

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
LLOYD W. AUBRY, JR., Labor Commissioner
2 By: MARIANO KRAMER, Special Hearing Officer
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4 Telephone: (213) 590-5044

5 Hearing Officer for Labor Commissioner

6
7 BEFORE THE LABOR COMMISSIONER OF THE
8 STATE OF CALIFORNIA

9	ANGEL O'BRIEN, APRIL DOYLE, DOUG ALLEN,)	
	JESSE HOMER, BURT NEWMAN, ALBERT WILLIAMS,)	No. TAC 27-86
10	dba THE MAR DELS,)	
)	DETERMINATION
11	Petitioners,)	
)	
12	vs.)	
)	
13	LUCKENBACH PRODUCTIONS, INC., and)	
	DOES I through 10,)	
14)	
)	
15	Respondents.)	
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16)	

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18 The above-entitled controversy came on regularly for hearing on
19 October 21, 1986, before the Labor Commissioner, Division of Labor Standards
20 Enforcement, Department of Industrial Relations, State of California, by
21 Mariano Kramer, serving as Special Hearing Officer under the provisions of
22 California State Labor Code Section 1700.44.

23 Petitioners appeared represented by Victoria A Schall, attorney.
24 Respondent appeared represented by Robert K. Peddycord, Esq., attorney.

25 Both oral and documentary evidence having been introduced and the
26 matter having been briefed and submitted for decision, the following
27 determination is made:

1. That the contract at issue is valid and enforceable.
2. That the petition to determine controversy is dismissed.

ISSUES

The petitioner requests:

(a) that the contract between petitioner and respondent be voided for all engagements performed after February 23, 1986 when respondent's Talent Agent license allegedly expired.

(b) that all compensation received by respondent for engagements performed by petitioner after February 23, 1986 be disgorged and paid to petitioner.

At the hearing the amounts transacted between the parties was disputed. Both parties stipulated to a bifurcation of this proceeding to determine whether said contract should be voided before determining any issues of accountability.

DISCUSSION AND FINDING

Petitioner is a musical group and an artist as defined by Section 1700.4 of the California State Labor Code. Respondent is a talent agency as defined by Section 1700.4 of the California State Labor Code. Respondent was duly licensed per Section 1700.5 of the California State Labor Code from May 9, 1985 to February 23, 1986.

The parties entered into an oral contract in which respondent was to book musical engagements for petitioner for 10 percent of the gross amount generated by said engagement. Respondent was duly licensed at the time contract was entered into and had booked engagements through December 6, 1986.

In January 1986 respondent's representative, Lauri Oakland, purportedly sent a renewal application for said Talent Agency license first class mail with a check for the corresponding fee to the Labor Commissioner's

1 office in San Francisco, California. Thereafter Oakland renewed respondent's
2 surety bond in February 1986 in compliance with Section 1700.15 of the
3 California State Labor Code.

4 Oakland testified that on or about March 1986 she called the Labor
5 Commissioner's office in San Francisco to inquire about respondent's
6 renewal application. Oakland was allegedly told that said application was
7 being processed. Respondent remained idle until receipt of a letter dated
8 July 2, 1986 by petitioner's attorney indicating that respondent's license had
9 expired on February 22, 1986. Petitioner requested payment on all engagements
10 subsequent to the above date based on the assertion that said contract was void
11 due to non-licensure.

12 Oakland further testified that upon receipt of this letter she
13 immediately called the Labor Commissioner's office and was told that there
14 was no record of receipt of said renewal application. On July 22, 1986
15 Oakland sent a copy of the previous renewal application with the
16 corresponding fee to the Labor Commissioner's office. Respondent received
17 written confirmation of receipt on August 12, 1986. At time of hearing no
18 license had been issued.

19 Respondent argues that there was substantial compliance predicated
20 on the good faith effort to renew said license and the fact that respondent
21 was licensed at the time both parties entered into said contract.

