

1 **STATE OF CALIFORNIA**  
Department of Industrial Relations  
2 Division of Labor Standards Enforcement  
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8 **BEFORE THE LABOR COMMISSIONER**  
9 **OF THE STATE OF CALIFORNIA**  
10

11 NIA VARDALOS, An Individual,  
12 Petitioner,

) CASE NO. TAC 2-03

) **DETERMINATION OF CONTROVERSY**

13 vs.  
14

15 RICHARD SIEGEL, an individual;  
16 MARATHON ENTERTAINMENT, INC., A  
California Corporation,  
17 Respondent.  
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20 The above-captioned petition was filed by Nia Vardalos (hereinafter, "petitioner") on January  
21 10, 2003. Petitioner alleges, *inter alia*, therein that respondents Richard Siegel, an individual and  
22 Marathon Entertainment Inc., a California Corporation (hereinafter collectively referred to as  
23 "respondents") violated the Talent Agencies Act (hereinafter, also referred to as the "Act") by acting  
24 in the capacity of a talent agent without being licensed, in violation of Labor Code section 1700.5.

25 Petitioner and respondents entered into an oral agreement (hereinafter referred to as,  
26 "Agreement") in or about November 1997, whereby respondents agreed to act as a personal manager  
27 for petitioner and agreed to seek to procure employment for petitioner as a *de facto* talent agent. In  
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1 return, petitioner agreed to pay respondents 15% commissions on all gross earnings petitioner  
2 received in connection with activities and/or services by petitioner as an actor or writer resulting from  
3 agreements entered into or negotiated during the term of the Agreement. The Agreement was  
4 terminated by petitioner in or about October, 2000.

5 Petitioner herein seeks a determination from the Labor Commissioner that: respondents have  
6 violated section 1700 et seq. of the Labor Code; that the Agreement is void ab initio and is therefore  
7 unenforceable; and, that petitioner has no liability thereon to respondents and respondents have no  
8 rights or privileges thereunder.

9 Respondents concede that they are not licensed talent agents but deny that they violated the  
10 Talent Agencies Act. Respondents argue that petitioner has no standing to enforce the act as an  
11 'employer' since the Labor Code only serves to protect 'employees'. Respondents also argue that  
12 petitioner does not have standing because she is not an 'artist' as defined by Labor Code section  
13 1700 et seq., since she did not render professional services directly to respondents; respondents also  
14 argue that the petition is barred by the applicable statute of limitations; and lastly, to the extent  
15 respondents' conduct is found to be 'procurement' of employment, respondents argue their conduct  
16 was at all relevant times in conjunction with a licensed talent agent.<sup>1</sup>

17 The matter came on for hearing on September 25, 2003, before Edna Garcia Earley, Special  
18 Hearing Officer, in Los Angeles, California. Petitioner appeared through her attorneys, Martin D.  
19 Singer and Paul N. Sorrell of Lavelly & Singer. Respondents appeared through their attorney, Tanya  
20 M. Acker of Fox & Spillane, LLP. Called as witnesses by petitioner were: Nia Vardalos, Jennifer  
21 Cusentino, Gary Goetzman, John Kelly, and Nikitas Nestoros (by telephonic deposition taken on  
22 September 15, 2003). Called as witnesses by respondents were Richard Siegel and Jonathan D.

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25 <sup>1</sup>Respondents also argue that the relief petitioner seeks to enforce is in violation of California  
26 Business & Professions Code, section 17200. However, the hearing officer was not persuaded by this  
27 argument. Moreover, recognizing that this is not a valid defense under the Talent Agencies Act, there  
28 will not be any further discussion with respect to this argument, in this determination.

1 Moonves.

2 The matter was taken under submission at the close of the hearing. Based upon the testimony  
3 and evidence received at this hearing, the Labor Commissioner adopts the following determination of  
4 controversy.

5 **FINDINGS OF FACT**

6 **A. My Big Fat Greek Wedding**

7 Petitioner became acquainted with respondents through her husband, Ian Gomez, who was a  
8 client of respondents. Petitioner, who is an actress and writer, asked respondents to represent her as  
9 a manager. Respondents initially declined representation because they were already representing  
10 petitioner's husband. However, a couple of months later, respondent Rick Siegel learned that Rita  
11 Wilson, actress and wife of actor Tom Hanks, was planning on attending petitioner's one-woman  
12 show and decided to attend the show as well. After the show, respondent Rick Siegel learned that  
13 Rita Wilson was interested in obtaining a copy of the screenplay written by petitioner which was  
14 based on the one-woman show, and offered to send Rita Wilson a copy. This act, (followed by an  
15 oral agreement entered into between the parties), commenced respondents' three year representation  
16 of petitioner.

