

1 MILES E. LOCKER, CSB #103510
DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
State of California
3 455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
4 Telephone: (415) 703-4863
Facsimile: (415) 703-4806
5 Attorney for the Labor Commissioner
6
7

8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10
11 RAY LEONARD, an individual,) No. TAC 23-04
Petitioner,)
12 vs.) DETERMINATION OF CONTROVERSY
13 BJORN REBNEY, an individual,)
Respondent.)
14
15
16

17 The above-captioned matter, a petition to determine
18 controversy under Labor Code §1700.4, came on regularly for
19 hearing on October 19, 2004, in Los Angeles, California, before
20 the Labor Commissioner's undersigned hearing officer. Petitioner
21 was represented by Howard Weitzman and Michael A. Firestein; and
22 Respondent was represented by Hillel Chodos and Jonathan P.
23 Chodos. Based on the evidence presented at this hearing, the
24 Labor Commissioner hereby adopts the following decision.

25 PROCEDURAL BACKGROUND

26 On or about May 17, 2004, respondent herein, BJORN REBNEY
27 (hereinafter "Rebney") filed a Complaint against petitioner
28 herein, RAY LEONARD aka SUGAR RAY LEONARD (hereinafter "Leonard"),

1 seeking damages for alleged breach of contract, intentional breach
2 of fiduciary duty, and indemnification. The Complaint alleges,
3 inter alia, that in 1999, Leonard and Rebney made an oral
4 agreement to form a joint venture or partnership focused on boxing
5 promotion, with the partnership owned primarily by Leonard and
6 Rebney. This agreement was later memorialized in a written
7 agreement that organized Sugar Ray Leonard Boxing LLC. The
8 Complaint further alleges that in 2004, Rebney began to pursue
9 negotiations with Fox Television Network for Sugar Ray Leonard
10 Boxing LLC to produce a boxing reality television show hosted by
11 Leonard to compete with an NBC show called "The Contender."
12 Finally, the Complaint alleges that the producers of "The
13 Contender" approached Leonard in March 2004 to offer him a role on
14 "The Contender," and induced him to breach his partnership
15 agreement with Rebney and terminate his relationship with Sugar
16 Ray Leonard Boxing LLC.

17 This petition to determine controversy was filed on July 19,
18 2004. By this petition, Leonard presents an affirmative defense
19 to the Complaint that must be heard and decided by the Labor
20 Commissioner. (See *Styne v. Stevens* (2001) 26 Cal.4th 42.) The
21 petition alleges that any agreements between Rebney and Leonard
22 are void and unenforceable because Rebney acted as an unlicensed
23 talent agent by procuring, offering, promising or attempting to
24 procure employment for Leonard as an artist within the meaning of
25 the Talent Agencies Act (Labor Code §1700, et seq.); that these
26 agreements are a subterfuge and fraudulent device designed to
27 circumvent the Act's prohibition against procurement activities by
28 unlicensed persons; and that as a consequence, Rebney has no

1 enforceable claim for recovering commissions or any other
2 compensation from Leonard.

3 Respondent Rebney filed an answer to the petition to
4 determine controversy, contending that Rebney did not procure or
5 attempt to procure employment for Leonard, that because the
6 respondent did not violate the Talent Agencies Act the Act does
7 not apply, and therefore, that the Labor Commissioner does not
8 have jurisdiction over the parties' dispute.

9 FINDINGS OF FACT

10 1. Petitioner RAY CHARLES LEONARD, professionally known as
11 SUGAR RAY LEONARD, is a world-famous former boxing champion.
12 Since his retirement from boxing, Leonard has sought to use his
13 celebrity to derive income from making product endorsements,
14 appearing in advertisements or infomercials, making live or
15 televised public appearances, making motivational speeches, and
16 the like.

17 2. Respondent BJORN REBNEY is a licensed attorney in
18 California. He has never been licensed by the California Labor
19 Commissioner as a talent agent. Beginning around 1996, Rebney
20 began working for Leonard, soliciting and negotiating deals for
21 Leonard to give motivational speeches, make product endorsements,
22 and make personal appearances, for which Rebney received a
23 percentage of Leonard's compensation as commission. Rebney also
24 handled various legal matters for Leonard. He later became
25 Leonard's business partner in a joint venture to promote boxing.

