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7
8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 AISHA TYLER, an individual,)	No. TAC 31-01
)	
12 Petitioner,)	
)	
13 vs.)	DETERMINATION OF
)	CONTROVERSY
14 LAUGH FACTORY MANAGEMENT, a business)	
entity of unknown form; and JAMIE)	
15 MASADA, an individual,)	
)	
16 Respondent.)	

17
18 The above-captioned matter, a petition to determine
19 controversy under Labor Code §1700.44, came on regularly for
20 hearing on June 24 and 25, 2002, in Los Angeles, California,
21 before the Labor Commissioner's undersigned attorney specially
22 designated hearing officer. Petitioner appeared and was
23 represented by attorneys Michael J. Plonsker and Mark D. Passin,
24 and Respondent appeared and was represented by attorney Joan
25 Kenegos. Based on the evidence presented at this hearing and on
26 the other papers on file in this matter, the Labor Commissioner
27 hereby adopts the following decision.

28 //

1 FINDINGS OF FACT

2 1. AISHA TYLER (hereinafter "Tyler" or "Petitioner") is an
3 actress and a comedian, and is now well-known for her stand-up
4 comedy performances. She has been a California resident at all
5 times relevant herein.

6 2. Respondent JAMIE MASADA operates a comedy club in Los
7 Angeles, California, doing business as a corporation under the
8 name "The Laugh Factory." The club is known as a venue for
9 aspiring young comedians, many of whom are "managed" by Masada,
10 including some who have gone on to become nationally known
11 performers. Respondent "LAUGH FACTORY MANAGEMENT" is the
12 fictitious business name under which Masada operates his business
13 as a "personal manager" for comedians. Masada and Laugh Factory
14 Management have never been licensed as talent agents by the State
15 Labor Commissioner.

16 3. On January 23, 1997, Tyler and Masada/Laugh Factory
17 Management executed a written agreement under which Masada was to
18 serve as Tyler's personal manager for which Masada would be paid
19 commissions in the amount of 15% of Tyler's entertainment
20 industry earnings. This personal management agreement contains a
21 paragraph which states: "YOU HAVE SPECIFICALLY ADVISED ME THAT
22 YOU ARE NOT A 'TALENT AGENT' BUT ACTING SOLELY AS A PERSONAL
23 MANAGER, AND THAT YOU ARE NOT LICENSED AS A 'TALENT AGENT' UNDER
24 THE LABOR CODE OF THE STATE OF CALIFORNIA; YOU HAVE AT ALL TIMES
25 ADVISED ME THAT YOU ARE NOT LICENSED TO SEEK TO OBTAIN EMPLOYMENT
26 OR ENGAGEMENTS FOR ME AND THAT YOU DO NOT AGREE TO DO SO, AND YOU
27 HAVE MADE NO REPRESENTATIONS TO ME, EITHER ORAL OR WRITTEN, TO
28 THE CONTRARY." Notwithstanding this contractual language, prior

1 to entering into this agreement Masada did in fact advise Tyler
2 that he would be able to get her work in the entertainment
3 industry, that he had lots of connections with producers,
4 television executives and owners of other comedy clubs, and that
5 he could "close deals" with them.¹

6 4. Masada engaged Tyler's services to perform at the Laugh
7 Factory on a frequent basis throughout the period from January
8 1997 through December 2000. Masada frequently invited motion
9 picture and television producers, casting directors and other
10 entertainment industry executives to see Tyler (and other
11 comedians for whom he provided personal management services)
12 performing at his club, in the hope that this would lead to
13 employment offers for Tyler (and these other comedians). On some
14 occasions, these producers, directors and executives would
15 observe Tyler and the other comedians performing at regularly
16 scheduled shows that were advertised by the Laugh Factory and
17 that were open to the public. On other occasions, Masada would
18 set up "special showcases," which were performances that were not
19 open to the public, at which Tyler and other performers would
20 showcase their talents before producers.

