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BEFORE THE STATE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

In The Matter of:)	TAC 21-94
SHARON LA FLEUR-PRINCE, EDNA)	
FISHER, GERALDINE CLARK,)	DECISION
DENISE MOISES, GARRENTINE MITCHELL,)	
JOANNE WILLIAMS, YOLANDA CRAIL and)	
JACQUELINE MCKENZIE,)	
)	
Petitioners,)	
)	
v.)	
)	
AL FANN, MIMI GREEN, AL FANN)	
THEATRICAL ENSEMBLE, THE AL FANN)	
THEATRICAL ENSEMBLE MANAGEMENT)	
ASSOCIATION, and THE INSTITUTE FOR)	
ARTISTIC DEVELOPMENT, INC.)	
)	
Respondents.)	

This proceeding arose under the provisions of the Talent Agencies Act (the "Act"), Labor Code §§ 1700 - 1700.47¹. On February 14, 1994, Petitioners filed a petition with the Labor Commissioner pursuant to §1700.44 seeking determination of an alleged controversy with respondents. The petition was duly served on the Respondents on February 16, 1994. No answer was filed and, pursuant to the provisions of 8 C.C.R. § 12025 a full evidentiary hearing was scheduled and held.

Due consideration having been given to the testimony, documentary evidence, briefs, and arguments submitted by the parties, the Labor Commissioner now renders the following decision.

¹ Unless otherwise specified, all subsequent statutory references are to the Labor Code.

1 PROCEDURAL AND FACTUAL BACKGROUND

2 The petition alleges that Respondents induced the Petitioners
3 to enter into contracts for acting lessons for themselves or their
4 children in the Al Fann Theatrical Ensemble Dramatic Workshop².
5 Not everyone was invited to join the Workshop. Only those who
6 successfully passed a "screen test" conducted by Mimi Green and Al
7 Fann were invited to enroll. The enrollees paid \$2800.00 for the
8 training they were to receive. Most of the students were children.

9 According to the testimony of the witnesses, the only activ-
10 ities engaged in by the "clients" or "students" while enrolled in
11 the Al Fann Theatrical Ensemble Dramatic Workshop was participation
12 in a series of uncoordinated dances and the repetition of "jingles"
13 and "affirmations" coupled with discussions about the acting career
14 of Mr. Fann. Mr. Fann³ explained that such repetitions were an
15 integral part of the curriculum at his school and the discussions
16 regarding his acting career were encouraged in order to install
17 hope in the aspiring thespians.

18 In conjunction with the enrollment in the "Workshop" the
19 individuals entered into "Artist Management" contracts with Al Fann
20 Theatrical Ensemble Management Association whereby the Management
21 Association was to act in behalf of the artist in exchange for a
22 25% commission on all money paid the "artist". The fee, according
23 to the contract was to cover:

24
25 ²According to the testimony of Mimi Green, while appearing on behalf of all
26 of the named parties, all of the named entities are simply fictitious names for
27 Al Fann. For purposes of this decision Al Fann, Al Fann Theatrical Ensemble, The
28 Al Fann Theatrical Ensemble Management Association, and The Institute For
Artistic Development, Inc., will be treated as the alter egos of Al Fann. Mimi
Green states that she is "public relations" for these entities but has no
proprietary interest in the entities.

³Al Fann sometimes refers to himself as Dr. Fann.

1 "personal career management, contracts and contractual
2 negotiations, dramatic coaching on scripts for auditions,
3 weekly episodics, film, commercials, comedies, movies,
4 etc. It includes career counseling and guidance, advice
5 on wardrobe, hairstyles, makeup (stage and street) and a
6 complete image makeover. In addition there are creden-
7 tialed Los Angeles Unified School teachers on our prem-
8 ises for school age clients⁴."

9 According to the witnesses, both Al Fann and Mimi Green told
10 the Petitioners that the students would be provided with acting
11 jobs. The witnesses also testified that Mimi Green routinely
12 contacted the students and directed them to auditions scheduled in
13 the Los Angeles area.