26 3. Leonard and Rebney were parties in a prior matter heard
27 by the Labor Commissioner, *Leonard & Rebney vs. Ersoff* (TAC 25-
28 01). In that case, we concluded that the various agreements at

1 issue between Ersoff and Leonard and between Ersoff and Rebney
2 were unlawful and void *ab initio* because Ersoff and Rebney acted
3 as unlicensed talent agents by procuring or attempting to procure
4 employment for Leonard as an artist within the meaning of the
5 Talent Agencies Act. In this proceeding, Rebney admitted to
6 procuring speaking engagements for Leonard and receiving
7 commissions on fees Leonard was paid for those engagements in the
8 late 1990's. However, that conduct and those agreements are not
9 at issue in this proceeding, which focuses exclusively on the
10 subsequent activities and agreements discussed hereinbelow.

11 4. Initially, Rebney and Leonard orally agreed to form a
12 partnership to promote boxing. This joint partnership was called
13 Sugar Ray Leonard Boxing. In or around 2001, the partnership was
14 organized as a limited liability company called Sugar Ray Leonard
15 Boxing LLC (hereinafter "the LLC" or "the boxing promotion
16 company"). A written operating agreement was later executed for
17 the LLC. Leonard owned a majority interest of the LLC,
18 approximately 54%, and Rebney owned approximately 46% of the
19 company. The purpose of the business was to promote boxing around
20 the country and to orchestrate boxing matches. The LLC's
21 operations included contracting with boxing venues to stage
22 matches, negotiating with and contracting television networks to
23 televise events, negotiating with boxing managers to pay boxers to
24 fight in matches, and publicizing boxing events. The boxing
25 promotion company and Leonard and Rebney held licenses to promote
26 boxing in approximately 15-16 states and Indian reservations.

27 5. When Rebney and Leonard formed the boxing promoting
28 company, each contributed equal amounts of money to the company

1 for administrative costs. Leonard was the guarantor on a company
2 American Express credit card. After Leonard and Rebney
3 constructed a business plan for the company, an investor
4 contributed investment capital which allowed the company to
5 function without further contribution from either partner. After
6 the LLC began promoting events, revenue generated from the license
7 fees paid by the broadcasting networks to the boxing promotion
8 company as well as fees from the venues went back to the company.
9 Neither Leonard nor Rebney received personal payment for any of
10 their activities on events promoted by the LLC. To the extent
11 that Leonard or Rebney enjoyed any benefit from their work with
12 the events, it was through the LLC's receipt of proceeds from
13 events. Additionally, when Leonard and Rebney reduced their
14 business agreement to writing, they engaged the services of
15 counsel to write an LLC agreement. The boxing promotion company
16 paid the legal fees for the drafting of the agreement, not Leonard
17 or Rebney individually.¹

18 6. From 2001 until 2004, the LLC promoted over 36 televised
19 boxing events as part of a deal with the ESPN television network.
20 The LLC also promoted or co-promoted events televised on other
21 networks, and promoted a number of non-televvised boxing events.
22

23 ¹ Leonard's testimony contradicted that of Rebney on this
24 point. We find Rebney's account of how the LLC paid the legal
25 fees for the drafting of the agreement to be more believable.
26 Leonard's testimony that the LLC, not Leonard personally, paid the
27 bills for a moving company, plane tickets, and company charge
28 accounts is inconsistent with his testimony that he paid 85% of
the legal fees for the drafting of the LLC agreement. In
addition, Leonard changed his testimony on this issue, initially
saying that the LLC paid for the fees, and then contending that
the bill was split 85-15, with him paying 85% and Rebney paying
15%.

1 Rebney was President and CEO of the boxing promotion company, and
2 handled the planning, management, and business activities of the
3 venture. Leonard used his celebrity and image as a former boxing
4 champion to promote boxing events staged by the LLC by working
5 with venues to generate publicity for events. Leonard was
6 involved in the LLC's promotion of every event that was televised
7 on ESPN.

8 7. In late 2003, Rebney and Leonard learned of a boxing
9 reality show called "The Contender" being developed for NBC by
10 Mark Burnett, Jeffrey Katzenberg, Sylvester Stallone and Jeff
11 Wald. Rebney saw an opportunity for the boxing promotion company
12 to pursue a similar deal to produce a boxing reality show on
13 another network to compete with "The Contender," and began to
14 pursue that opportunity with the Fox network. In his testimony,
15 Rebney maintained that over the course of a three-month period, he
16 and Leonard had detailed conversations of what such a reality show
17 would consist of and the role their boxing promotion company would
18 play in such a show. Leonard and Rebney had two meetings with
19 Brillstein-Grey, a management agency, to discuss how a potential
20 show would be produced and to receive assistance in pitching an
21 idea for a show to Fox.

