

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

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STATE OF CALIFORNIA

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MARY JO MIAL, individually )  
and dba KILROY, NIGHT MOVES )  
11 and COLLECTOR'S ITEM, )

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Petitioner, )

NO. TAC 27-80  
SF MP 91

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vs. )

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STEPHEN R. CROSBY, )  
14 dba CROSBY MUSIC AGENCY, )

DETERMINATION

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Respondent. )

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The above-entitled controversy came on regularly for hearing in San Diego, California, on August 21, 1981, before the Labor Commissioner of the State of California by Frank C. S. Pedersen, Counsel for the Division of Labor Standards Enforcement, serving as Special Hearing Officer under the provisions of Section 1700.44 of the Labor Code of the State of California; petitioner Mary Jo Mial appearing by the law office of Zybelman and Paluso by George V. Paluso, and respondent Stephen R. Crosby, dba Crosby Music Agency, appearing in propria persona, it being stipulated that Stephen R. Crosby 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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