21 5. In February or March 1997, Masada introduced Tyler to
22 the Endeavor Talent Agency, and Endeavor began serving as Tyler's
23 talent agency. Endeavor never undertook the responsibility of

24
25 ¹This finding is consistent with Tyler's testimony, which
26 we credit. Although Masada denied making these representations,
27 we find his testimony in this area to be less than truthful.
28 This credibility finding is based in part on his demeanor while
testifying, his evasiveness in answering questions, our
conclusion that he was not truthful about other matters to which
he testified, and on our conclusion that he proffered into
evidence two falsified documents, discussed below.

1 procuring or booking "personal appearances" at comedy clubs or
2 other live engagements. Rather, its representation of Tyler was
3 limited to securing employment for her in the motion picture or
4 television industries.

5 6. During the period from 1997 through the end of 2000,
6 Tyler made several "personal appearances" at venues other than
7 The Laugh Factory, in which she performed stand-up comedy before
8 live audiences, including a one-week engagement at the Riviera
9 Hotel in Las Vegas in January 1998, an engagement at an event
10 called "Laughing All the Way to the Bank" at the Bellagio Hotel
11 in Las Vegas in July 1999, another engagement at the Bellagio,
12 called "Celebration of the Century," on December 31, 1999, and an
13 engagement to perform at Marymount College in February 2000.

14 7. Masada called Tyler in late 1997, telling her that he
15 got her booked for a week at the Riviera Comedy Club, that the
16 person who books comedians for the Riviera is a friend of his,
17 and that he negotiated the deal with his friend under which Tyler
18 was to be paid \$1,000. The Riviera sent a contract for Tyler's
19 services to Masada, and Tyler came into The Laugh Factory to sign
20 the contract. There is no evidence that any person other than
21 Masada procured this engagement for Tyler or negotiated the terms
22 of her employment. Tyler performed this engagement during the
23 week of January 5, 1998, received the agreed upon compensation,
24 and paid a commission to Masada on the amount she earned.²

25
26 ²Masada testified that he did not solicit or procure the
27 engagement for Tyler, or negotiate the terms of her compensation,
28 although he acknowledged that Steve Shirripa, the Riviera's
booking agent, called the Laugh Factory and asked for "my
recommendation for a female minority comic," and that in
response, Masada might have recommended that they hire Tyler for

1 8. In May 1999, Cristi Chadwick, a booker for the Bellagio
2 Hotel, called Masada and told him that the Bellagio needed four
3 comedians to perform at an event scheduled for July 24, 1999
4 called "Laughing All the Way to the Bank." Masada told her to
5 come out to Los Angeles and see the comedians performing at The
6 Laugh Factory in order to decide which comedians to hire for the
7 engagement. Chadwick attended regularly scheduled performances
8 at the Laugh Factory during the weekend of May 14 and 15, and she
9

10 the engagement. Masada further testified that on December 13,
11 1997, he provided Tyler with a copy of the proposed contract,
12 along with a cover letter. Tyler denied ever having seen a copy
13 of the purported cover letter until the day of the hearing in
14 this matter. This letter was introduced into evidence. It
15 states: "Enclosed please find the agreement dated 12/8/97 from
16 Rio [sic]. This offer is a starting point in my opinion. You
17 should have your husband, who knows the law and your agent read
18 and negotiate some of the points in the agreement. You know I
19 cannot negotiate for you. Look at our agreement, it is stated in
20 big letters in paragraph 3. That's the reason I made it in big
21 letters because I do not want to get in any kind of trouble with
22 the law." The letter bears Masada's signature, and according to
23 Masada it was typed by his assistant, Karmen Cahn. There are
24 many factors, in addition to Tyler's testimony, upon which we
25 base our finding that this letter was created by Masada as a
26 fictitious piece of "evidence" some time after the instant
27 petition to determine controversy was filed. Masada failed to
28 produce the person who allegedly typed the letter as a witness in
this proceeding. The letter itself seems almost over the top in
its earnest, self-serving tone, as if it were written with the
issues of this litigation in mind, rather than in the more
matter-of-fact tone one would expect if indeed it had been
written four years prior to the filing of the petition to
determine controversy. Furthermore, it flies in the face of the
declaration of Steven Shirripa, wherein he states that Masada
repeatedly telephoned him with requests that the Riviera hire
Tyler for a comedy engagement, and that after he agreed to hire
Tyler for the engagement, Masada then negotiated the terms of her
employment. Also, at the time the letter was purportedly
written, Tyler's husband was a first-year law student with no
expertise or exposure in the field of entertainment law, not
"someone who knows the law." Finally, if the letter were
actually written in December 1997, rather than four or four-and-a
half years later, it is inconceivable that Masada would have
confused the Riviera with the Rio, another Las Vegas hotel which
never engaged Tyler's services.

