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7
8 BEFORE THE LABOR COMMISSIONER
9 STATE OF CALIFORNIA

10
11 DAVID SHAUGHNESSY, an individual;) No. TAC 24-03
DNA ENTERPRISES, INC., a California)
12 corporation)
13)
Petitioners,)
14)
vs.)
15 ARTISTS AGENCY, INC., a New York) DETERMINATION OF
corporation,) CONTROVERSY
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 May 27, 2004, in San Francisco, California, before the
21 Labor Commissioner's undersigned hearing officer. Petitioners
22 were represented by Robert Heller, and Respondent was represented
23 by Lawrence C. Hinkle II. Based on the evidence presented at
24 this hearing and on the papers on file in this matter, the Labor
25 Commissioner hereby adopts the following decision.

26 FINDINGS OF FACT

27 1. ARTISTS AGENCY, INC. (hereinafter "AAI" OR "Respondent")
28 was most recently licensed as a talent agency by the State Labor

1 Commissioner from August 8, 2000 to February 26, 2001. Following
2 expiration of its license on February 26, 2001, it was not
3 licensed at any time by the Labor Commissioner. It first became
4 licensed by the Labor Commissioner on November 30, 1988, and
5 applied for and obtained annual renewals of its license over the
6 next 12 years. It was licensed at all times from November 30,
7 1988 to February 26, 2001, except for gaps in licensure from
8 April 15 to August 25, 1999 and February 27 to August 8, 2000.
9 AAI specialized in the representation of writers, directors and
10 producers. At all times while licensed, AAI maintained an office
11 in Los Angeles, California. Application forms that were filed
12 with the Labor Commissioner by AAI show that Jonathan Russo was
13 AAI's president.

14 2. DAVID SHAGNESSY has resided in California since 1986.
15 Prior to that, he lived in England and worked as an actor and
16 director in theater. After moving to California, he was employed
17 as an actor in movies and television series, did voice-overs, and
18 occasionally, directed theatrical productions. By the late
19 1980's, Shaugnessy became interested in obtaining work as a
20 producer and/or director for a daytime television show. At this
21 time, Shaugnessy's wife was working as a television writer, and
22 she was represented by Jonathan Russo of AAI. Shaugnessy met
23 with Russo to see if AAI would represent him in order to obtain
24 employment for a job as a daytime television producer and/or
25 director. Shaugnessy and Russo entered into an oral agreement
26 whereby AAI would serve as Shaugnessy's talent agency, and would
27 attempt to obtain employment and negotiate the terms of
28 employment for Shaugnessy, for which Shaugnessy would pay

1 commissions to AAI in the amount of 10% of his earnings.

2 3. DNA ENTERPRISES, INC. ("DNA") is a loan-out company for
3 Shaugnessy's services. It was established in 1991, and since
4 that time, agreements under which a production company contracted
5 for Shaugnessy's services specified that Shaugnessy's services
6 were provided through DNA. Under such agreements, the production
7 company would show payments made to DNA for Shaugnessy's
8 services, and Shaugnessy would be paid as an employee of DNA.

9 4. In 1990, a friend of Shaugnessy introduced him to the
10 executive producer of 'The Young and the Restless,' a daytime
11 soap opera. A few months later, the executive producer
12 telephoned Shaugnessy, told him the producer was leaving the
13 show, and asked if he wanted to join the show as the producer.
14 Shaugnessy asked Russo to negotiate the deal for employment as a
15 producer on the show, and after several weeks of negotiations
16 between Russo and the production company, CPT Holdings, Inc.
17 ("CPT"), Shaugnessy signed a contract for employment as the
18 producer and director for The Young and the Restless.

19 5. As a producer and director for this soap opera,
20 Shaugnessy supervised all creative aspects of the show, making
21 decisions which takes to use, directed actors on how to perform
22 their roles, told directors of photography or lighting how to
23 shoot or light scenes, and made a myriad of creative choices on a
24 day-to-day basis.

25 6. In 1994, 1997 and 2000, Shaugnessy signed renewal
26 agreements with CPT, extending his employment as the producer and
27 director of The Young and the Restless. Each of these renewal
28 agreements was negotiated by Russo/AAI, and it took about 2 or 3

1 weeks for Russo to negotiate each of these renewal agreements.

