

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 By: FRANK C. S. PEDERSEN,
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BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

MARY JO MIAL, individually)
and dba KILROY, NIGHT MOVES)
and COLLECTOR'S ITEM,)
Petitioner,)
vs.)
STEPHEN R. CROSBY,)
dba CROSBY MUSIC AGENCY,)
Respondent.)

NO. TAC 27-80
SF MP 91

DETERMINATION

17 The above-entitled controversy came on regularly for
18 hearing in San Diego, California, on August 21, 1981, before
19 the Labor Commissioner of the State of California by Frank C.
20 S. Pedersen, Counsel for the Division of Labor Standards
21 Enforcement, serving as Special Hearing Officer under the
22 provisions of Section 1700.44 of the Labor Code of the State
23 of California; petitioner Mary Jo Mial appearing by the law
24 office of Zybelman and Paluso by George V. Paluso, and respond-
25 ent Stephen R. Crosby, dba Crosby Music Agency, appearing
26 in propria persona, it being stipulated that Stephen R. Crosby
27 was the sole proprietor and that Douglas C. Fries be dismissed

1 from the controversy.

2 Evidence, both oral and documentary, having been introduced,
3 and the matter remaining open for the submission of further docu-
4 mentary evidence by respondent, and respondent having submitted
5 such evidence and the hearing officer having given petitioner
6 until March 21, 1981 to respond to said further evidence, and
7 petitioner having responded on March 17, 1981, and the matter
8 being submitted on March 21, 1981, the following determination
9 is made:

10 It is the determination of the Labor Commissioner:

11 1. That the contract entered into between the parties here-
12 to on January 29, 1979 was a legal contract and enforceable to
13 November 23, 1979.

14 2. That from and after November 23, 1979 said contract
15 was unenforceable and respondent was not entitled to any commis-
16 sions after said date.

17 3. ; That respondent return to petitioner the sum of \$540.00
18 representing commissions paid to respondent for services rendered
19 after November 23, 1979.

20 I

21 INTRODUCTION

22 On October 1, 1980 Mary Jo Mial, individually and doing
23 business as Kilroy, Night Moves and Collector's Item, filed a
24 Petition to Determine Controversy pursuant to Labor Code Section
25 1700.44.

26 Petitioner alleged that respondent had acted as a talent
27 agency and collected commissions as such from January 29, 1979

1 through April 26, 1980, although he was not licensed as a talent
2 agency and asked for the return of all commissions paid to
3 respondent.

4 Respondent filed an answer admitting that he was not lic-
5 ensed as a talent agency and alleging that during the time in-
6 volved he was licensed by the Bureau of Employment Agencies.

7 II

8 DISCUSSION

9 Mary Jo Mial is and was an artist as that term is defined
10 in Labor Code Section 1700.4.

11 Petitioner's band was sent by respondent to the following
12 musical engagements:

13 1. The U. S. International University on February 23,
14 1979 and was paid the sum of \$200.00, out of which respondent
15 received a commission of \$40.00.

16 2. The Mission High School dance on December 15, 1979,
17 for which she was paid \$400.00, out of which respondent received
18 a commission of \$80.00.

19 3. The North Island Naval Air Station on January 4 and
20 5, 1980, for which she was paid the sum of \$350.00, out of which
21 respondent received the sum of \$50.00 (another band was also
22 involved but is not a party to this controversy).

23 4. The North Island Naval Air Station on February 6 and
24 7, 1980, for which she received the sum of \$800.00, out of which
25 respondent received a commission of \$150.00.

26 5. The Big Oak Ranch on March 22, 1980 for \$360.00, out
27 of which respondent received a commission of \$60.00.

1 6. The Naval Training Center on April 3, 1980 for the sum
2 of \$175.00, out of which respondent received a commission of
3 \$25.00.

4 7. The North Island Naval Air Station on April 23 and 24,
5 1980, for which she received \$850.00, out of which respondent
6 was paid a commission of \$175.00.

7 Prior to January 1, 1979 respondent was licensed as a
8 Musician Booking Agency by the Bureau of Employment Agencies.
9 The law pertaining to such a license was repealed as of January
10 1, 1979, and Section 1700.45 of the Labor Code, effective Janu-
11 ary 1, 1979, stated that any person holding an unrevoked license
12 as a Musician Booking Agency within 90 days prior to January
13 1, 1979 could apply for and receive a talent agency license.

14 The Talent Agency Licensing Section mailed to respondent
15 and others a notice on January 1, 1979 stating that licenses
16 such as were held by respondent would remain valid through the
17 day before their birthday and that they should obtain a talent
18 agency license effective from the date of their birthday, which
19 in respondent's case was November 23, 1979.

20 Respondent claimed that he was at all times licensed by
21 the Bureau of Employment Agencies and submitted a copy of a lic-
22 ense from them effective through April 31, 1981, which is im-
23 material as from and after November 23, 1979 he could only rep-
24 resent musicians pursuant to a current talent agency license.

25 The Hearing Officer now makes the following Findings of
26 Fact and conclusions of Law:

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1 FINDINGS OF FACT

2 1. Petitioner was an artist within the definition of Labor
3 Code Section 1700.4.

4 2. Respondent was a licensed Musician Booking Agency on
5 January 1, 1979 and could legally book bands through November
6 22, 1979 without a new talent agency license.

7 3. From and after November 23, 1979 respondent required
8 a current talent agency license in order to book bands.

9 4. Respondent was entitled to his commission of \$40.00
10 for booking petitioner on February 23, 1979 into the U. S. Inter-
11 national University.

12 5. Respondent was not licensed as a talent agency when
13 he booked petitioner for the other engagements set forth herein
14 under "Discussion", for which engagements he received commis-
15 sions totalling \$540.00.

16 CONCLUSIONS OF LAW

17 1. The contract entered into on January 29, 1979 was of
18 no further force and effect from and after November 23, 1979.

19 2. Respondent is not entitled to any commissions under
20 said contract after November 22, 1979.

21 3. Respondent is ordered to return to petitioner the com-
22 missions received after November 22, 1979 in the amount of

23 DATED: April 6, 1982.

Frank C. Pedersen
Frank C. S. Pedersen
Special Hearing Officer

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26 ADOPTED:

Patrick W. Henning
Labor Commissioner
State of California

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