22 8. As any boxing reality show would stage matches, the show's
23 producers would have to comply with boxing regulations and use a
24 licensed boxing promoter. The advantage the LLC had in pitching
25 the show to Fox over other competitors trying to sell similar
26 shows was that Rebney and Leonard already had a licensed boxing
27 promotion organization in place, the LLC, to promote the fights on
28 the reality show. Rebney believed that the reality show would be

1 a duplication of what the LLC had done on ESPN. Rebney understood
2 that Leonard would play some role in the show, but according to
3 Rebney, discussions and negotiations hadn't gotten far enough to
4 determine the extent of the role Leonard would play, or whether he
5 would appear on camera as a host of the show.²

6 9. In March 2004, Rebney, Leonard and representatives from
7 Brillstein-Grey had a meeting scheduled with Fox executives to
8 pitch their idea for the boxing reality show. Some days before
9 that meeting was to occur, Leonard met with Mark Burnett, Jeffrey
10 Katzenberg, Sylvester Stallone, and Jeff Wald at his home. At
11 that meeting, the four men offered Leonard a role as an on-camera
12 host for "The Contender." As a condition of the deal, the
13 producers told Leonard that he would have to dissolve the boxing
14 promotion company with Rebney because there was a conflict between
15 Leonard being a boxing promoter and an on-air host. Leonard
16 accepted the offer to be a co-host with Sylvester Stallone on "The
17 Contender," and the next day informed Rebney that he had accepted
18 the offer and was shutting down the boxing promotion company.

19 LEGAL ANALYSIS

20 Labor Code §1700.4(b) defines "artists" as "actors and
21 actresses rendering services on the legitimate stage and in the
22

23 ² Leonard's testimony contradicts Rebney's statements
24 regarding the proposed boxing reality show. According to Leonard,
25 he never had a clear understanding of what the concept of the
26 reality show would be if it went forward, and he thought the show
27 would be separate from the boxing promotion company. In general,
28 we find Rebney to be a more credible witness than Leonard on this
issue, and faced with these two conflicting accounts of this
transaction, we credit Rebney's testimony over that of Leonard.
Leonard's professions of ignorance of his business partner's
attempts to develop a reality show to pitch to Fox are
disingenuous at best, given his involvement and stake in all of
the LLC's previous ventures.

1 production of motion pictures, radio artists, musical artists,
2 musical organizations, directors of legitimate stage, motion
3 picture and radio productions, musical directors, writers,
4 cinematographers, composers, lyricists, arrangers, models, and
5 other artists and persons rendering professional services in
6 motion picture, theatrical, radio, television, and other
7 entertainment enterprises." Leonard testified that he understood
8 his role on any television boxing reality show to be that of an
9 on-air host. Although Rebney testified that Leonard's role on the
10 LLC's potential show was unclear, he did state that the show would
11 be using Leonard's name, ostensibly for publicity and marketing.
12 In light of Leonard's fame and well-known persona as a former
13 boxing champion, it is reasonable to conclude that Leonard would
14 have appeared on the show being pitched to Fox in some capacity.
15 Therefore, we conclude that Leonard is an "artist" within the
16 meaning of Labor Code section 1700.4(b) in connection with his
17 role on the proposed reality boxing show.

18 At all times relevant herein, Rebney was not licensed as a
19 talent agency. Labor Code §1700.5 provides that "no person shall
20 engage in or carry on the occupation of a talent agency without
21 first procuring a license therefor from the Labor Commissioner."
22 Labor Code §1700.4(a) defines the term "talent agency" as "a
23 person or corporation who engages in the occupation of procuring,
24 offering, promising or attempting to procure employment or
25 engagements for an artist or artists, except that the activities
26 of procuring, offering or promising to procure recording contracts
27 for an artist or artists shall not of itself subject a person or
28 corporation to regulation and licensing."

1 The legislative history makes clear that the intent of the
2 Act was to protect artists in their capacities as artists, and to
3 regulate persons who procure artistic employment for artists. The
4 "purpose [of the Act] is to protect artists seeking professional
5 employment from the abuses of talent agencies." *Styne v. Stevens*
6 (2001) 26 Cal.4th 42, 50. The "Act's definition of a talent
7 agency is narrowly focused on efforts to secure professional
8 'employment or engagements' for an 'artist or artists.' (§1700.4,
9 subd. (a).) Thus, it does not cover...assistance in an artist's
10 business transactions other than professional employment." *Ibid*,
11 at 50-51.

