

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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9
10 BEFORE THE LABOR COMMISSIONER
11 OF THE STATE OF CALIFORNIA
12

13 CALVIN BROADUS,) Case No. TAC 50-97
14 Petitioner,)
15 vs.) DETERMINATION OF
16) CONTROVERSY
17)
18)
19 SHARITHA KNIGHT,)
20 dba KNIGHTLIFE MANAGEMENT, INC.,)
21 Respondent.)
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23)
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25)

26 INTRODUCTION

27 The above-captioned petition was filed on September 8,
1997 by CALVIN BROADUS a.k.a. "SNOOP DOGGY DOGG" (hereinafter
"Petitioner"), alleging that SHARITHA KNIGHT dba KNIGHTLIFE
MANAGEMENT, INC., (hereinafter "Respondent"), was acting in the
capacity of a talent agency without possessing the required
California talent agency license pursuant to Labor Code §1700.5¹.
Petitioner seeks from the Labor Commissioner a determination
voiding a 1993 management agreement *ab initio* and requests

¹ All statutory citations will refer to the California Labor Code unless
otherwise specified.

1 shall constitute Manager a talent agent or artist's
2 manager, and Manager has not agreed or promised to
3 perform such services except to the extent permitted by
4 any applicable laws. Artist agrees to utilize proper
5 talent or other employment agencies to obtain engagements
6 and employment or other employment agencies to obtain
7 engagements and employment for Artist **after first**
8 **submitting the names thereof to Manager**, and not to
9 engage or retain any talent or other employment agency of
10 which Manager may reasonably disapprove in writing."

11 3. Shortly after execution of the management agreement,
12 and throughout 1994, negotiations to engage petitioner's services
13 at a variety of venues ensued. The primary issue is whether
14 respondent negotiated the series of concert dates on petitioner's
15 behalf in violation of §1700.5.

16 4. Petitioner testified, he did not have a talent agent
17 until late 1994 or early 1995, at which time he hired International
18 Creative Management (ICM) to perform talent agency
19 responsibilities. Testimony reflected, and no impeachment evidence
20 introduced², that from the execution of the 1993 Personal
21 Management Agreement until late 1994, no licensed talent agency, or
22 any other representative other than respondent, conducted
23 negotiations on petitioner's behalf.

24 5. Specifically, petitioner alleges respondent
25 negotiated the terms and conditions via an "artist agreement" for
26 a February 10, 1994 London performance. In support, petitioner
27 provided the agreement, attached to a January 26, 1994 telefax

28 ² Section 3 of the 1993 Personal Management Agreement provides that the
29 petitioner must submit the names to respondent of any employment agencies used
30 on behalf of the petitioner to book engagements. Notwithstanding this provision,
31 respondent did not provide one individual or agency other than ICM at the end of
32 1994, that was used by the petitioner for the concerts in issue.

1 cover sheet directed to respondent from the London promoter,
2 "Styles of Rampage". The fax requested respondent's signature and
3 necessary bank information, ostensibly for the petitioner's
4 compensation to be directly deposited into respondent's account.
5 The promoter typed in the words, "[i]ts a pleasure doing business
6 with you", affixed to the telefax cover sheet. The respondent
7 filled in the information and faxed the signed agreement the next
8 day.

9 6. Respondent argues, albeit with no evidentiary
10 support, that "Styles of Rampage" was a licensed talent agent in
11 London. Therefore, even had respondent discussed negotiations with
12 "Styles", this activity falls within the narrow exemption contained
13 at §1700.44(d). This section provides, "it is not unlawful for a
14 person...which is not licensed...to act in conjunction, and at the
15 request of, a licensed talent agency in the negotiation of an
16 employment contract." Respondent's analysis is flawed. The
17 Legislature understood the realities of the industry and therefore
18 allowed manager involvement in this very limited capacity.
19 §1700.44(d) understands that managers and agents must often work
20 together in promoting an artist, and promulgated this section with
21 this in mind. This section would allow managers to discuss
22 employment opportunities for their clients without incurring
23 liability, so long as the manager was working in conjunction with
24 a licensed agent. This allows limited negotiations by a manager
25 while preserving and protecting the fiduciary duty contemplated by
26 the legislature in drafting the protective mechanisms of the Talent
27 Agencies Act. Here, there is no evidence that "Styles" was acting

1 on behalf of petitioner. Conversely, the evidence demonstrated
2 "Styles of Rampage" was the promoter of the show acting solely in
3 his best interest by signing the artist to a one time engagement.
4 Even if "Styles" was a California licensed talent agency, which he
5 is not³, there is no evidence of a fiduciary duty between "Styles"
6 and petitioner and hence, 1700.44(d) is inapplicable.