2 7. In late 2001, the executive producer of The Young and
3 The Restless left the show. Shaugnessy was asked if he wanted to
4 take over as the executive producer. He contacted Russo, and
5 around November 2001, Russo/AAI began negotiations with CPT
6 leading to an agreement, 4 or 5 weeks later, between
7 Shaugnessy/DNA and CPT under which Shaugnessy became the show's
8 executive producer. The agreement had a one year term, starting
9 November 26, 2001, with three additional years of successive one
10 year option periods, with each option to renew automatically
11 unless notice was given of intent not to renew. Shaugnessy was
12 to receive compensation at the rate of \$21,615 per week for the
13 first year, with specified increases for following option
14 periods. As noted above, AAI's last talent agency license
15 expired in February 2001, so at the time it negotiated this
16 employment agreement on behalf of Shaugnessy, AAI was unlicensed.

17 8. By letter dated October 22, 2003, CPT declined to renew
18 its second of three options for Shaugnessy's services, so his
19 employment agreement with CPT terminated at the conclusion of the
20 first option year.

21 9. At all times relevant herein, The Young and The Restless
22 was produced and filmed in the Los Angeles area. Every
23 employment agreement that AAI had negotiated for Shaugnessy was
24 for employment in California.

25 10. As executive director, Shaugnessy had final say in the
26 show's creative issues, including decisions about how scenes
27 should be acted and filmed, how voice overs and music should be
28 used, whether changes should be made to scripts, etc. Only 5% of

1 Shaughnessy's work as executive producer consisted of
2 "administrative" matters, while 95% of his work involved creative
3 issues.

4 11. Relations soured between Shaughnessy and AAI in late
5 2002, with Shaughnessy becoming increasingly concerned that AAI
6 was not acting in his best interests in dealings with CPT over
7 various production issues, based on AAI's concurrent
8 representation of two of the show's writers. These concerns lead
9 Shaughnessy, through his attorneys, to send written notice to AAI
10 on December 23, 2002, terminating AAI's services as his talent
11 agency effective November 30, 2002.

12 12. Prior to terminating AAI's services, Shaughnessy had
13 been paying AAI its 10% commissions on his earnings in connection
14 with The Young and The Restless. With his termination of AAI,
15 Shaughnessy stopped paying these commissions. On April 16, 2003,
16 AAI filed a lawsuit in the Los Angeles County Superior Court
17 against Shaughnessy and DNA for unpaid commissions, asserting
18 causes of action for breach of contract, quantum meruit,
19 declaratory relief and an accounting. On June 6, 2003 Shaughnessy
20 and DNA filed a demurrer to the complaint, asserting that the
21 action should be abated pending the exhaustion of remedies before
22 the State Labor Commissioner, and that since AAI was not licensed
23 at the time it negotiated the employment agreement at issue, it
24 is not entitled to any of the relief sought by the complaint. On
25 June 9, 2003, Shaughnessy and DNA filed the instant petition to
26 determine controversy with the State Labor Commissioner, seeking
27 a determination that the agency agreement between petitioners and
28 AAI is illegal and void under the Talent Agencies Act due to

1 AAI's failure to hold a talent agency license as required under
2 California law, that Shaughnessy and DNA do not owe any further
3 commissions to AAI under this agreement, and that commissions
4 previously paid to AAI under this agreement be disgorged. In
5 early July 2003, AAI filed a dismissal without prejudice of its
6 California lawsuit against Shaughnessy and DNA; however, on
7 September 17, 2003, AAI filed a lawsuit in New York against
8 Shaughnessy and DNA under the same theories and seeking the same
9 relief as set out in the dismissed California lawsuit. This
10 action was removed to the United States district court for the
11 Southern District of New York, where it is now pending.

12 13. During the one year period prior to the filing of the
13 petition to determine controversy, Shaughnessy paid a total of
14 \$55,687.50 in commissions to AAI, during which time AAI was not
15 licensed as a talent agency.

16 LEGAL ANALYSIS

17 1. Shaughnessy is an "artist" within the meaning of Labor
18 Code section 1700.4(b). AAI is a "talent agency" within the
19 meaning of Labor Code section 1700.4(a).