22 Upon review of the evidence submitted credence is given to the
23 respondent's testimony regarding the efforts made to renew said license.
24 Petitioner did not present any evidence to refute respondent's testimony and
25 it is unreasonable to presume that respondent would have renewed its surety
26 bond, which is an integral part of the licensing process, without taking the
27 steps to renew the actual license.

28 Petitioner proposes to disregard the aforementioned and void said

1 contract based on the sole fact that there was no license during the period
2 in question. In so doing, the petitioner will benefit by receiving a
3 significant amount of monies entitled to the respondent under this contract.

4 In Southfield v. Barrett, 13 C.A. 3rd. 290, the court sets forth
5 certain parameters for the enforceability of an illegal contract:

6 "The rule requiring courts to withhold relief under
7 the terms of an illegal contract is based on the
8 rationale that the public importance of discourag-
9 ing such prohibited transactions out weighs
10 equitable considerations of possible injustice as
11 between the parties."

12 Exceptions to Rule against Enforceability:

13 "The rule that courts will not aid in the enforcement
14 of an illegal contract is not an inflexible one, and
15 should not be applied where the public cannot be
16 protected, in that the transaction has been completed,
17 where no serious moral turpitude is involved, and where
18 the defendant is the one guilty of greatest moral fault
19 and would be unjustly enriched at the expense of the
20 plaintiff."

21 In Homestead Supplies vs. Executive Life Insurance Co., 81 Cal App
22 3rd 990, cites:

23 "Factors in considering the effect of an illegality on
24 enforceability of an agreement,

25 (a) whether violation of law involved serious moral
26 turpitude.

27 (b) whether parties are entirely in pari-dilecto.

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- 1 (c) whether the adverse party would be unjustly enriched
- 2 if enforcement were denied.
- 3 (d) whether forfeiture resulting from the denial of
- 4 enforcement would be disproportionately harsh in
- 5 proportion to the illegality.
- 6 (e) whether purpose of statute violated will best be
- 7 served by enforcement or denial of enforcement."

8 In the instant case no evidence was furnished to establish any
9 moral turpitude by the respondent in the performance of its contractual
10 obligations towards the petitioner. The respondent clearly fulfilled
11 statutory obligations by obtaining the original license and promptly took the
12 steps to secure a renewed license when advised by the Labor Commissioner's
13 office that an application had not been received.

14 In light of public policy and legislative intent great care must be
15 used in determining the enforceability of an illegal contract. In this case
16 there is no evidence that the respondent acted with moral turpitude, in bad
17 faith or in an unconscientious manner towards the petitioner or any other
18 artist in performance of its contractual obligations. Thus, it does not
19 appear that the purpose of this statute (to offer a standard of care and
20 propriety in the talent agent's conduct towards his or her artist/clients)
21 has been breached.

22 The forfeiture of respondent's commissions based on said contract
23 is disproportionate to the illegality. To withhold relief based on this
24 illegality would unjustly enrich the petitioner with commissions earned by the
25 respondent when the respondent had performed its obligations towards petitioner
26 in good faith and taken substantive steps towards obtaining licensure.

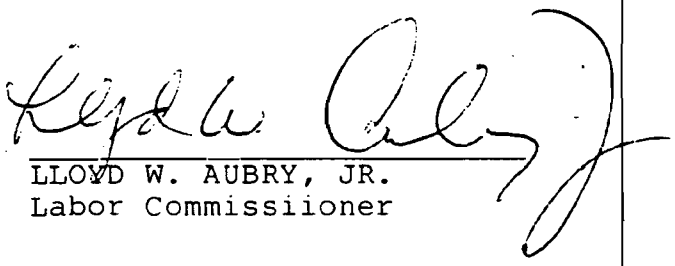
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1 Accordingly, this hearing officer orders that the petition
2 be dismissed.

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4 DATED: 4/13, 1987

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MARIANO KRAMER
Special Hearing Officer

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11 ADOPTED:
12 DATED: 4/14, 1987

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15 LLOYD W. AUBRY, JR.
Labor Commissioner

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