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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of:)	TAC 59-94
)	
FLAMENCO SOCIETY OF SAN JOSE,)	DECISION AND
)	ORDER
Petitioner,)	
)	
vs.)	
)	
JOANNE CORBETT-BARNES aka JOANNE)	
CONDRAIN, dba CORBETT ARTS)	
MANAGEMENT, LTD.,)	
)	
Respondent.)	

The above matter came on regularly for hearing on March 6, 1995 at 1:00 p.m. in Room 2217 of the State Building, 455 Golden Gate Avenue, San Francisco, California, before the undersigned Attorney, ANNE J. ROSENZWEIG, sitting as a Special Hearing Officer for the Labor Commissioner. FLAMENCO SOCIETY OF SAN JOSE (hereinafter "FLAMENCO"), Petitioner, appeared through its secretary/bookkeeper Robert Parker. A written answer was filed with the Licensing and Registration Unit on September 9, 1994 by the Respondent, JOANNE CORBETT-BARNES aka JOANNE CONDRIN, dba CORBETT ARTS MANAGEMENT, LTD., (hereinafter "MANAGEMENT"), but there was no appearance by or on behalf of the Respondent at the hearing. Evidence, both oral and documentary, having been introduced the matter was submitted.

I. FACTS

According to information obtained from the California

1 Secretary of State, CORBETT ARTS MANAGEMENT LTD. was not
2 incorporated until September 27, 1994, more than a month after the
3 August 18, 1994 filing of the Petition to Determine Controversy
4 herein. Since MANAGEMENT was not incorporated at any time during
5 the business relationship of the parties, the proper designation
6 for the Respondent is JOANNE CORBETT-BARNES aka JOANNE CONDRIN dba
7 CORBETT ARTS MANAGEMENT, LTD.

8 The business relationship between FLAMENCO and MANAGEMENT
9 began in January of 1993 when FLAMENCO artistic director Anita
10 Sheer introduced Joanne Corbett-Barnes at a FLAMENCO Board meeting
11 to discuss plans for two concerts Corbett-Barnes planned to book
12 for flamenco guitarist Anita Sheer and FLAMENCO. The Board
13 authorized MANAGEMENT to represent it in negotiations for the two
14 concerts. A contract for a concert with the Tulare County Symphony
15 on April 30, 1994 was signed more than a year earlier in March
16 1993. A contract for May 6-7, 1994 concerts with the San Jose
17 Symphony was signed in April 1993. Commissions for these two
18 contracts are not at issue in this controversy.

19 What is at issue is four payments FLAMENCO made to MANAGEMENT
20 after the two symphony contracts had been negotiated:

- 21 1. A June 8, 1993 payment of \$500.00
- 22 2. An October 10, 1993 payment of \$16.35
- 23 3. A December 14, 1993 payment of \$509.50, and
- 24 4. A January 29, 1994 payment of \$161.55

25 The first two payments were based on an oral contract under which
26 MANAGEMENT agreed to represent FLAMENCO as a booking agent at
27 various conventions where agents book artists for concerts. The
28 June 1993 payment of \$500 was for MANAGEMENT to represent FLAMENCO

1 at the A.C.S.O and W.A.A.A. conventions. The October 10, 1993
2 payment of \$16.35 was for expenses such as postage, telephone,
3 advertising incurred by MANAGEMENT on behalf of FLAMENCO.

4 On December 6, 1993 FLAMENCO and MANAGEMENT entered into a
5 written agreement titled "General Management (sic) Agreement" with
6 a General Management Agreement Rider. The contract calls for
7 MANAGEMENT to perform certain services for FLAMENCO as "sole and
8 exclusive agency, advisor and representative" and, in particular,
9 "to use all reasonable efforts to promote employment for
10 [FLAMENCO'S] services." In the contract FLAMENCO promises to pay
11 MANAGEMENT 20% of the compensation paid for FLAMENCO's professional
12 services for "every engagement, employment or contract for
13 [FLAMENCO'S] services...whether procured by [MANAGEMENT], by
14 [FLAMENCO] or by any third party."

15 This written agreement contains the usual language regarding
16 the jurisdiction of the Labor Commissioner and right of either
17 party to seek relief from the Labor Commissioner. The agreement
18 states on its fact "THIS AGENCY IS LICENSED BY THE LABOR
19 COMMISSIONER OF THE STATE OF CALIFORNIA."

20 By sworn declaration of an agent of the Labor Commissioner
21 introduced at the hearing, it was determined that a search of the
22 licensing files of the Division of Labor Standards Enforcement
23 reveals that CORBETT ARTS MANAGEMENT, LTD, JOANNE CONDRIN and her
24 alias JOANNE CORBETT-BARNES were not now nor were they ever
25 licensed as Talent Agents in California.