20 2. The negotiation of an employment agreement for artistic
21 services is an activity that falls within the scope of "procuring
22 . . . employment for an artist" as the term "procuring" is used
23 in Labor Code §1700.4(a). By continuing to operate as a talent
24 agency after the expiration of its license on February 26, 2001,
25 and in particular, by negotiating the contract in November 2001
26 under which Shaughnessy became the executive producer of The
27 Young and The Restless, AAI violated Labor Code section 1700.5,
28 which prohibits persons from engaging in the occupation of a

1 talent agency without holding a valid license therefor.

2 3. An agreement that violates the licensing requirement of
3 the Talent Agencies Act is illegal and unenforceable. "Since the
4 clear object of the Act is to prevent improper persons from
5 becoming [talent agents] and to regulate such activity for the
6 protection of the public, a contract between an unlicensed
7 [agent] and an artist is void." *Buchwald v. Superior Court*
8 (1967) 254 Cal.App.2d 347, 351. Having determined that a person
9 or business entity procured, promised or attempted to procure
10 employment for an artist without the requisite talent agency
11 license, "the [Labor] Commissioner may declare the contract
12 [between the unlicensed agent and the artist] void and
13 unenforceable as involving the services of an unlicensed person
14 in violation of the Act." *Styne v. Stevens* (2001) 26 Cal.4th 42,
15 55. "[A]n agreement that violates the licensing requirement is
16 illegal and unenforceable" *Waisbren v. Peppercorn*
17 *Productions, Inc.* (1995) 41 Cal.App.4th 246, 262. Moreover, the
18 artist that is party to such an agreement may seek disgorgement
19 of amounts paid pursuant to the agreement, and "may . . . [be]
20 entitle[d] . . . to restitution of all fees paid the agent."
21 *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. This remedy of
22 restitution is, of course, subject to the one year limitations
23 period set out at Labor Code §1700.44(c).

24 4. At the hearing, Respondent's attorney argued that the
25 Labor Commissioner should exercise its discretion to allow AAI to
26 keep the commissions that it received in the one year period
27 prior to the filing of the petition to determine controversy.
28 Though the Labor Commissioner may have such discretion, based

1 upon exceptional facts, to refuse to impose this standard remedy,
2 we can see no reason for doing so under the facts herein. The
3 Talent Agencies Act is remedial legislation that is designed to
4 protect artists. Allowing an unlicensed talent agency to keep
5 commissions that were paid to it under a void agency agreement
6 would not further the remedial purposes of this legislation, and
7 would fail to serve as a disincentive to others to prevent
8 violations of the Act. Here not only did AAI violate the Act by
9 negotiating the November 2001 employment agreement when it was
10 not licensed to do so; it compounded this violation by trying to
11 enforce its purported right to payment of commissions under its
12 void agency agreement -- first by filing a lawsuit in California,
13 then by filing a lawsuit in New York, forcing the petitioners to
14 retain counsel in both states to oppose AAI's claims for
15 commissions for which it has no legal entitlement under
16 California law.

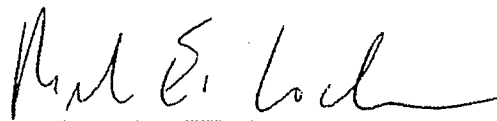
17 ORDER

18 For the reasons set forth above, IT IS HEREBY ORDERED that:

19 1. Upon the expiration of AAI's most recent license as a
20 talent agency, on February 26, 2001, AAI's agreement to serve as
21 Shaughnessy's talent agency became void and unenforceable, and as
22 a consequence, AAI has no right to commissions or any other
23 payments from Shaughnessy or DNA as to any employment agreements
24 negotiated or otherwise procured by AAI at any time after
25 February 26, 2001. Specifically, AAI has no right to payment of
26 any further commissions on petitioners' earnings under the
27 November 2001 contract for Shaughnessy's services as executive
28 producer for The Young and The Restless; and,

1 2. AAI shall disgorge the \$55,687.50 in commissions that it
2 received from petitioners during the one year period preceding
3 the filing of this petition, and pay that amount to petitioners
4 with interest at 10% per annum from the date of the filing of the
5 petition.

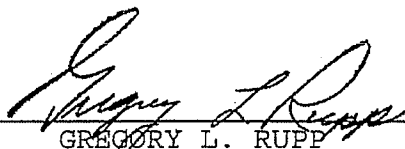
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7 Dated: 6/7/04



MILES E. LOCKER
Attorney for the Labor Commissioner

9
10 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

11
12
13 Dated: 6-11-4



GREGORY L. RUPP
Acting Deputy Chief Labor Commissioner