7 7. The evidence demonstrated that respondent negotiated
8 a March 5, 1995, concert engagement in Jamaica, New York. Again,
9 respondent signed the "artist engagement contract" on behalf of the
10 petitioner and admittedly, in her own writing, made equipment
11 requests on the face of the document. Though, this in itself is
12 not dispositive of procuring employment, a "Rider to Artist
13 Engagement Contract" was attached referencing Knightlife Management
14 as the "agent" for the petitioner. When asked about this reference,
15 respondent maintained that she received the contract, made
16 handwritten notations, executed it, but had never seen the "Rider"
17 before. It was clear after examining the documents, that they were
18 faxed to respondent simultaneously.

19 8. On January 27, 1994, respondent negotiated a series
20 of five concerts in Japan. Petitioner produced an exchange of
21 faxes between the Japanese promoter and respondent detailing
22 negotiations including: concert dates; airfare; accommodations;
23 and compensation terms to the artist. Respondent returned a fax
24 stating:

25 ³ The Labor Commissioner's Licensing and Registration Unit maintains
26 records of all talent agencies that are, or have been licensed by the State Labor
27 Commissioner. A search of these records reveals that no license has ever been
issued to a business operating under the name "Styles of Rampage."

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2 "Per our conversation, I am sending you this letter to
3 confirm Snoop Doggy Dogg will perform in Japan on April
4 1-7, 1994 at \$100,000 USD for five 35 minutes
5 performances (venues to be announced). To close deal, I
require fifty percent (\$50,000 USD) in advance. The
remaining fifty percent (\$50,000 USD) is due upon our
arrival in Japan."

6 When asked about this damaging evidence, Respondent
7 replied, "I didn't create this. I had lots of staff that could have
8 fraudulently used my name." This testimony did not seem likely.
9 It should be noted, not one document contained petitioner's own
signature.

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11 9. Documents were produced reflecting a 1993 \$160,000.00
12 payment in commissions to respondent, derived from royalties earned
13 in connection with sale of petitioner's music. Petitioner was
14 signed by the label, "Death Row Records". Respondent did not deny
15 the payment of the commissions but argued she was entitled.
16 Section 11. of the "Personal Management Agreement" provides,
17 "[m]anager shall not be entitled to commissions from the artist in
18 connection with any gross monies or other considerations derived
19 from artist...(ii) from the sale, license or grant of any literary
20 or musical rights to Manager or any person, firm or corporation
21 owned or controlled by Manager." Respondent argues in her post
22 trial brief, "If the personal manager has a record company in which
23 the artist becomes obligated, then the personal manager will
24 receive commissions as the record company and is not entitled to
25 separate commissions as the personal manager." Respondent's
26 analysis is correct, as this activity, commonly called "double
27 dipping", would be a breach of fiduciary duty, a violation of the

1 Talent Agencies Act, and this Personal Management Agreement. Here,
2 petitioner's record company is "Death Row Records", owned and
3 operated by respondent's ex-husband. When the 1993 commissions
4 were paid, respondent was still married to Death Row's owner.
5 Respondent fails to recognize basic presumptions of California
6 community property law. Indeed, the basic concept of community
7 property is that marriage is a partnership where spouses devote
8 their particular talent, energies, and resources to their common
9 good. Acquisitions and gains which are directly or indirectly
10 attributable to community expenditures of labor and resources are
11 shared equally by the community. In re Marriage of Dekker 17
12 Cal.App.4th 842, at 850. It is difficult to imagine how in good
13 faith respondent could charge petitioner commissions on royalties
14 derived from record sales where she also owned the record company.
15 Though no evidence was presented with respect to "Death Row Records"
16 profits, one can only assume that respondent benefitted twice at
17 the expense of the petitioner and breached section 11 of the
18 Personal Management Agreement.