26 MANAGEMENT did not procure any engagements for FLAMENCO after
27 June 8, 1993. FLAMENCO paid MANAGEMENT \$687.40 for expenses during
28 the year preceding the filing of the petition herein. The petition

1 constituted a demand for payment which was clearly rejected by the
2 Answer filed by the Respondent which stated that "should the
3 Flamenco Society wish to pursue this ridiculous matter by their
4 very vindictive artistic director, they will simply have to wait in
5 a very long line." In the Answer, the Respondent admits that she
6 is not a licensed talent agent. However she claims to have started
7 to apply for a license in April 1994 (after all the payments for
8 which FLAMENCO seeks reimbursement were made) and to have
9 interrupted the application process when she was diagnosed with
10 cancer, for which she was still being treated when the Answer was
11 filed in September 1994.

12 II. DISCUSSION

13 Neither the entity called CORBETT ARTS MANAGEMENT, LTD., nor
14 the woman behind the scenes, JOANNE CONDRIN (alias JOANNE CORBETT-
15 BARNES), are now nor were they ever licensed as Talent Agents in
16 California. As such, Respondent had no right to receive any
17 remuneration for services as a talent agent in California.

18 Under the oral agreement between the parties MANAGEMENT'S sole
19 function was to act as a "booking" agent for FLAMENCO. Although
20 the written agreement between the parties is called a general
21 management agreement, the most significant service MANAGEMENT was
22 to perform was the procurement of employment as an artist. The
23 testimony at the hearing further indicates that procuring
24 employment was the only service MANAGEMENT was to perform under the
25 agreement. Through the false representation that MANAGEMENT was
26 licensed by the Labor Commissioner, FLAMENCO was fraudulently
27 induced to pay for various "expenses" which were nothing more than
28 veiled charges for procuring employment.

1 A violation must have occurred within a year of the filing of
2 the petition to be actionable. (Labor Code §1700.44) Since the
3 \$500.00 paid by FLAMENCO to MANAGEMENT on June 8, 1993 was received
4 by MANAGEMENT more than one year before the Petition was filed,
5 that fee may not be recovered in this action. However the \$687.40
6 in fees which FLAMENCO paid to MANAGEMENT between October 10, 1993
7 and January 29, 1994 are recoverable.

8 Labor Code §1700.40 provides inter alia:

9 "In the event that a talent agency shall collect from an
10 artist a fee or expenses for obtaining employment for the
11 artist, and the artist shall fail to procure the employment,
12 or the artist shall fail to be paid for the employment, the
13 talent agency shall, upon demand therefor, repay to the artist
14 the fee and expenses so collected. Unless repayment thereof
15 is made within 48 hours after demand therefor, the talent
16 agency shall pay to the artist an additional sum equal to the
17 amount of the fee."

18 No employment having been procured by FLAMENCO, the sums paid
19 by FLAMENCO to MANAGEMENT within one year prior to the filing of
20 the Petition were recoverable upon demand. The failure of
21 MANAGEMENT to repay the sum of \$687.40 withheld from FLAMENCO
22 within forty-eight hours of service of the Petition entitles
23 FLAMENCO to recover a like sum (\$687.40).

24 III. CONCLUSION

25 The Respondent was an unlicensed talent agency using a form
26 agreement which purported to show that the agency was licensed with
27 the Labor Commissioner. Through this ruse Respondent was able to
28 convince Petitioner that the payment of "fees" to offset the costs
of procuring employment for the Petitioner was both legal and
ethical. Upon learning of the unlicensed nature of the Respondent,
Petitioner petitioned for the return of the sums paid to
Respondent. Respondent failed to repay these sums and, pursuant to

1 Labor Code §1700.40¹ the Petitioner is entitled to recover the sums
2 paid and not repaid upon demand in the amount of \$687.40, and an
3 equal amount for failure to have repaid the sums within 48 hours as
4 required by the statute.


5 DISPOSITION

6 Accordingly, it is hereby ordered as follows:

7 1. The agreement between Petitioners and Respondent is
8 declared to be illegal, void, and unenforceable, and it is declared
9 that Petitioner shall have no further obligation to Respondent
10 under the contract for commissions, payments or otherwise.

11 2. The Petitioner shall recover from Respondent, MANAGEMENT,
12 including JOANNE CORBETT-BARNES aka JOANNE CONDRIN, dba CORBETT
13 ARTS MANAGEMENT, LTD., the sum of \$1,374.80 being the illegal fees
14 paid by Petitioner plus a like amount for failure to comply with
15 Labor Code §1700.40.

16
17 Dated: April 11, 1995

18 
19 ANNE J. ROSENZWEIG
20 Attorney and Special Hearing
21 Officer for the Labor Commissioner
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26 ¹Note that Labor Code §1700.40 was amended effective January 1,
27 1995, to provide other remedies for artists who are defrauded.
28 However, this is a substantive change in the law and is not
retroactive in effect. This decision is based upon the law in
effect before January 1, 1995.

1 The above Determination is adopted in its entirety by the Labor
2 Commissioner.

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4 Dated: April 17, 1995

Victoria L. Bradshaw
VICTORIA L. BRADSHAW
State Labor Commissioner

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