introduced, and the matter being briefed and submitted for  
2 decision, the following determination is made:

3 It is the determination of the Labor Commissioner:

4 That there is nothing due to petitioner from respondents.

5 I

6 INTRODUCTION

7 On or about May 7, 1979, respondent FAR OUT MANAGEMENT,  
8 LTD. ("FOM"), as plaintiff, commenced action in the Superior  
9 Court against petitioner TANYA TUCKER, her personal services  
10 corporation, TANYA, INC., her father, BOE TUCKER, and others,  
11 seeking to enforce a "Personal Management Agreement" entered into  
12 on or about August 16, 1977. The complaint in the Superior Court  
13 action, verified by respondent STEVE GOLD ("Gold"), was admitted  
14 into evidence as Exhibit 32 at the hearing of this proceeding; the  
15 hearing officer stated that the Labor Commissioner will take  
16 judicial notice of the allegations of the complaint. Tr. 310.

17 On or about July 11, 1979, TANYA TUCKER commenced the  
18 instant proceeding by the filing of her petition against respon-  
19 dents FOM, Gold and JERRY GOLDSTEIN. Petitioner's demurrer and  
20 motion to stay the Superior Court action on the ground that the  
21 Labor Commissioner has exclusive original jurisdiction over the  
22 dispute between an artist and the alleged talent agents was  
23 granted on August 30, 1979. Respondents then moved before the  
24 Labor Commissioner for a dismissal of this proceeding on the  
25 ground that the Labor Commissioner lacked jurisdiction over the  
26 subject matter; the motion was denied by the Commissioner by order  
27 dated December 3, 1979. Thereafter, respondents moved in the

1 Superior Court to vacate the stay, which motion was also denied by  
2 order dated March 17, 1980.

3 The petition, in part, alleged:

4 1. That all of the respondents were acting in the capacity  
5 of a "talent agency" or "talent agents" as that term is defined in  
6 Section 1700.4 of the Labor Code.

7 2. That respondents have never been licensed as required by  
8 Section 1700.5 of the Labor Code and have never held a valid  
9 talent agent's license as defined therein.

10 3. That on or about August 16, 1977, petitioner and FOM  
11 entered into a written agreement, a copy of which is attached  
12 hereto as Exhibit A.

13 4. That prior to entering into said agreement, respondents,  
14 for the purpose of inducing petitioner to engage their services,  
15 represented to petitioner that they would arrange to secure  
16 bookings for personal appearances which would result in substan-  
17 tial additional income to her.

18 5. That respondents, in carrying out the terms of the  
19 aforesaid agreement, acted in the capacity of "talent agents" and,  
20 among other things, they:

21 a) negotiated and entered into an agreement or agreements  
22 with another talent agency pursuant to which such other talent  
23 agency was to represent petitioner, all without consulting with or  
24 obtaining the approval or consent of petitioner;

25 b) negotiated, procured and made all arrangements for  
26 personal appearances by petitioner, established the terms and  
27 conditions thereof and cancelled or changed the dates thereof, all

1 The case law construing the provisions of the Labor Code  
2 dealing with artists' manager controversies are Raden v. Laurie,  
3 120 C.A.2d 778, 262 P.2d 61 (1953); Buchwald v. Superior Court,  
4 254 C.A.2d 347; 62 Cal.Rptr. 364 (1967); and Buchwald v. Katz,  
5 8 Cal.3d 493, 105 Cal.Rptr. 378 (1972).

6 IV

7 DISCUSSION AND FINDINGS

8 Petitioner has been a major recording star for many  
9 years, having started in the business at the age of 13. Her  
10 father, Boe Tucker ("Boe"), had been her personal manager and  
11 advisor during most of that time. Boe entered into discussion  
12 with respondents because he wanted her to "cross over" into a  
13 different category of artist and both Boe and Gold testified that  
14 the initial discussions were for the purpose of securing Goldstein  
15 as the producer of petitioner's next album. However, a "package"  
16 deal was agreed to whereby the respondents would act in the  
17 capacity of co-managers along with the petitioner's father.

18 Both the "personal management agreement" between  
19 petitioner and FOM (Exhibit 7) and the three-way agreement among  
20 petitioner, FOM and MCA Records pursuant to which FOM was to  
21 provide the services of respondent Goldstein as the "Individual  
22 Producer" of petitioner's next album (Exhibit 8), were executed  
23 simultaneously under date of August 16, 1977. The "personal  
24 management agreement" had an initial term of about 16 months to  
25 January 1, 1979 and provided for four one-year options if certain  
26 contingencies (not relevant to the issues to be determined by the  
27 Labor Commissioner) occurred. Paragraph 1 of Exhibit 7A. FOM was

1 obligated only to "advise and counsel" petitioner in all aspects  
2 of her career and was to receive commissions of 10 percent of her  
3 gross receipts from her recording services and 15 percent of her  
4 other gross receipts. Paragraphs 2 and 4 of Exhibit 7.