19 20 21 CONCLUSIONS OF LAW

22 1. Labor Code §1700.4(b) includes "musical artists" in
23 the definition of "artist" and petitioner is therefore an "artist"
24 within the meaning of Labor Code §1700.4(b).

25 2. In a motion brought by respondent in the course of
26 discovery, respondent argues, "based on our understanding of
27 Petitioner's claim and the relevant sections of the Labor Code, no

1 controversy exists to authorize the jurisdiction of the Labor
2 Commission pursuant to Labor Code section 1700.44(c)." §1700.44(c)
3 provides that "no action or proceeding shall be brought pursuant to
4 [the Talent Agencies Act] with respect to any violation which is
5 alleged to have occurred more than one year prior to the
6 commencement of this action or proceeding."⁴ Here, the petitioner
7 raises the issue of respondent's unlicensed status purely as a
8 defense to the proceedings brought by respondent's action against
9 the petitioner filed in superior court.

10 3. A statute of limitations is procedural, that is it
11 only affects the remedy, not the substantive right or obligation.
12 It runs only against causes of action and defenses seeking
13 affirmative relief, and not against any other defenses to an
14 action. The statute of limitations does not bar the defense of
15 illegality of a contract, and in any action or proceeding where the
16 plaintiff is seeking to enforce the terms of an illegal contract,
17 the other party may allege and prove illegality as a defense
18 without regard to whether the statute of limitations for bringing
19 an action or proceeding has already expired. Sevano v. Artistic
20 Production, Inc., (1997)TAC No. 8-93 pg.11. Additionally, this
21 issue was brought before the California Court of Appeals in Park v.
22 Deftones 84 Cal.Rptr.2d 616, at 618, which agreed with the Labor
23 Commissioners ruling in Moreno v. Park (1998) TAC No. 9-97, p.4,

24
25 ⁴ Respondent argues the, "Personal Management Service Agreement" was
26 executed on 9-3-93 for a 3 year period. The Petition was filed on 9-8-97 and
27 "thus any violation must have occurred within the year period prior to filing
said Petition or by September 8, 1996...thus it is clear the alleged violation
occurred beyond the statute."

1 stating, "the attempt to collect commissions allegedly due under
2 the agreement was itself a violation of the Act." In that case, as
3 here, the petitioner has brought this case before the Labor
4 Commissioner as a result of respondents superior court action filed
5 on May 29, 1997. Park adds, "it also assures that the party who
6 has engaged in illegal activity may not avoid its consequences
7 through the timing of his own collection action." Park, supra at
8 618. We thus conclude that §1700.44(c).does not bar petitioner
9 from asserting the defense of illegality of the contract on the
10 ground that respondent acted as a talent agent without a license.

11 4. The primary issue is whether based on the evidence
12 presented at this hearing, did the respondent operate as a "talent
13 agency" within the meaning of Labor Code §1700.40(a). Labor Code
14 §1700.40(a) defines "talent agency" as, "a person or corporation who
15 engages in the occupation of procuring, offering, promising, or
16 attempting to procure employment or engagements for an artist or
17 artists." The statute also provides that "talent agencies may in
18 addition, counsel or direct artists in the development of their
19 professional careers." Labor Code section 1700.5 provides that "no
20 person shall engage in or carry on the occupation of a talent
21 agency without first procuring a license therefor from the Labor
22 Commissioner." In Waisbren v. Peppercorn Production, Inc (1995)
23 41 Cal.App.4th 246, the court held that any single act of procuring
24 employment subjects the agent to the Talent Agencies Act's
25 licensing requirement, thereby upholding the Labor Commissioner's
26 long standing interpretation that a license is required for any
27 procurement activities, no matter how incidental such activities

1 are to the agent's business as a whole. Applying Waisbren, it is
2 clear respondent acted in the capacity of a talent agency within
3 the meaning of Labor Code §1700.4(a).