14 The students were required to execute an assignment form
15 authorizing any production company to pay any fee they (or their
16 child) were due to the Al Fann Theatrical Ensemble Management
17 Association.

18 Respondents contend that the school they operated was
19 contacted on an ongoing basis by production companies seeking
20 African-American children for use in commercials. They further
21 contend that as the students progressed, they were put in contact
22 with licensed talent agents and it was these licensed talent agents
23 who offered to procure employment for the students through the
24 auditions. According to Mimi Green, she did, occasionally, send a
25 child to an audition based upon a contact which she had made
26 directly through her friends in the industry.

27 Both Ms. Green and Mr. Fann testified that most of the offers
28

29 ⁴Mimi Green originally testified that she was a credentialed teacher in the
30 Los Angeles Unified School System. On closer questioning, however, it was
31 revealed that she misunderstood the term "credentialed" and was not a certified
32 teacher in Los Angeles Unified School District or, for that matter, in any other
33 school district. She had, at one time, engaged in a theatrical workshop at a Los
34 Angeles school and it was upon that experience that she claimed teaching
35 credentials.

1 of employment were made through licensed talent agents. Ms. Green
2 testified that the agents would contact her as a result of the fact
3 that the Al Fann Theatrical Ensemble Management Association was the
4 "personal manager" of the students. Mimi Green testified that she
5 simply passed on the information regarding the audition to the
6 students (or their parents).

7 Evelyn Schultz, a licensed talent agent, testified that she
8 did represent a few of the children at the school; but she testi-
9 fied that she had scheduled auditions for the Al Fann children less
10 than five times in a one-year period. Stefanie Tessmer and Joy
11 Stevenson, agents with an agency owned by Herb Tannen, testified
12 that they had scheduled auditions for the 15 students enrolled at
13 the Al Fann School who they represented a total of 12-15 times in
14 a one-year period.

15 Some of the students were scheduled for auditions for em-
16 ployment as a result of the activities of the licensed talent
17 agents who contacted Mimi Green on behalf of the student's personal
18 manager, Al Fann Theatrical Ensemble Management Association.

19 In most cases, the students who were scheduled for auditions
20 for employment by Mimi Green were not represented by licensed
21 talent agents at the time they were scheduled or, if represented,
22 the agent knew nothing of the audition and did not schedule the
23 audition for employment.

24 In an announcement routinely sent to the students, Al Fann
25 states that "[Q]uite often we send Ensemble clients [students] out
26 on acting jobs". The announcement asks that the students make sure
27 that the payment for such jobs is sent directly to the Management
28 Association so that the Association can insure that the full sum

1 owed was paid by the production company.

2 Both Mimi Green and Al Fann Theatrical Ensemble Management
3 Association held themselves out to be "agents" and the only contact
4 listed for persons interested in the services of the students.
5 These representations were made through information printed on the
6 publicity pictures and Zed cards they distributed to production
7 companies and others in the entertainment industry.

8 There was no evidence that any of the auditions within the
9 period at issue in this case resulted in the students who were not
10 represented by licensed talent agents being given parts in commer-
11 cials or music videos. Further, with the exception of the payment
12 of \$200.00 paid by Jacqueline McKinzie as part of the balance due
13 for tuition in the Al Fann Theatrical Ensemble, no payments were
14 made by any of the Petitioners to any of the Respondent entities
15 during the relevant period.

16 The Respondents set up two basic defenses: first, that the
17 claims for relief are barred by the applicable statutes of limita-
18 tions, §1700.44(c), and second, that, even if not barred, the
19 claims are legally and factually without merit.

20 **DECISION**

- 21 **1. THE REQUEST TO RECOVER AMOUNTS PAID MORE THAN ONE**
22 **YEAR BEFORE THE FILING OF THE PETITION IN THIS**
23 **MATTER IS TIME BARRED.**

24 The Act contains the following statute of limitations
25 provision, at Section 1700.44, subd. (c):

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

1 The question presented is whether this provision bars Petitioners'
2 request for a declaration that the contract is void so as to re-
3 cover sums paid by the Petitioners as "tuition".

