

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
 Department of Industrial Relations  
 2 State of California  
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 5

6 BEFORE THE LABOR COMMISSIONER  
 7 OF THE STATE OF CALIFORNIA  
 8  
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10	MARTHA ROBI,	)	Case No. TAC 29-00
		)	
	Petitioners,	)	
11	vs.	)	DETERMINATION OF
		)	CONTROVERSY
12		)	
		)	
13	HOWARD B. WOLF,	)	
		)	
	Respondents.	)	
14		)	
15		)	

16 INTRODUCTION

17 The above-captioned petition was filed on September 1,  
 18 2000, by MARTHA ROBI, (hereinafter "Robi" or "Petitioner"),  
 19 alleging that HOWARD B. WOLF, (hereinafter "Wolf" or "Respondent"),  
 20 booked performances on behalf of the petitioner's husband without  
 21 a talent agency license, thereby acting as an unlicensed talent  
 22 agent in violation of Labor Code §1700.5<sup>1</sup>. Petitioner seeks a  
 23 determination voiding *ab initio* several written and one oral  
 24 management agreement between the parties.  
 25

26 <sup>1</sup> All statutory citations will refer to the California Labor Code unless  
 27 otherwise specified.

1 Respondent filed his answer with this agency on October  
2 3, 2000, asserting laches, statute of limitations, and release as  
3 his affirmative defenses. A hearing was scheduled before the  
4 undersigned attorney, specially designated by the Labor  
5 Commissioner to hear this matter. After several continuances, the  
6 hearing commenced on August 14, 2001, in Los Angeles, California.  
7 Petitioner was represented by Allen Hyman; respondent appeared  
8 through his attorney Terran T. Steinhart. Due consideration having  
9 been given to the testimony, documentary evidence, arguments  
10 presented, and briefs submitted, the Labor Commissioner adopts the  
11 following determination of controversy.

12  
13 FINDINGS OF FACT

14 1. Petitioner's husband, Paul Robi was an original  
15 member of the performing group, "The Platters". "The Platters"  
16 established a string of #1 hits including, "Only You" and "The  
17 Great Pretender" and performed internationally throughout the 50's,  
18 60's. Several original members interchanged, but Paul Robi legally  
19 retained the group's commercial name and continued to perform as  
20 "The Platters" throughout the 70's and 80's.

21 2. In 1983 Paul Robi met Howard Wolf at the Tropicana  
22 Hotel and Casino in Las Vegas, Nevada. On May 4, 1983, Paul Robi  
23 and Wolf signed an agreement, whereby Wolf would produce a  
24 nostalgia show utilizing "The Platters", called "Golden Memories on  
25 Tour". Wolf's responsibilities for the tour, pursuant to the terms  
26 of the agreement included, "negotiating on behalf of the show, and  
27 coordinating the functions that go into the presentation of the

1 show." Soon thereafter, Wolf sought to exclusively manage Robi's  
2 career as a performing artist.

3 3. On November 18, 1983, Paul Robi and Howard Wolf  
4 signed a one-year agreement whereby Wolf agreed to personally  
5 manage Robi's career in exchange for 10% of Robi's gross  
6 compensation. The agreement provided that Wolf would advise and  
7 counsel, *inter alia*, any and all matters pertaining to public  
8 relations; the adoption of proper formats for presentation; and  
9 other general practices in the entertainment industry. Notably, a  
10 provision informing Robi that Howard could not act as a talent  
11 agent or seek or obtain employment for Robi was also included. At  
12 the expiration of the one-year agreement, Robi and Wolf agreed to  
13 continue the relationship and executed ostensibly the same  
14 agreement in both 1984 and 1985.

15 4. On July 28, 1986, Paul Robi and Wolf appeared  
16 to terminate the agreement by executing a mutual release from  
17 liability. The release provided in pertinent part:

18 "I hereby release you from any further liability or  
19 obligation to perform services under the aforesaid  
20 Personal Management agreement and I release you from any  
21 obligation or claim to obligations for services rendered  
22 or required to be rendered under that agreement in the  
23 past. In doing so I waive all claims against you, known  
24 or unknown..."

24 5. The testimony conflicted as to why the parties  
25 executed the release and whether the release truly manifested the  
26 parties intent. The petitioner argued the release was a sham  
27 designed to protect the assets of the relationship from Wolf's

1 pending bankruptcy petition and further argued the parties  
2 continued to function as they always had. The petitioner  
3 established through documentary and testimonial evidence, that  
4 irrespective of the mutual release, Wolf continued to act as Robi's  
5 personal manager via an oral agreement under the same terms. Robi,  
6 supplied deposit statements evidencing the collection of  
7 commissions by Wolf for performances completed after the mutual  
8 release was executed by the parties. In short, it was clear the  
9 parties acted under the terms of an oral agreement for continued  
10 representation and the mutual release, prepared by Wolf, was not  
11 the true intent of the parties.

12           6. In support of Robi's allegation that Wolf acted as  
13 a talent agency by procuring work, Robi introduced several  
14 "Agreements". The "Agreements", admittedly prepared by Wolf,  
15 contained all of the material terms between the artist [Robi], and  
16 the purchaser of talent [venue], including compensation and  
17 perquisites. Wolf unconvincingly argued that the petitioner would  
18 procure the engagements herself on behalf of her husband, and then  
19 phone in the information to Wolf who would simply fill in the terms  
20 on his preprinted agreement forms. This testimony was not  
21 credible. In sum, it was Wolf who negotiated the terms of the  
22 deals and it was Wolf who procured these engagements on Robi's  
23 behalf.