4 5. Testimony conflicted greatly on this issue.
5 Respondent proposed an array of arguments including the petitioner
6 has not met his burden of proof. I disagree. In Respondent's
7 analysis of precedent case law, she makes the argument that in all
8 of the published decisions, "the personal manager either admitted
9 to procuring employment for it's artists or that there was 'clear
10 evidence' that the personal manager procured employment for the
11 artist." I can only assume that Respondent's use of the words
12 "clear evidence", is a reference to the clear and convincing
13 evidence standard as the appropriate burden of proof. This is not
14 the burden of proof. The proper burden of proof is found at
15 Evidence Code §115 which states, "[e]xcept as otherwise provided by
16 law, the burden of proof requires proof by preponderance of the
17 evidence." "Preponderance of the evidence" standard of proof
18 requires the trier of fact to believe that the existence of a fact
19 is more probable than its nonexistence. In re Michael G. 74
20 Cal.Rptr.2d 642, 63 Cal.App.4th 700. Here, the petitioner has
21 clearly established by a preponderance of the evidence the
22 respondent procured employment by negotiating performance dates,
23 fees and payment terms on behalf of the petitioner. Though
24 respondent maintained petitioner negotiated all of his employment
25 contracts, that argument was wholly unsupported by the evidence.
26 The overwhelming weight of the evidence presented suggested
27 respondent's actions more than satisfied the minimal standard

1 described in Waisbren. In fact, the petitioner's credible
2 testimony reflected he had never even seen one of the contracts,
3 and testified, "I did whatever I was told to do. I trusted
4 Sharitha. She was family." All of the contracts were signed by
5 the respondent on behalf of the petitioner. All of the handwritten
6 notations on the face of the contracts were handwritten by the
7 respondent. All the correspondence that was sent between parties
8 were addressed to the respondent. There was no evidence the
9 petitioner used a licensed talent agent. In short, there was no
10 evidence the petitioner was involved in any way with the
11 negotiations of these performances. The testimony clearly
12 reflected the respondent maintained a very influential disposition
13 over the petitioner. The petitioner more than satisfied his burden
14 of proof.

15 6. Respondent points to the exculpatory clause found
16 within the Personal Management Agreement and argues that the
17 express provision establishes the conduct of the parties. In
18 Buchwald v. Superior Court (1967) 254 Cal.App.2d 347, 351, the court
19 held that because "the clear object of the Act is to prevent
20 improper persons from becoming [talent agents] and to regulate such
21 activity for the protection of the public, a contract between an
22 unlicensed [agent] and an artist is void." Buchwald involved a
23 dispute between a musical group and their unlicensed manager. In
24 that case, as here, the management agreement contained similar
25 language prohibiting the manager from negotiating employment. The
26 group argued that the contractual language established, as a matter
27 of law, that the manager was not subject to the Act's requirements.
The court rejected that argument and stated, "The court or as here,

1 the Labor Commissioner, is free to search out illegality lying
2 behind the form in which a transaction has been cast for the
3 purpose of concealing such illegality. [citation.] The court will
4 look through provisions, valid on their face, and with the aid of
5 parol evidence, determine that the contract is actually illegal or
6 part of an illegal transaction." The evidence is clear, that the
7 respondent indeed, procured employment without a license in
8 violation of Labor Code §1700.5.

9 7. The aforementioned agreement between respondent and
10 petitioner is hereby void *ab initio* and is unenforceable for all
11 purposes. Waisbren v. Peppercorn Inc., supra, 41 Cal.App. 4th 246;
12 Buchwald v. Superior Court, supra, 254 Cal.App.2d 347.

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14
15 ORDER

16 For the above-stated reasons, IT IS HEREBY ORDERED that
17 the 1993 contract between respondent SHARITHA KNIGHT dba KNIGHTLIFE
18 MANAGEMENT INC., and petitioner CALVIN BROADUS a.k.a. SNOOP DOGGY
19 DOGG is unlawful and void *ab initio*. Respondent has no enforceable
20 rights under that contract.

21 Having made no clear showing that the respondent
22 collected commissions within the one-year statute of limitations
23 prescribed by Labor Code §1700.44(c), petitioner is not entitled to
24 a monetary recovery.

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26 Dated: 7/27/99

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DAVID L. GURLEY
Attorney for the Labor Commissioner

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ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 7/27/99

Marcy Saunders
MARCY SAUNDERS
State Labor Commissioner