4
5 **2. THE REQUEST TO RECOVER AMOUNTS PAID WITHIN ONE YEAR**
6 **OF THE FILING OF THE PETITION IN THIS MATTER ARE**
7 **NOT TIME BARRED.**

8 The one-year statute of limitations would not preclude the
9 recovery of any sums paid under the terms of an illegal contract if
10 the payments had been made within one year of the date of the
11 filing of the Petition with the Labor Commissioner.

12 The Petition herein was filed February 14, 1994. In the event
13 that the contract is illegal, any sums paid after February 14,
14 1994, would be recoverable.

15 **3. THE CONTRACT FOR "TUITION" IS A SUBTERFUGE AND IS**
16 **ILLEGAL UNDER THE ACT; THE PETITIONERS ARE NOT**
17 **OBLIGATED TO PAY ADDITIONAL COMMISSIONS OR**
18 **OTHERWISE PERFORM FURTHER UNDER THE CONTRACT.**

19 Section 1700.5 of the Act provides in pertinent part as
20 follows:

21 "No person shall engage in or carry on the occupation of
22 a talent agency without first procuring a license there-
23 for from the Labor Commissioner."

24 Section 1700.4 of the Act defines the terms "talent
25 agency" and "artist" in pertinent part as follows:

26 "(a) 'Talent agency' means a person or corporation who
27 engages in the occupation of procuring, offering,
28 promising, or attempting to procure employment or
engagements for an artist or artists, Talent
agencies may, in addition, counsel or direct artists in
the development of their professional careers.

"(b) 'Artists' means actors and actresses rendering
services on the legitimate stage and in the production of
motion pictures, . . . and other artists and persons
rendering professional services in motion picture,
theatrical, radio, television and other entertainment
enterprises."

1 "Since the clear object of the Act is to prevent improper
2 persons from becoming [talent agents] and to regulate such activity
3 for the protection of the public, a contract between an unlicensed
4 [talent agent] and an artist is void." (*Buchwald v. Superior*
5 *Court* 254 Cal.App. 2d 347, 351 (1967))

6 There can be little doubt that the students involved here were
7 artists within the meaning of the act. The fact that the ostensible
8 reason for their training was to prepare them for acting careers
9 coupled with fact they were required to sign a personal management
10 contract assuring them guidance in their chosen career makes it
11 clear that all parties agree on the classification. Therefore, the
12 sole question presented is whether Respondents were engaged in the
13 occupation of a talent agent. The answer is that they were.

14 The true contractual and business relationship between
15 the students and the Respondents was defined at the outset when
16 each of the Petitioners (and, probably every other subsequent
17 student who took and "passed" the screen test) was assured that the
18 Respondent would undertake, on behalf of the students, to provide
19 them with employment as actors and actresses.

20 The teaching techniques utilized in training actors and
21 actresses is not specifically in issue in this case. Still the
22 unusual teaching techniques which consisted of "dancing around" and
23 recitations of jingles and affirmations does become important in
24 determining whether the contractual agreement is a subterfuge. The
25 "Artist Manager Contract" signed by each of the Petitioners states
26 that "credentialed Los Angeles Unified School teachers" are on the
27 premises. This clearly implies that the course of instruction
28 available at Al Fann Theatrical Ensemble was to be presented by

1 qualified personnel. As the evidence showed, Mimi Green was the
2 teacher who conducted most of the classes.

3 When viewed in connection with the original testimony of Mimi
4 Green that she was a "certificated Los Angeles Unified School
5 teacher" (which she later recanted); and the testimony of Al Fann
6 that he has a doctorate (which was shown to be from a correspond-
7 ence course) the "puffing" and, frankly, incredible testimony of
8 Ms. Green and Al Fann enforces the conclusion that the whole
9 scheme, including the contract for training was a subterfuge.