17 As petitioner's new manager, respondent Rick Siegel not only sent the screenplay to Rita  
18 Wilson but also admitted during the hearing on this matter, sending the screenplay to "anyone and  
19 everyone I could think of that could potentially help us in reaching our objective of getting the film  
20 made." (R.T. 97:11-13). Those who received the screenplay from respondent Rick Siegel included,  
21 but were not limited to, Sony Classics, Screen Gems, Fine Line, Fox Searchlight, and Patriot  
22 Pictures. Throughout his representation of petitioner, respondent Rick Siegel also became actively  
23 involved in negotiating amendments to a pre-existing contract petitioner had with MPH  
24 Entertainment, a production company, to produce the movie based on petitioner's screenplay.  
25 Respondent Rick Siegel admitted to negotiating modifications to the MPH agreement in 1998 and  
26 1999. Furthermore, a letter written by respondent Rick Siegel to MPH demonstrates the active role  
27 he took as petitioner's main negotiator with respect to the project. (See Exhibit 7)

1 During respondents' representation of petitioner, Rick Siegel was also the main person  
2 responsible for updating PLAYTONE Pictures on all developments related to making the movie *My*  
3 *Big Fat Greek Wedding*. Gary Goetzman of PLAYTONE Pictures, testified that respondent Rick  
4 Siegel had discussions with PLAYTONE Pictures about replacing MPS Entertainment as one of the  
5 production companies involved in making *My Big Fat Greek Wedding*. Mr. Goetzman also testified  
6 that respondent Rick Siegel was the main person responsible for maintaining PLAYTONE Picture's  
7 interest in making *My Big Fat Greek Wedding*, especially during moments when PLAYTONE  
8 Pictures considered abandoning the project.

9 Notably, while petitioner was also represented by licensed talent agents Bressler-Kelly &  
10 Associates between 1999 and the beginning of 2001, petitioner's witness and former licensed talent  
11 agent, John Kelly, testified that he did not participate in getting the project *My Big Fat Greek*  
12 *Wedding* developed into a film. In fact, the only participation Bressler-Kelly had in the project was  
13 to provide petitioner with some counsel when she was having trouble with the director, both during  
14 and after pre-production and during actual production of the movie *My Big Fat Greek Wedding*.

15 **B. Film, Theatrical and Television Sitcoms**

16 In addition to negotiating and working to get the movie *My Big Fat Greek Wedding* made,  
17 starring petitioner, respondents also admitted to procuring work for petitioner as an actress in film,  
18 theatrical and television sitcoms. Among the film, theatrical and television sitcom auditions that  
19 respondents procured for petitioner during the period of March 2000 through October 2000 were:  
20 *The Paul Rodriguez Show*, the television series entitled *My Wife and Kids*, the television pilot  
21 entitled *BETTE*, a potential movie called *Animal Husbandry*, and *THE BEAST*.

22 Respondent Rick Siegel testified that most of the time he submitted petitioner for auditions,  
23 he did so in conjunction with petitioner's licensed talent agents. However, the evidence presented,  
24 including the testimony by respondents' former employees, petitioner's talent agent, and respondent  
25 Rick Siegel himself, establish that respondent was *not* acting in conjunction with the talent agents  
26 when procuring work for petitioner.

27 Nikitas Nestoros, a former employee of respondent testified that the purpose of respondent's  
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1 company was to procure employment for its clients. Ms. Nestoros testified that this was done on a  
2 daily basis by going "through a publication know as breakdowns, which lists roles, identified specific  
3 roles that were felt suitable for specific clients, and then to submit to the casting directors head shots  
4 and resumes of those actors. This was then followed up with a call on that day or the next day to the  
5 casting directors."(R.T. of Telephonic Deposition of Nikitas Nestoros, 15:5-11). Mr. Nestoros also  
6 testified that respondents submitted head shots for petitioner *without first communicating with an*  
7 *agent* and that the only communication that an agent could be guaranteed to receive would be a  
8 report that was sent to them anytime up to a week *after* the submission was made.

9 Jennifer Cusentino, also a former employee of respondents, testified that respondent Rick  
10 Siegel instructed her to make submissions on behalf of petitioner for the purpose of procuring work  
11 for petitioner. Ms. Cusentino testified that there were occasions while working for respondents,  
12 when she submitted petitioner for an acting role without first discussing it with petitioner's licensed  
13 talent agent.