1 watched 24 comedians perform their stand-up acts. She later
2 informed Masada which comedians she wanted for the Bellagio
3 engagement. Ultimately, she informed Masada that she wanted to
4 book Tyler for this engagement, and she offered something less
5 than \$5,000 for Tyler's appearance. Masada told her that Tyler
6 should get \$5,000 for the engagement, and after some discussion,
7 Chadwick increased her offer to \$5,000. Masada accepted that
8 offer, and he then told Tyler that through his efforts, he got
9 more money for her than the amount the Bellagio had originally
10 offered. Masada also spoke to Chadwick in an attempt to convince
11 her to have the Bellagio pay for Tyler's round trip air fare from
12 Los Angeles to Las Vegas. No one other than Masada negotiated
13 the terms of this engagement. Tyler performed at this event,
14 received the agreed upon compensation, and paid Masada his
15 commission on these earnings.³

16
17 ³Masada testified that he did not negotiate the terms of
18 this engagement, but merely told Chadwick what he thought would
19 be the "fair amount" for the Bellagio to pay Tyler. Masada also
20 testified that on June 12, 1999, he sent Tyler a copy of the
21 proposed contract, along with a cover letter. Tyler denied ever
22 seeing a copy of the purported cover letter until the day of the
23 hearing in this proceeding. This letter was introduced into
24 evidence. It states: "Enclosed find the agreement from Bellagio
25 dated 6/5/99.... When Cristi Chadwick from Bellagio called,
26 without crossing the line, I gave her my expert opinion as a club
27 owner.... I was very careful not to cross the line.... Cristi
28 told me she was paying everyone \$5,000, but was going to pay you
\$3,500. I told her in my club I pay everyone the same.... So she
is going to pay everyone the same too...." There are many
factors, in addition to Tyler's testimony, upon which we base our
finding that this letter was created by Masada as a fictitious
piece of "evidence" some time after the instant petition to
determine controversy was filed. Masada failed to produce the
person who allegedly typed the letter as a witness in this
proceeding. Moreover, Masada's account of his "discussion" with
Chadwick is at odds with Chadwick's deposition testimony that
Masada told her that Tyler "wouldn't do it for that amount" that
had originally been offered. It is therefore apparent that
Masada's statement that \$5,000 would constitute a "fair price"

1 9. In late 1999, Cristi Chadwick decided that she wanted to
2 obtain Tyler's services to serve as the master of ceremonies for
3 a comedy performance to be held at the Bellagio on New Year's
4 Eve, called "Celebration of the Century." Chadwick contacted
5 Masada, and they negotiated the terms of Tyler's services.
6 Chadwick told Masada the Bellagio would pay Tyler \$3,500 for this
7 event. Masada unsuccessfully sought to have Chadwick increase
8 this offer to \$5,000. Although Tyler later spoke to Chadwick
9 directly with her request that the Bellagio provide her with one
10 free night of lodging, she had no discussions with Chadwick over
11 her monetary compensation. No one other than Masada negotiated
12 with Chadwick over the amount of Tyler's monetary compensation
13 for this event. Tyler performed at this event on December 31,
14 1999, was paid the agreed upon compensation, and she then paid
15 Masada's commission on these earnings.

16 10. In late 1999 or early 2000, Andre Coleman, a resident
17 director at Marymount College and the advisor of the school's
18 Black Student Alliance, was given the responsibility of booking a
19 comedian to appear at an event scheduled to be held at the
20 Marymount Student Center on February 8, 2000. Coleman did not
21 have a specific comedian in mind, and at that time he did not
22 know anything about Tyler. Based on a colleague's
23 recommendation, he called the Laugh Factory and after explaining

24 _____
25 was offered not as an academic "expert opinion," but rather, as a
26 desired target in the context of a negotiation for Tyler's
27 services. Finally, the letter's focus on "not crossing the line"
28 between the role of a talent agent and the role of a personal
manager sounds much more like an explanation created in the
context of ongoing litigation, rather than a communication
between the parties that supposedly occurred two and a half years
before the filing of the petition to determine controversy.