10 All of the testimony of Mimi Green and Al Fann was either
11 evasive or incredible.

12 "The Labor Commissioner is free to search out illegality lying
13 behind the form in which a transaction has been cast for the
14 purpose of concealing illegality." *Buchwald v. Superior Court*
15 (1967) 254 Cal.App.2d 347, 355. In undertaking this review of the
16 true relationship of the parties, as evidenced by their conduct and
17 words, the recitations in the contract to the effect that Respond-
18 ents were simply to provide training carry no weight. In fact, in
19 these circumstances, the recitations concerning training can only
20 be considered a subterfuge designed to conceal the true "talent
21 agency - artist" relationship which existed. (*Buchwald v. Superior*
22 *Court, supra*, 254 Cal.App. 2d at 355)

23 In addition, the more credible evidence establishes that
24 after the contracts were entered into Respondent engaged in con-
25 tinuous attempts to procure employment for the students. These
26 activities included arranging employment interviews or auditions
27 and sending out resumes and photographs which clearly show that
28 Mimi Green and/or "AFTEMA" were the agents soliciting the employ-

1 ment. In sum, throughout the relationship with the Petitioners,
2 Respondents were engaged in the business of offering, promising, or
3 attempting to procure employment for the students.

4 Respondent nevertheless contends that, under the recent
5 decision in *Wachs v. Curry* 13 Cal.App 4th 616 (1993), Respondent
6 was still not a "talent agency" within the meaning of section
7 1700.4. In particular, Respondent asserts that Petitioners failed
8 to demonstrate that Respondent's procurement functions constituted
9 a "significant part" of his business as a whole. (*Wachs v. Curry*,
10 *supra*, at 628) In this regard, Respondent is mistaken. The holding
11 in *Wachs v. Curry* sets forth when licensure as a talent agent is
12 required under the Act:

13 We conclude from the Act's obvious purpose to protect
14 artists seeking employment and from its legislative his-
15 tory, the "occupation" of procuring employment was in-
16 tended to be determined according to a standard that
17 measures the significance of the agent's employment
18 procurement function compared to the agent's counseling
19 function taken as a whole. If the agent's employment
20 procurement function constitutes a significant part of
21 the agent's business as a whole then he or she is subject
22 to the licensing requirement of the Act even if, with re-
23 spect to a particular client, procurement of employment
24 was only an incidental part of the agent's overall
25 duties. On the other hand, if counseling and directing
26 the clients' careers constitutes the significant part of
27 the agent's business then he or she is not subject to the
28 licensing requirement of the Act, even if, with respect
to a particular client, counseling and directing the
client's career was only an incidental part of the
agent's overall duties. (*Wachs v. Curry, supra*, 13
Cal.App. 4th at 628)

The governing principles are clear. The *Wachs* court intended
to distinguish the personal manager who, while operating in good
faith, inadvertently steps over the line in a particular situation
and engages in conduct which might be classified as procurement.
It clearly was not the court's intention to encourage individuals

1 to engage in activities which the Legislature has determined
2 require a license.

3 As the Labor Commissioner has held in precedent decision
4 TAC 52-92, *Church v. Brown*, it is clear from a reading of the deci-
5 sion in *Wachs* that the court intended that in determining whether
6 the Act requires a talent agency license, only the person's em-
7 ployment procurement functions on behalf of talent compared to his
8 talent counseling functions are to be taken into account in estab-
9 lishing the person's business for purposes of determining the sig-
10 nificance of the procurement activity. Other activities in which
11 the person may engage, even those related to the theater such as
12 theatrical exhibition, motion picture distribution, or being a
13 casting director, are not considered or counted as part of the
14 person's "business as a whole" in making the assessment. Were this
15 not true even non-related occupations such as operating a fast food
16 outlet could be counted. Such a result would encourage individuals
17 to dabble in procuring employment for artists as a sideline without
18 the need for licensure and would hardly be in keeping with "the
19 Act's obvious purpose to protect artists seeking employment." *Wachs*
20 *v. Curry, supra*, at 628.