14 John Kelly of Bressler-Kelly testified that he represented petitioner as a talent agent during  
15 the end of 1999 to the beginning of 2001. His testimony revealed that he did not request respondent  
16 Rick Siegel to contact casting directors for potential employment and did not instruct respondent  
17 Rick Siegel to try to get work for petitioner.

18 Finally, respondent Rick Siegel testified that there were many times where the agent didn't  
19 know he had communication with the casting director before it happened.(R.T. 76:10-14.). Thus,  
20 while it is evident that respondents procured work for petitioner, it is also evident that most times, it  
21 was not in conjunction with a licensed talent agent.

#### 22 CONCLUSIONS OF LAW

23 1. Labor Code section 1700.44(c) provides "No action or proceeding shall be brought  
24 pursuant to this chapter with respect to any violation which is alleged to have occurred more than  
25 one year prior to commencement of the action or proceeding." Respondents argue that this petition  
26 is barred by Labor Code section 1700.44(c) because it was brought more than a year after  
27 respondents' demand for payment for monies related to the *My Big Fat Greek Wedding* project.

1 However, petitioner has raised the Act as a defense. As such, the statute of limitations contained in  
2 Labor Code Section 1700.44(c) does not bar petitioner's defense since it does not involve a claim for  
3 affirmative relief. "A defense may be raised at any time, even if the matter alleged would be barred  
4 by a statute of limitations if asserted as the basis for affirmative relief." *Styne v. Stevens* (2001) 26  
5 Cal.4th 42, 109 Cal.Rptr.2d 14. Petitioner's claim is not barred by Labor Code section 1700.44(c).

6 2. Respondents argue that petitioner is not an "artist" within the meaning of the Talent  
7 Agencies Act because she did not render professional services directly to respondents. Labor Code  
8 section 1700.4(b) defines "artists" as "actors and actresses *rendering services on the legitimate stage*  
9 *and in the production of* motion pictures, radio artists, musical artists, musical organizations,  
10 directors of legitimate stage, motion picture and radio productions, musical directors, writers,  
11 cinematographers, composers, lyricists, arrangers, models and other artists and persons rendering  
12 professional services in motion picture, theatrical, radio, television and other entertainment  
13 enterprises." [Emphasis added]. Nowhere in the code does it require the artist to render services  
14 *directly to* respondents. In this case, petitioner is an actress who has rendered services in the  
15 production of motion pictures (*My Big Fat Greek Wedding*) as well as theater and television.  
16 Additionally, petitioner is a writer. There is absolutely no question that she falls under the definition  
17 of "artist" contained in Labor Code section 1700.4(b). Accordingly, the Labor Commissioner has  
18 jurisdiction to determine this controversy pursuant to the provisions of that section.

19 3. Respondents argue that petitioner has no standing to enforce the act as an 'employer'  
20 since the Labor Code only serves to protect 'employees'. Respondents ignore the fact that there  
21 exists an entire statutory scheme in the Labor Code specifically set up to protect "artists" as defined  
22 in Labor Code section 1700.4(b). Statutes must be given a reasonable and common sense  
23 construction in accordance with the apparent purpose and intention of the lawmakers..." *Buchwald v.*  
24 *Katz* (1967) 254 Cal.App.2d 347, 355 citing to 45 Cal.Jur.2d, Statutes, §116, pp. 625-626. Here,  
25 the California legislature has determined that the act of "procuring employment" for artists is an  
26 occupation necessitating regulatory oversight and statutory protection. Respondents' argument that  
27 petitioner has no standing because she hired respondents to be her personal managers completely  
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1 ignores the legislature's intent to protect "artists". Since petitioner is an "artist" as defined  
2 hereinabove, she has standing to enforce the Talent Agencies Act.

3 4. Respondents next argue that to the extent that they procured work for petitioner, they  
4 did so at the request of and in conjunction with a licensed talent agent. Accordingly, they are exempt  
5 from the prohibitions of the law under the provisions of Labor Code section 1700.44(d). The  
6 assertion of this defense necessitates careful analysis. To qualify under these express provisions  
7 requires the satisfaction of a twofold burden of proof, i.e., the person claiming the exemption must  
8 prove the he or she acted both (1) "at the request of," and (2) "in conjunction" with, a licensed talent  
9 agent during the course of the events in question.