12 Leonard's case boils down to the allegation that Rebney
13 attempted to procure employment for Leonard, within the meaning of
14 Labor Code §1700.4(a), by negotiating with Fox to create a boxing
15 reality show in which Leonard would appear as the on-air host, and
16 thereby violated the Act by not being licensed as a talent agent
17 in accordance with Labor Code section 1700.5. However, evidence
18 was presented that the LLC was to play a substantial role as the
19 promoter and/or producer of the potential Fox boxing reality show.
20 The majority owner of the LLC was Leonard, who owned approximately
21 54% of the company, and Rebney was a member of the LLC, holding
22 approximately 46%. By working on the proposal for a boxing
23 reality show for Fox, Rebney was acting within the scope of his
24 authority as a member of the LLC to obtain a role for the LLC in
25 the production of the show. A talent agent is an independent
26 entity, separate from the artist and the third party from whom the
27 artist seeks work. Here, Rebney was not an independent entity
28 acting as an agent to procure employment for Leonard, rather, he

1 was acting on behalf of the LLC in which both he and Leonard were
2 members. To the extent that it was contemplated or intended that
3 Leonard would appear on the proposed show as an on-air host, the
4 LLC was in essence the vehicle through which Leonard was trying to
5 obtain work for himself.

6 Leonard argues that the LLC agreements are a subterfuge
7 designed to circumvent the Act's prohibition against procurement
8 activities by unlicensed persons. If the LLC was in fact a
9 subterfuge, Rebney's actions in creating a boxing reality show
10 featuring Leonard would implicate the Act. However, this
11 situation is distinguishable from prior cases where we have found
12 business enterprises to be fraudulent devices designed to evade
13 the Act's requirements. In *Sevano v. Artistic Productions, Inc.*
14 (TAC 8-93), the agent was an executive vice president in the
15 artist's loan out corporation. The sole purpose of the loan out
16 corporation was to act as a contracting party with third party
17 employers, and the sole purpose of the agent as the "executive
18 vice president" was to procure work for the artist. The agent's
19 position as an officer of the loan out corporation was a
20 subterfuge to avoid the Act's licensing requirement. Similarly,
21 in *Humes v. MarGil Ventures, Inc.*, (1985) 174 Cal.App.3d 486, the
22 court noted that the Labor Commissioner found that a "theatrical
23 production company" formed by an artist and her agent was a
24 production company in name only, as the venture did not produce
25 anything and solely functioned as a loan out company for the
26 artist's services. Therefore, the Labor Commissioner concluded
27 that the agent's procurement activities violated the Act.

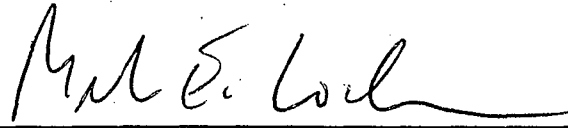
28 Here, there was no evidence presented that the LLC functioned

1 as anything but a boxing promotion company. Over the three year
2 period following its inception, the LLC had promoted over 36
3 televised boxing events and numerous non-televised events. There
4 is no evidence that the LLC ever obtained any employment for
5 Leonard as an artist for a third party employer, or ever attempted
6 to do so, except in connection with Leonard's possible role as the
7 host of the proposed Fox boxing reality show. The LLC cannot even
8 remotely be compared to the *Artistic Productions* loan out company,
9 or to *MarGil's* completely phony "production company." We conclude
10 that the LLC was not a subterfuge designed to circumvent the Act's
11 licensing requirements, but rather, functioned as a legitimate
12 business entity in which Leonard himself held a majority ownership
13 interest, so that Rebney's efforts in connection with the proposed
14 boxing reality show did not implicate the Talent Agencies Act.

15 ORDER

16 For the reasons set forth above, the petition to determine
17 controversy is hereby DISMISSED on the ground that Petitioner
18 failed to present evidence that Respondent engaged in the
19 occupation of a talent agency, within the meaning of Labor Code
20 §1700.4(a), so as to require licensure under Labor Code §1700.5.

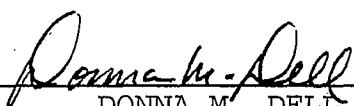
21
22 Dated: 6/21/05



MILES E. LOCKER
Attorney for the Labor Commissioner

23
24
25 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

26
27 Dated: JULY 1, 2005



DONNA M. DELL
State Labor Commissioner

