

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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BEFORE THE LABOR COMMISSIONER
FOR THE STATE OF CALIFORNIA

Case No. 9-97

DETERMINATION OF
CONTROVERSY

CAMILLO WONG MORENO, STEPHEN
CARPENTER, ABE CUNNINGHAM, and
CHI LING CHENG,

Petitioners,

vs.

DAVE PARK,

Defendant.

Introduction

The above-captioned matter was initiated by a petition filed on February 25, 1997, by CAMILLO WONG MORENO, STEPHEN CARPENTER, ABE CUNNINGHAM, and CHI LING CHENG, (hereinafter "petitioners") against DAVE PARK (hereinafter "respondent"), charging that respondent violated the Talent Agencies Act, Labor Code §§1700 et seq., by acting as a talent agency without holding a license as required by law. By the petition, petitioner seeks a declaration that certain agreements are void.

Respondent filed a request for dismissal based on the statute of limitations, Labor Code §1700.44(c). The request for dismissal was denied October 7, 1997, and the matter was subsequently set for hearing on January 12, 1998.

Petitioner STEPHEN CARPENTER appeared in person, and petitioners were represented

1 by Allen B. Grodsky, Esq., and James D. Kozmor, Esq., of Browne & Woods, LLP. Respondent
2 appeared in person and was represented by Neville L. Johnson, Esq.

3 Based on the testimony and evidence presented at the hearing, the Labor Commissioner
4 adopts the following Determination of Controversy.

5 **Findings of Fact**

6 1. Petitioners are musicians and together form a band called the "Deftones."

7 2. Petitioners began playing together as a band some time between 1991 and 1992. Since
8 that date, respondent has acted as manager for the band. In that capacity, respondent did
9 "everything except writing and performing music." He handled "all business matters" for the band.

10 3. Included in the matters which respondent performed on behalf of the band was (by
11 respondent's admission) obtaining and booking some 84 performance engagements at various
12 venues in Oakland, Los Angeles, Sacramento, San Jose, and Las Vegas.

13 4. In connection with obtaining and booking such performance engagements, respondent
14 conducted negotiations with the representatives of the venue, received payment from the venue,
15 and paid expenses such as gasoline, meals, telephone, printing of flyers, supplies, and other items.
16 From time to time, respondent disbursed to petitioners various amounts for *per diem*, and for
17 expenses incurred by each of petitioners. Respondent himself received at least \$530 (testimony
18 regarding the amount was in conflict, but respondent admitted receiving at least this amount) from
19 "the band's account," at or near the time of his grandmother's death.

20 5. Petitioners and respondent had a series of written agreements governing their
21 relationship. One of those agreements was introduced into evidence at the hearing. That
22 agreement recited that petitioners engaged respondent as their "sole and exclusive personal
23 manager" with "the exclusive right to shop for and secure a recording and distribution agreement."
24 The agreement also provided that respondent was to "counsel and advise" petitioners regarding
25 their careers, and recited that respondent was not a talent agent and was not to "obtain, seek, or
26 procure employment or engagements for" petitioners.

27 6. Respondent is not licensed as a talent agency, and was not so licensed during the time
28 that he booked engagements for petitioners.

7. In approximately September of 1994, petitioners signed a recording contract with a

1 record company, and received an advance in the amount of \$65,000. Respondent received a
2 portion of this advance, apparently at least \$2,000.

3 8. In approximately February of 1995, petitioners telephoned respondent and informed
4 him that they were terminating his services. In October of 1996, respondent commenced an action
5 in the Superior Court of the County of Los Angeles, naming respondents (and others) as
6 defendants, seeking damages for breach of contract and intentional interference with contract.

7 Conclusions of Law

8 1. The Labor Commissioner has jurisdiction over this matter pursuant to Labor Code
9 §1700.44.

10 2. Petitioners are "artists" within the meaning of Labor Code §1700.4(b).