21 The Labor Commissioner, in exercising her mandated primary
22 jurisdiction in these cases on a day-to-day basis, found in the
23 precedent case of *Church v. Brown* that:

24 The Commissioner finds that procurement of employment
25 constitutes a "significant" portion of the activities of
26 an agent if the procurement is not due to inadvertence or
27 mistake and the activities of procurement have some
28 importance and are not simply a *de minimis* aspect of the
overall relationship between the parties when compared
with the agent's counseling functions on behalf of the
artist. This meaning would seem to be in line with the
tenor of the court's decision in *Wachs v. Curry*.

1 In the context of the foregoing principles, a petitioner
2 who asserts a licensing violation under the Act, satis-
3 fies his burden if he establishes that the petitioner was
4 involved in a contractual relationship with the respon-
5 dent and that that relationship was permeated and per-
6 vaded by employment procurement activities undertaken by
7 the respondent. Such a showing supports an inference
8 that these activities were a significant part of the re-
9 spondent's business as a whole, and suffices to establish
10 a prima facie case of violation of the Act. At that
11 point, the burden shifts to the respondent to come for-
12 ward with sufficient evidence to sustain a finding that
13 the procurement functions were not a significant part of
14 the respondent's "business as a whole" as that term is
15 defined, above. Precedent Decision TAC 52-92, *Church v.*
16 *Brown*, pp. 12-13

9 In the present case, Petitioner clearly demonstrated that the
10 contract with Respondent was permeated and pervaded by procurement
11 activities. Respondent, on the other hand, failed to produce any
12 credible evidence that would show that such activities were not a
13 significant part of Respondent's business, which included the
14 representation of many other student/actors in addition to Peti-
15 tioners and their children. In these circumstances, Petitioner's
16 evidence warrants a finding that at the time of entering into and
17 performing under the contract, Respondents were engaged in and
18 carrying on the occupation of a talent agency. Consequently, the
19 contracts were illegal and void, and Respondent is precluded from
20 obtaining any further recovery of any kind under the contracts.

21 DISPOSITION

22 Accordingly, it is hereby ordered as follows:

23 1. The contracts between Petitioners and Respondents are
24 declared to be illegal, void, and unenforceable, and it is declared
25 that Petitioners shall have no further obligation to Respondents
26 under the contract for commissions, payments or otherwise.
27
28

1 2. The complaint for rescission of the contract and
2 restitution of commissions and other payments paid is granted but
3 is limited to restitution of those commissions withheld and/or
4 payments paid after February 14, 1993. The rest of the claims for
5 restitution are held to be barred by the statute of limitations. In
6 respect to this determination, the Labor Commissioner finds that
7 the only evidence offered in respect to sums which were paid after
8 February 14, 1993, was that paid by Jacqueline McKinzie in the
9 amount of \$200.00.

10 3. The Labor Commissioner lacks jurisdiction to award
11 attorney's fees or costs in connection with these proceedings.

12
13 Dated: *August 25, 1994*

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.,
Attorney and Special Hearing
Officer for the Labor Commissioner

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17 The above Determination is adopted in its entirety by the
18 Labor Commissioner.

19
20 Dated: August 29, 1994

Victoria Bradshaw

VICTORIA BRADSHAW,
State Labor Commissioner

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. §1013a)

(Sharon LaFleur-Prince, etc. v. Al Fann, Mimi Green, etc.)
(TAC 21-94)

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, Suite 3166, San Francisco, California 94102.

On August 29, 1994, I served the following document:

DECISION

by placing a true copy thereof in an envelope addressed as follows:

STEVEN J. ROTTMAN, ESQ.
100 Wilshire Blvd., Ste. 950
Los Angeles, CA 90401-113

AL FANN
c/o Al Fann Theatrical Ensemble
6051 Hollywood Blvd., #207
Hollywood, CA 90028

MIMI GREEN
c/o Al Fann Theatrical Ensemble
6051 Hollywood Blvd., #207
Hollywood, CA 90028

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on August 29, 1994, at San Francisco, California.


MARY ANN E. GALAPON