5 As practical observation, the management agreement  
6 entered into on August 16, 1977, which must be taken into account  
7 when the activities of respondents and Boe are viewed below, is  
8 that Boe is designated in the agreement as a co-manager. Exhibit  
9 7A, paragraph 1. It is clear that all of the parties intended  
10 that Boe act as a co-manager. Respondents, themselves, admitted  
11 in their testimony that Boe was the co-manager during the time  
12 that the relationship existed between them and petitioner.  
13 (Tr. 289, 303-306) Moreover, although they deny in their testi-  
14 mony that Boe acted as their "partner", they made a conclusive  
15 admission that Boe was, in fact, acting in "partnership" with them  
16 when they so alleged in their verified complaint against  
17 petitioner and Boe filed in their Superior Court action. Exhibit  
18 32, paragraphs 30, 31 and 33. Petitioner testified that she was  
19 under the impression that Boe was supposed to be a partner of  
20 respondents and that all decisions respecting her career would be  
21 made among the partners, as did Boe. Tr. 458-59, 479. In view of  
22 the conclusive admission in respondents' own complaint, this state  
23 of facts must be held to have existed during the entire period of  
24 time that respondents purported to act as the "personal manager"  
25 of petitioner.

26 Another aspect that bears mentioning is the fact that  
27 there was never a period of time when TANYA, INC. was not

1 represented by either Iron Head Talent, the Tennessee booking  
2 agency operated by Boe Tucker's son, Don, or by the William Morris  
3 Agency of California. With almost no exceptions, every engagement  
4 was booked and commissioned through a booking agency.

5 Reference was made at the hearing to the case of Buchwald  
6 v. Superior Court, 254 Cal.App.2d 347, 62 Cal.Rptr. 364, which  
7 held under the prior Act that when a prima facie showing is  
8 presented to the Labor Commissioner indicating that a person was  
9 acting as an unlicensed artists' manager under the pretext of a  
10 contract designed to circumvent the regulatory statutes by some  
11 sham, fraud, or deceit, the Labor Commissioner shall have initial  
12 jurisdiction to determine whether such a connivance or scheme  
13 actually exists. But the circumstances present in Buchwald  
14 demonstrate so great a disparity from the fact situation presented  
15 in the instant proceeding that the matter deserves some comment.

16 As the Commissioner well knows, Buchwald involved a  
17 fledgling musical group known as the Jefferson Airplane which  
18 filed a Petition to Determine Controversy before the California  
19 State Labor Commissioner in 1967, alleging that Matthew Katz, who  
20 was unlicensed as an artists' manager, had acted as and performed  
21 services for which a license was required. The petition alleged  
22 that Katz had acted fraudulently by asserting in writing that he  
23 was not acting as an artists' manager when at all relevant times  
24 he had intended to act and did act in such a capacity. The  
25 petition's allegations included the following:

26 [D]efendant [Matthew Katz] acting as an artists'  
27 manager and through false and fraudulent statements  
and by duress caused complainants to sign with

1 defendant as an artists' manager; that defendant  
2 prior to the time of signing said contracts,  
3 promised the complainants and each of them that  
4 he would procure bookings for them; that  
5 defendant thereafter procured bookings for the  
6 complainants and insisted that the complainants  
7 perform the bookings procured by him; that  
8 complainants sought to procure their own  
9 bookings, and that defendant refused them the  
10 right to procure their own bookings ... that  
11 Matthew Katz never rendered an accounting to the  
12 complainants for thousands of dollars received  
13 by Mr. Katz for their services; that Matthew  
14 Katz has not allowed complainants to inspect  
15 the books and records maintained by Matthew Katz  
16 with respect to fees earned by the complainants;  
17 that Matthew Katz has and continues to obtain  
18 payments intended for one or more of the above  
19 complainants and has cashed checks intended for  
20 one or more of the above complainants for his  
21 own use and benefit.

22 Buchwald at 352.

23 Although the testimony concerning whether or not respon-  
24 dents actually engaged in activities violative of the Talent  
25 Agencies Act during the early stages of the relationship between  
26 the parties is in sharp dispute, petitioner contends that there is  
27 substantial evidence in the record to support the conclusion that  
they did violate the act at this stage. However, before the  
Commissioner addresses this issue, the case of Raden v. Laurie,  
120 C.A.2d should be noted. In this case, the court, in constru-  
ing Labor Code Section 1700.4, before its amendment in 1979,  
stated:

One is not an artists' manager unless he both  
advises, counsels and directs artists in the  
development or advancement of their professional  
careers, and also procures, offers, promises  
or attempts to procure "only in connection with  
and as a part of the duties and obligations of  
such artist by which such person contracts to  
render services of the nature above-mentioned  
to such artist." Such is the clear wording of  
the statute. (At 781)

1 The artists' manager under the prior Act was one who was  
2 required to perform the functions of both personal manager and  
3 employment procurer. However, the talent agent, under the new  
4 Act, is not purely and simply defined as an employment procurer--  
5 but one who may also, if he chooses, perform career counseling  
6 functions. There seems little doubt that the California  
7 Legislature's enactment of the Talent Agencies Act was intended  
8 to charge the Labor Commissioner with responsibility for ensuring  
9 that persons whose usual or principal work was the procurement of  
10 employment for artists, were licensed.

11 V

12 CONCLUSION

13 It is concluded that the respondents acted in a capacity  
14 as advisors and managers to petitioner and as such did not  
15 violate the Labor Code Section 1700.4.

16 It is the hearing officer's determination that  
17 petitioner taking nothing by way of her petition.

18 ALBERT J. REYFF, Deputy Chief  
19 DIVISION OF LABOR STANDARDS ENFORCEMENT  
20 Department of Industrial Relations  
State of California

21 DATE: \_\_\_\_\_

CARL G. JOSEPH  
Special Hearing Officer

22 ADOPTED:

23 DATED: \_\_\_\_\_

*Albert J. Reyff*  
ALBERT J. REYFF  
Deputy Chief

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