1 the reason for his call, he was connected to Jennifer Parks,
2 Masada's assistant at Laugh Factory Management. Coleman told
3 Parks he wanted to obtain the services of an African American
4 comedian for this event, and Parks recommended Tyler for this
5 engagement. Over the course of two or three telephone
6 conversations, Coleman and Parks negotiated the terms of Tyler's
7 appearance at this event.⁴ Parks prepared a written contract on
8 Laugh Factory Management letterhead, under which Tyler was to be
9 paid \$700 for this performance. Tyler performed at this event,
10 received the agreed upon compensation, and paid a commission to
11 Masada on these earnings.

12 11. Despite Endeavor's role as Tyler's talent agency in
13 connection with television and film work, Masada also
14

15 ⁴According to Masada, Parks was never authorized by him to
16 negotiate contracts for an artist's services. Masada claims that
17 as soon as he learned that Parks was attempting to negotiate this
18 deal for Tyler he told Parks that she was supposed to pass on any
19 communication of interest in a client to the client's talent
20 agent, so that the agent could take over the negotiations.
21 Moreover, Masada claims that as soon as he learned what Parks was
22 doing, he called Tyler's agent (either Adam Venit or Rick Rosen
23 at Endeavor), and asked the agent to handle the negotiations.
24 However, according to Masada, the agent declined to step into the
25 negotiations, and instead gave Masada permission to negotiate the
26 terms of the deal, and Masada then completed the negotiations
27 with Marymount College. Masada's account is unbelievable.
28 First, it defies credulity that Masada would seek Endeavor's
involvement in this personal appearance at a live comedy event
when Endeavor's representation was strictly limited to film and
television work. Second, Masada's recent activities in
negotiating the terms of Tyler's two Bellagio engagements
(without any talent agent involvement) belies his assertion that
he told Parks that she should have turned over the negotiation of
this much smaller deal to an agent. Third, Masada did not
produce any corroborating testimony from Parks, Venit or Rosen.
Finally, Masada's claim that he completed the negotiation is
contradicted by Coleman's testimony that all negotiations on
Tyler's behalf were conducted by Parks. We therefore discredit
all of Masada's testimony as to this engagement, including his
claim that Parks acted without his authorization.

1 communicated with various television executives, producers or
2 bookers in an effort to procure employment for Tyler. Tyler's
3 appearance as a guest comedian on the NBC show "Friday Night" in
4 March 1997 came about as a result of Masada's communications with
5 NBC. No one other than Masada was involved in procuring or
6 negotiating the terms of that engagement for Tyler, and when
7 Masada told Tyler about the upcoming appearance, he said "I got
8 you a spot on [the show]." In his testimony, Masada conceded
9 that he "may have" recommended Tyler for a role in a television
10 show, "From the Hip," in a conversation with the producer of that
11 show. Masada admitted that he had more than one conversation
12 with the booker for the CBS "Late Late Show With Craig Kilburn,"
13 during which Masada told the booker that he'd "like to get
14 [Tyler] on the show." Tyler performed on that show on
15 November 28, 2000.

16 12. On January 26, 2001, Tyler sent a letter to Masada
17 terminating the agreement under which he had served as her
18 personal manager. On October 3, 2001, Masada filed a lawsuit
19 against Tyler in the Los Angeles County Superior Court, for
20 breach of contract, quantum meruit and an accounting. Tyler then
21 filed this petition to determine controversy on November 6, 2001,
22 seeking a determination that Masada acted as a talent agent
23 without the requisite license and that as a result, the personal
24 management agreement is void *ab initio*, and that Masada has no
25 enforceable rights thereunder. The petition also seeks recovery
26 of all amounts that Tyler paid to Masada pursuant to this
27 agreement, along with interest.