24           7. On February 25, 1988, Paul Robi, unequivocally  
25 terminated the relationship with Howard Wolf. In 1989 Paul Robi  
26 passed away and control of the estate passed to the petitioner.  
27 Throughout the latter part of Paul Robi's life and thereafter, the

1 petitioner was engaged in several lawsuits, litigating the right to  
2 control "The Platters" name. In 1990, the petitioner prevailed in  
3 one federal lawsuit and was awarded \$3,510,000.00. As a result of  
4 petitioner's victory in the federal action, the respondent filed  
5 two state court actions against the petitioner in 1996 and 1998,  
6 seeking 10% of the \$3,510,000.00 award and 10% of all gross income  
7 for the sale of a Platters' recording. The second state action is  
8 stayed pending this Labor Commissioner's Determination of  
9 Controversy.

10  
11 CONCLUSIONS OF LAW

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

15 2. The primary issue is whether based on the evidence  
16 presented at this hearing, did the respondent operate as a "talent  
17 agency" within the meaning of §1700.40(a). Labor Code §1700.40(a)  
18 defines "talent agency" as, "a person or corporation who engages in  
19 the occupation of procuring, offering, promising, or attempting to  
20 procure employment or engagements for an artist or artists."

21 3. Labor Code section 1700.5 provides that "no person  
22 shall engage in or carry on the occupation of a talent agency  
23 without first procuring a license therefor from the Labor  
24 Commissioner." There was some testimony that the respondent  
25 obtained a talent agency license, but did not act as petitioner's  
26 talent agency. The express relationship between Robi and Wolf was  
27 a personal management agreement. Therefore, whether respondent

1 obtained a talent agency license is irrelevant for this proceeding.  
2 A manager may not switch hats. If the manager embarks on a  
3 personal management relationship with a client, and subsequently  
4 obtains a talent agency license, the possession of a talent agency  
5 license will not insulate a manager acting as an agent for his  
6 client from liability. Any person obtaining employment for an  
7 artist will be subject to all of the state's talent agency  
8 requirements.

9 4. In Waisbren v. Peppercorn Production, Inc (1995) 41  
10 Cal.App.4th 246, the court held that any single act of procuring  
11 employment subjects the agent to the Talent Agencies Act's  
12 licensing requirements, thereby upholding the Labor Commissioner's  
13 long standing interpretation that a license is required for any  
14 procurement activities, no matter how incidental such activities  
15 are to the agent's business as a whole. Applying Waisbren, it is  
16 clear respondent acted in the capacity of a talent agency within  
17 the meaning of §1700.4(a).

18 5. Respondent argued the petitioner did not meet her  
19 burden of proof. The burden of proof is found at Evidence Code  
20 §115 which states, "[e]xcept as otherwise provided by law, the  
21 burden of proof requires proof by preponderance of the evidence."  
22 Further, McCoy v. Board of Retirement of the County of Los Angeles  
23 Employees Retirement Association (1986) 183 Cal.App.3d 1044 at 1051  
24 states, "the party asserting the affirmative at an administrative  
25 hearing has the burden of proof, including both the initial burden  
26 of going forward and the burden of persuasion by preponderance of

27

1 the evidence (cite omitted). "Preponderance of the evidence"  
2 standard of proof requires the trier of fact to believe that the  
3 existence of a fact is more probable than its nonexistence. In re  
4 Michael G. 74 Cal.Rptr.2d 642, 63 Cal.App.4th 700.

5           6.           Here, the petitioner has established by a  
6 preponderance of the evidence the respondent procured employment  
7 reflected by the petitioner's credible testimony, and supported by  
8 several "Agreements" between Robi and the purchaser of the  
9 performance, negotiated and completed by the respondent. The  
10 defense proffered by respondent that all of these "Agreements" were  
11 actually procured by the petitioner was not supported by the  
12 evidence. The evidence presented satisfies the minimal standard  
13 described in Waisbren.

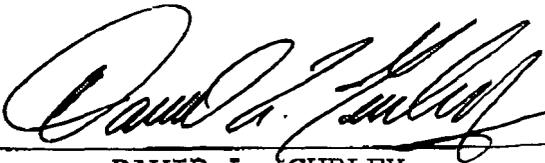
14           7.           Finally, the respondent argues that the petition  
15 should be dismissed because the statute of limitations for a  
16 violation of the Act had run. Labor Code §1700.44(c) provides that  
17 "no action or proceeding shall be brought pursuant to [the Talent  
18 Agencies Act] with respect to any violation which is alleged to  
19 have occurred more than one year prior to the commencement of this  
20 action or proceeding.

21           8.           Petitioner alleges violations that occurred between  
22 1983 and 1988. The petition was filed on September 1, 2000. The  
23 question arises whether the management agreements can be voided.  
24 They can. The recent California Supreme Court case of Styne v.  
25 Stevens 26 Cal.4th 42, held, "that statutes of limitations do not  
26 apply to defenses..... Under well-established authority, a defense  
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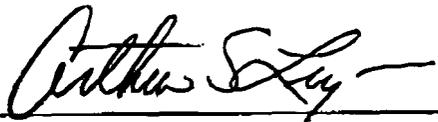
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Dated: March 21, 2002

  
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DAVID L. GURLEY  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: March 21, 2002

  
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ARTHUR S. LUJAN  
State Labor Commissioner