11 3. Labor Code §1700.4(a), defines "talent agency" as a person who "engages in the
12 occupation of procuring, offering, promising, or attempting to procure employment or
13 engagements for an artist." In *Weisbren v. Peppercorn Prod., Inc.* (1995) 41 C.A.4th 246, 48
14 C.R. 437, the court of appeal held that a single instance of procuring, offering, or attempting to
15 procure employment is sufficient to satisfy this definition. Respondent admits to having obtained
16 "gigs" or performance engagements for petitioners on 84 occasions. While it is not clear if
17 respondent received compensation for making these bookings,¹ the statutory definition turns on the
18 act of "procuring, offering, promising, or attempting to procure employment or engagements" and
19 not on the receipt of compensation for these acts -- which is nowhere even mentioned by the
20 statute. Accordingly, respondent is a "talent agency" within the meaning of this section.

21 4. Labor Code §1700.5 provides that no person shall engage in the occupation of a talent
22 agency without having first obtained a license from the Labor Commissioner. Respondent violated
23 this section by procuring and attempting to procure engagements for petitioners.

24 5. Labor Code §1700.23 requires submission of contract forms used by talent agencies to
25 the Labor Commissioner for approval. The agreements entered into between petitioners and
26 respondent were not made on forms so submitted and approved.

27 6. The agreements entered into between petitioners and respondent are void under the

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¹ The \$530 received by respondent from the petitioners' bank account could be regarded
as a form of compensation.

1 Talent Agencies Act, *Weisbren v. Peppercorn Prod., Inc., supra.*

2 7. Respondent argues that this proceeding is barred by the statute of limitations contained
3 in Labor Code §1700.44(c). However, the filing of the superior court action by respondent in
4 October, 1996, was an attempt to collect commissions allegedly due under the agreements between
5 petitioners and respondents. But, since these agreements are void, the attempt to collect these
6 commissions is itself a violation of the Talent Agencies Act, occurring within one year of the
7 commencement of this proceeding. Accordingly, this proceeding is not barred by limitations.

8 8. Although petitioners argue in their trial brief (page 8 line 5-6) that a money award
9 should be made against respondent, the evidence was unclear what amount, if any, respondent had
10 received under the contracts. In addition, the petition to determine controversy sought only a
11 declaration that the agreements between petitioners and respondent were void and that respondent
12 was not entitled to future payments, but did not seek recovery of past amounts received by
13 respondent. Accordingly, no money award should be made against respondent.

14 **Order**

15 1. It is hereby ordered that a certain letter agreement dated February 24, 1992, (later
16 extended as of February 24, 1993) between and among respondent DAVID C. PARK and
17 petitioners CAMILLO WONG MORENO, STEPHEN CARPENTER, ABE CUNNINGHAM,
18 and CHI LING CHENG, be, and the same is hereby declared null, void and unenforceable.

19 2. It is hereby ordered that a certain Personal Management Agreement dated February 24,
20 1993, between and among respondent DAVID C. PARK and petitioners CAMILLO WONG
21 MORENO, STEPHEN CARPENTER, ABE CUNNINGHAM, and CHI LING CHENG, be, and
22 the same is hereby declared null, void and unenforceable.

23 3. It is hereby ordered that a certain Personal Management Agreement dated January 18,
24 1994, between and among respondent DAVID C. PARK and petitioners CAMILLO WONG
25 MORENO, STEPHEN CARPENTER, ABE CUNNINGHAM, and CHI LING CHENG, be, and
26 the same is hereby declared null, void and unenforceable.

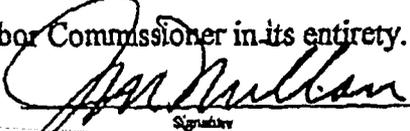
27 Dated January 12, 1998.

28 
JAMES G. PATTILLO
Attorney for the Labor Commissioner

Adoption By The Labor Commissioner

The above determination is adopted by the Labor Commissioner in its entirety.

Dated: Jan. 20 1998.



Print Name

Signature

Paul Sullivan
For the Labor Commissioner

pdcc@lac.smoreno.com

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