28 13. During the one-year period preceding the filing of the

1 petition to determine controversy, Tyler paid a total of \$16,500
2 in commissions to Masada pursuant to the terms of the personal
3 management agreement. These payments were made on November 7,
4 2000, and Tyler did not make any other payments to Masada after
5 that date.

6 LEGAL ANALYSIS

7 1. Petitioner is an "artist" within the meaning of Labor
8 Code §1700.4(b).

9 2. Labor Code §1700.4(a) defines "talent agency" as "a
10 person or corporation who engages in the occupation of procuring,
11 offering, promising, or attempting to procure employment or
12 engagements for an artist or artists, except that the activities
13 of procuring, offering or promising to procure recording
14 contracts for an artist or artists shall not of itself subject a
15 person or corporation to regulation and licensing under this
16 chapter." The term "procure," as used in this statute, means "to
17 get possession of: obtain, acquire, to cause to happen or be
18 done: bring about." *Wachs v. Curry* (1993) 13 Cal.App.4th 616,
19 628. Thus, under Labor Code §1700.4(a), "procuring employment"
20 is not limited to initiating discussions with a potential
21 purchaser of an artist's services regarding employment; rather,
22 "procurement" includes any active participation in a
23 communication with that potential purchaser aimed at obtaining
24 employment for the artist, regardless of who initiated the
25 communication. *Hall v. X Management* (TAC No. 19-90, pp. 29-31.)
26 To be sure, a person does not engage in the procurement of
27 employment for an artist by merely taking a phone call from a
28 booking agent where the booking agent provides information about

1 a potential engagement, and then advising the artist of the
2 information that was received from the booking agent about the
3 potential employment, leaving it to the artist (or the artist's
4 licensed talent agent) to contact the booking agent to negotiate
5 the terms of employment. But calling a booking agent to
6 "recommend" an artist for an engagement, or carrying on
7 negotiations with a booking agent in response to a phone call
8 from the booking agent, brings us into the realm of
9 "procurement," as that term is used in Labor Code §1700.4(a).

10 3. Based on the evidence herein, we conclude that
11 Respondent acted as a talent agency within the meaning of Labor
12 Code §1700.4(a) by procuring, attempting to procure, and
13 promising to procure stand-up comedy and television comedy
14 engagements for Tyler. The evidence presented here leaves no
15 doubt that throughout the period of January 1997 to the end of
16 2000, Respondent repeatedly engaged in activities that fall
17 within the statutory definition of a talent agency with respect
18 to his representation of Aisha Tyler.

19 4. Labor Code §1700.5 provides that "[n]o person shall
20 engage in or carry on the occupation of a talent agency without
21 first procuring a license . . . from the Labor Commissioner."
22 The Talent Agencies Act is a remedial statute that must be
23 liberally construed to promote its general object, the protection
24 of artists seeking professional employment. *Buschwald v.*
25 *Superior Court* (1967) 254 Cal.App.2d 347, 354. For that reason,
26 the overwhelming weight of judicial authority supports the Labor
27 Commissioner's historic enforcement policy, and holds that "even
28 the incidental or occasional provision of such [procurement]

1 services requires licensure." *Styne v. Stevens* (2001) 26 Cal.4th
2 42, 51. "The [Talent Agencies] Act imposes a total prohibition
3 on the procurement efforts of unlicensed persons," and thus, "the
4 Act requires a license to engage in any procurement activities."
5 *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th
6 246, 258-259; see also *Park v. Deftones* (1999) 71 Cal.App.4th
7 1465 [license required even though procurement activities
8 constituted a negligible portion of personal manager's efforts on
9 behalf of artist, and manager was not compensated for these
10 procurement activities].

