

1 MAN, by BARRETT W. MCINERNEY, and Respondent, MICHAEL MANN
2 MANAGEMENT, appearing by the law offices of JAMES G. KORSEN,
3 by JAMES G. KORSEN.

4 Evidence, both oral and documentary, having been intro-
5 duced, the following determination is made:

6 It is the determination of the Labor Commissioner that:

7 1. Petitioner's claim regarding any alleged unlicensed
8 talent agent activity prior to March 31, 1988 is barred by the
9 one-year statute of limitations provision in Labor Code Sec-
10 tion 1700.44(c).

11 2. As to any alleged unlicensed talent agent activity
12 occurring after March 31, 1988, Respondent did not act in
13 violation of Labor Code Section 1700.4.

14 3. That the management agreement between the parties
15 be given full force and effect until Respondent conditionally
16 released Petitioner on May 6, 1988.

17 4. That Petitioner take nothing by her petition.

18
19 I

20 INTRODUCTION

21 On March 31, 1989, Petitioner filed with the Labor Com-
22 missioner a Petition to Determine Controversy pursuant to
23 Labor Code Section 1700.44. On May 26, 1989, Respondent filed
24 an answer to the Petition to Determine Controversy.

25 On October 26, 1988, Respondent had submitted a dispute
26 regarding his entitlement to certain fees under the contract
27 to the American Arbitration Association in Los Angeles pur-

1 suant to the agreement's arbitration clause. The arbitration
2 has been stayed pending the outcome of this proceeding under
3 Labor Code Section 1700.44.

4 The Petition alleges that the management agreement be-
5 tween the parties was entirely drafted and presented to
6 Petitioner at a time when Petitioner was unrepresented by
7 counsel and that said contract contains unconscionable terms
8 and conditions, particularly with respect to the options for
9 renewal. The Petition further alleges that Respondent ex-
10 ploited his fiduciary position of trust with Petitioner and
11 induced her to sign the contract without legal representation.

12 Petitioner alleges that during the term of the con-
13 tract, and specifically in April, 1988, Respondent submitted
14 Petitioner's resume to various producers, and committed other
15 acts in violation of the Talent Agency Act by procuring, of-
16 fering, promising or attempting to procure employment and en-
17 gagements on Petitioner's behalf.

18 Petitioner further alleges that, upon Petitioner's re-
19 quest, Respondent agreed and repeatedly maintained that he
20 would release Petitioner from the contract, and subsequent to
21 his verbal consent to unconditionally release Petitioner,
22 Respondent demanded in a letter, dated May 6, 1988, that he
23 receive fees from Petitioner on projects he "submitted and
24 procured for her" as a condition to releasing her from the
25 contract.

26 In the Petitioner's prayer for relief, Petitioner has
27 requested:

1 3. If Respondent is determined to have engaged in the
2 procurement of employment pursuant to Labor Code Section
3 1700.4, are the acts complained of specifically excepted from
4 licensing pursuant to Labor Code Section 1700.44(d)?
5

6 III

7 APPLICABLE LAW

8 Petitioner brought this action under the provisions of
9 Division 2, Part 6, Chapter 4 of the Labor Code commencing
10 with Section 1700. This portion of the Labor Code is commonly
11 known as the Talent Agency Act ("Act").

12 Section 1700.4 of the act defines the term "talent
13 agency" as:

14
15 "A person or corporation who engages in the oc-
16 cupation of procuring, offering, promising, or at-
17 tempting to procure employment or engagements for
18 an artist or artists, except that the activities
19 of procuring, offering, or promising to procure
20 recording contracts for an artist or artists shall
21 not of itself subject a person or corporation to
22 regulation and licensing under this chapter.
23 Talent agencies may, in addition, counsel or
24 direct artists in the development of their profes-
25 sional careers."

26 Labor Code Section 1700.5 provides:

27 "No person shall engage in or carry on the occupa-
tion of a talent agency without first procuring a
license therefor from the Labor Commissioner..."

Labor Code Section 1700.44(c) provides:

"No action or proceeding shall be brought pursuant
to this chapter with respect to any violation
which is alleged to have occurred more than one
year prior to commencement of the action or
proceeding."

DISCUSSION AND FINDINGS

The threshold issue to be decided is whether the Petitioner's claim is barred in whole or in part by the one-year statute of limitations provision in Labor Code Section 1700.44(c).

The evidence presented established the following chronology:

On February 15, 1985, the parties entered into a written agreement whereby Respondent was to act as Petitioner's personal manager to counsel, advise, consult and perform those services customarily rendered by a personal manager regarding the development and advancement of Petitioner's career. The agreement provided an initial term of two years with two 1-year mutual options to renew. Said written agreement was effective through February 14, 1989.

During the period from February 15, 1985 through May 6, 1988, except for a period of approximately three weeks, Petitioner was represented by a licensed talent agency. Petitioner was first represented by the J. Michael Bloom Agency and, after choosing to leave that agency, was represented by Lawrence, Badgley, McQueeney & Connor (LBMC), now Badgley & Connor.