10 In this case, respondents presented no evidence that each of their employment procurement  
11 activities on behalf of petitioner, were undertaken at the request of a licensed talent agent. In fact,  
12 the overwhelming evidence revealed that most times, respondents *did not* act at the request of a  
13 talent agent. Mr. Nestoros and Ms. Cusentino, former employees of respondents, testified that the  
14 standard practice while working for respondents, was to first submit petitioner for certain television  
15 and film roles and then to inform petitioner's talent agent of the submissions by providing the talent  
16 agent with a weekly breakdown of the submissions made on behalf of petitioner. Mr. Kelly,  
17 petitioner's talent agent from the end of 1999 to the beginning of 2001, testified that he did not  
18 request respondents to submit petitioner for many of the roles respondents admitted to having  
19 submitted on behalf of petitioner. Notably, even respondent Rick Siegel admitted that many times  
20 the agent did not know in advance that he would be having discussions with casting directors relating  
21 to procurement activities on petitioner's behalf.

22 Respondent Rick Siegel testified that he often made the submissions without first contacting  
23 petitioner's talent agents only because the role or type of work respondents were submitting on  
24 behalf of petitioner may not have been an area in which petitioner's talent agent was knowledgeable.  
25 The problem however, is that the act requires that respondents be licensed or act at the request of a  
26 licensed talent agent on every single submission and procurement activity done on behalf of  
27 petitioner. (See *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246). In 1982,

1 AB 997 established the California Entertainment Commission. Pursuant to statutory mandate, the  
2 Commission studied and analyzed the Talent Agencies Act. In considering when a personal manager  
3 could engage in "casual conversations" concerning the suitability of an artist for a role or part, the  
4 Commission expressed that it is not enough that the talent agent grants overall permission for the  
5 manager to seek employment. The agent must advise the manager or request the manager's activity  
6 for each and every submission. At the very minimum an agent must be aware of the manager's  
7 procurement activity.(Commission Report pp. 10-12). By knowingly making submissions on  
8 petitioner's behalf without being requested to do so by petitioner's licensed talent agent, respondents  
9 were clearly acting as unlicensed talent agents in violation of the Act.

10 Respondents have also failed to present any evidence that their employment procurement  
11 activities on behalf of petitioner were done **in conjunction with a licensed talent agent**. In fact, the  
12 evidence indicates just the opposite. Significantly, it was undisputed that respondents sent the  
13 screenplay petitioner wrote based on her one-woman show to numerous production companies,  
14 negotiated modifications to petitioner's contract with MPH Entertainment to produce *My Big Fat*  
15 *Greek Wedding* and were instrumental in maintaining PLAYTONE Pictures' interest in producing the  
16 movie, all *without working in conjunction with a licensed talent agent*. Petitioner's licensed talent  
17 agent at the time, John Kelly, testified that his role in getting *My Big Fat Greek Wedding* was limited  
18 to counseling petitioner during pre-production and production of the movie. This can only mean that  
19 respondent Rick Siegel's active role in getting the movie made was done alone and not in conjunction  
20 with a licensed talent agent as required by the Act.

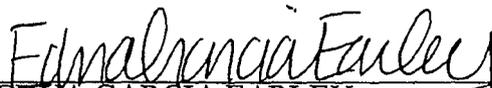
21 Respondents have not met their burden of proof showing they are exempt from the  
22 prohibitions of the law under the provisions of Labor Code section 1700.44(d).

23 5. In conclusion, it is clear that respondents violated Labor Code section 1700.5, in that  
24 they engaged in and carried on the occupation of a talent agency without first procuring a license  
25 therefor from the Labor Commissioner. Consequently, the verbal agreement entered into between  
26 petitioner and respondents in or about November 1997, is void *ab initio* and is unenforceable for all  
27 purposes.

**ORDER**

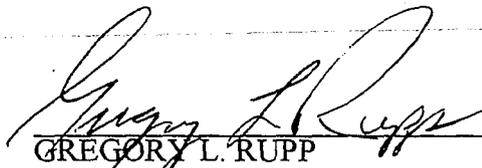
For the above-stated reasons, IT IS HEREBY ORDERED that the 1997 oral contract between Petitioner NIA VARDALOS and Respondents RICHARD SIEGEL, an individual and MARATHON ENTERTAINMENT, INC., a California corporation, is unlawful and void *ab initio*. Petitioner NIA VARDALOS has no liability thereon to Respondents RICHARD SIEGEL, an individual and MARATHON ENTERTAINMENT, INC., a California corporation and respondents RICHARD SIEGEL, an individual and MARATHON ENTERTAINMENT, INC., a California corporation have no rights or privileges thereunder.

Dated: 1/14/04

  
EDNA GARCIA EARLEY  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 1-14-04

  
GREGORY L. RUPP  
Acting Deputy Chief Labor Commissioner