11 5. An agreement that violates the licensing requirement of
12 the Talent Agencies Act is illegal and unenforceable. "Since the
13 clear object of the Act is to prevent improper persons from
14 becoming [talent agents] and to regulate such activity for the
15 protection of the public, a contract between an unlicensed
16 [agent] and an artist is void." *Buchwald v. Superior Court*,
17 *supra*, 254 Cal.App.2d at 351. Having determined that a person or
18 business entity procured, promised or attempted to procure
19 employment for an artist without the requisite talent agency
20 license, "the [Labor] Commissioner may declare the contract
21 [between the unlicensed agent and the artist] void and
22 unenforceable as involving the services of an unlicensed person
23 in violation of the Act." *Styne v. Stevens, supra*, 26 Cal.4th at
24 55. "[A]n agreement that violates the licensing requirement is
25 illegal and unenforceable" *Waisbren v. Peppercorn*
26 *Productions, Inc., supra*, 41 Cal.App.4th at 262. Moreover, the
27 artist that is party to such an agreement may seek disgorgement
28 of amounts paid pursuant to the agreement, and "may . . . [be]

1 entitle[d] . . . to restitution of all fees paid the agent."
2 *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. Restitution, as a
3 species of affirmative relief, is subject to the one-year
4 limitations period set out at Labor Code §1700.44(c), so that the
5 artist is only entitled to restitution of amounts paid within the
6 one-year period prior to the filing of the petition to determine
7 controversy. *Greenfield v. Superior Court* (2003) 106 Cal.App.4th
8 743.

9 6. On the other hand, this statute of limitations does not
10 apply to the defense of contract illegality and unenforceability,
11 even where this defense is raised by the petitioner in a
12 proceeding under the Talent Agencies Act. "If the result the
13 [artist] seeks is [a determination] that he or she owes no
14 obligations under an agreement alleged by [the respondent] ...
15 the statute of limitations does not apply." *Styne v. Stevens*,
16 *supra*, 26 Cal.4th at 53. The Labor Commissioner has exclusive
17 primary jurisdiction to determine all controversies arising under
18 the Talent Agencies Act. "When the Talent Agencies Act is
19 invoked in the course of a contract dispute, the Commissioner has
20 exclusive jurisdiction to determine his jurisdiction in the
21 matter, including whether the contract involved the services of a
22 talent agency." *Ibid.* at 54. This means that the Labor
23 Commissioner has "the exclusive right to decide in the first
24 instance all the legal and factual issues on which an Act-based
25 defense depends." *Ibid.*, at fn. 6, italics in original. In
26 doing so, the Labor Commissioner will "search out illegality
27 lying behind the form in which a transaction has been cast for
28 the purpose of concealing such illegality," and "will look

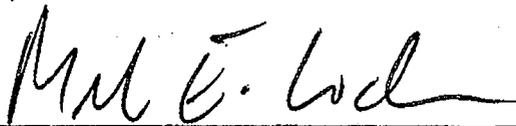
1 through provisions, valid on their face, and with the aid of
2 parol evidence, determine [whether] the contract is actually
3 illegal or part of an illegal transaction." *Buchwald v. Superior*
4 *Court, supra*, 254 Cal.App.2d at 351.

5 7. Applying these legal principles to the facts of this
6 case, we conclude that the personal management agreement was void
7 *ab initio*, that Respondent has no enforceable rights thereunder,
8 and that nothing is owed to Respondent for the services that he
9 provided to Tyler, regardless of whether Respondent is seeking
10 payment for such services through a claim of breach of contract,
11 or under any other legal theory, including unjust enrichment or
12 quantum meruit. See *Yoo v. Robi* (2005) 126 Cal.App.4th 1089,
13 1004 n. 30. We also conclude that Tyler is entitled to
14 restitution of the commissions she paid to Masada under this
15 agreement during the one year period prior to the filing of this
16 petition, with interest at the 10% legal rate from the date these
17 payments were made.

18 ORDER

19 For the reasons set forth above, IT IS HEREBY ORDERED that
20 the parties' personal management contract is void *ab initio* and
21 unenforceable under the Talent Agencies Act, that nothing is owed
22 to Respondent for services provided to Tyler pursuant to this
23 agreement, and that Respondent shall pay restitution to Tyler in
24 the amount of \$16,500, plus interest in the amount of
25 \$8,620.68, for a total of \$25,120.68.

26
27 Dated: 1/30/06



28 MILES E. LOCKER
Attorney for the Labor Commissioner

1 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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Dated: 2/3/06

Robert A. Jones

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ROBERT A. JONES
Acting Labor Commissioner

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