In May, 1988, Petitioner wished to be released from the agreement stating that she did not desire to have a personal manager anymore. (Sometime thereafter, however, Petitioner retained a new personal manager).

1 On May 6, 1988, Respondent agreed to release her from
2 the contract, provided that she was not leaving to take on
3 another manager, and set forth in a letter of that date those
4 projects he believed he was entitled to participate in pur-
5 suant to the agreement. Petitioner did not respond to the May
6 6, 1988 letter.

7 Petitioner's counsel, in an August 4, 1988 letter to
8 Respondent, stated that Respondent's letter of May 6, 1988 in-
9 dicated that Respondent had, on previous occasions, submitted
10 Petitioner for various projects, and as such, Petitioner had
11 strong reason to believe that Respondent was in violation of
12 the Talent Agency Act by procuring, offering, promising or at-
13 tempting to procure employment and engagements on behalf of
14 Petitioner.

15 On October, 1988, Respondent filed an arbitration ac-
16 tion with the American Arbitration Association in Los Angeles.

17 On March 31, 1989, Petitioner filed with the Labor Com-
18 missioner a Petition to Determine Controversy pursuant to
19 Labor Code Section 1700.44.

20 Petitioner presented no argument regarding the statute
21 of limitations issue, therefore, Petitioner's claims is barred
22 as to any alleged unlicensed talent agent activity on the part
23 of Respondent prior to March 31, 1988.

24 Regarding the period from March 31, 1988 to May 6,
25 1988, the date upon which Respondent agreed to conditionally
26 release Petitioner from the written agreement, Petitioner was
27

1 unable to present any evidence to support her contention that
2 Respondent engaged in the procurement of employment on her be-
3 half in violation of Labor Code Section 1700.4.

4 Petitioner's evidence consisted of the declarations of
5 two ex-employees of Respondent, Cynthia Maxfield and Nancy
6 Schmidt, delivered to the Labor Commissioner's office the
7 morning of the hearing. However, since neither declarant was
8 employed by Respondent during the period from March 31, 1988
9 through May 6, 1988, the declarations are of no relevance. A
10 third declaration, that of Robert Harbin involved in the cast-
11 ing for an "L.A. Law" episode, was delivered but, because it
12 was unsigned, was not admitted into evidence.

13 Petitioner could not recall any specific submissions
14 made on her behalf, except allegedly involving the "L.A. Law"
15 episode, and did not think any employment was procured during
16 the 3-week period that she was unrepresented by a licensed
17 agent and, further, could not recall when this 3-week period
18 of non representation occurred during her relationship with
19 Respondent.

20 Petitioner testified on cross-examination that her
21 agents had always negotiated her fee except, allegedly,
22 regarding the L.A. Law episode involving Robert Harbin. In
23 any case, the alleged procurement of the L.A. Law spot by
24 Respondent is refuted by a letter from Erin Connor to the
25 Screen Actor's Guild on May 4, 1987 (agreed to and accepted by
26 Petitioner) that LBMC obtained employment for Petitioner on
27

1 the L.A. Law episode in question. In any case, since the al-
2 leged violation occurred prior to March 31, 1988 it is time-
3 barred.

4 Respondent, on the other hand, presented persuasive
5 evidence corroborating that he did not engage in unlicensed
6 talent agent activity on Petitioner's behalf. Petitioner was
7 represented by a licensed talent agent at all times except for
8 an unidentified 3-week period between agents and, furthermore,
9 Petitioner testified that Respondent was instrumental in the
10 selection of LEMC as Petitioner's licensed talent agent after
11 she left the J. Michael Bloom Agency.

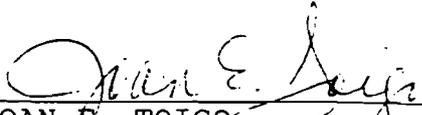
12 Since it is determined that Respondent did not engage
13 in the procurement of employment, it is unnecessary to reach
14 the issue of activities excepted from licensing pursuant to
15 Labor Code Section 1700.44(d).

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17 V

18 CONCLUSION

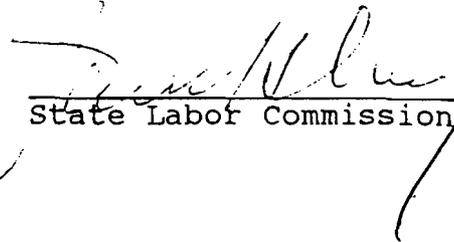
19 In summary, Petitioners have simply failed to carry the
20 requisite burden necessary for a finding that Respondent en-
21 gaged in unlicensed talent agent activity in violation of the
22 Labor Code.

23
24 Dated: April 16, 1990


25 JOAN E. TOIGO
Special Hearing Officer

26 ADOPTED:

27 Dated: April 23, 1990


State Labor Commissioner