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Department of Industrial Relations
Division of Labor Standards Enforcement
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BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

JAMIE JONES, an individual, DELIOUS KENNEDY, an individual, TONY BOROWIAK, an individual, and ALFRED NEVAREZ, an individual, Petitioners, vs. THE LA RODA GROUP, a California Corporation, BARRETT LA RODA, an individual, and HAROLD HARAMAN, an individual, and DOES 1 through 10, inclusive, Respondents.	CASE NO. TAC 35-04 **DETERMINATION OF CONTROVERSY**

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on July 21, 2005 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioners JAMIE JONES, an individual, DELIOUS KENNEDY, an individual, TONY BOROWIAK, an individual, and ALFRED NEVAREZ, an individual, (hereinafter, collectively referred to

as "petitioners"), appeared and were represented by Attorneys Gary L. Zimmerman and Todd S. Eagan of Zimmerman, Rosenfeld, Gersh & Leeds LLP. Respondents THE LA RODA GROUP, INC. a California Corporation, BARRETT LA RODA, an individual, and HAROLD HARAMAN, an individual, (hereinafter, collectively referred to as "respondents"), appeared and were represented by Attorney Kenneth D. Freundlich of Schleimer & Freundlich, LLP.

Based on the evidence presented at this hearing and on the other papers on file in this matter, including the closing briefs submitted by the parties on August 4, 2005, the Labor Commissioner hereby adopts the following decision.

FINDINGS OF FACT

1. Petitioners are singers, songwriters and performers professionally known as "ALL 4 ONE", a Grammy-award winning music act.

2. Respondent Barrett La Roda, (hereinafter, also referred to as "respondent LA RODA"), has worked in the entertainment industry for over eighteen years and is the President of The La Roda Group, Inc. Respondent Harold Haraman, (hereinafter, also referred to as "respondent Haraman"), has worked with The La Roda Group, Inc. for six years, on a consulting basis.

3. None of the respondents are or have ever been licensed as talent agents by the State of California.

4. In early 2002, petitioners entered into an oral agreement with respondents wherein respondents agreed to act as petitioners' managers in exchange for which petitioners agreed to pay respondents a commission equal to twenty percent (20%) of their gross earnings and promised to reimburse respondents for all reasonable expenses incurred by respondents on petitioners' behalf.

5. During one of the first meetings between the parties, petitioners expressed to respondents their desire to tour again. In response, respondent LA RODA informed them

that he had been in the industry a long time and had lots of contacts and wouldn't have any trouble getting them any "gigs". He also informed petitioners that he envisioned the band doing a minimum of 300 "gigs" a year.

6. Prior to being represented by respondents, petitioners were represented by Booking Agent Terry Rindal of POW, Inc.

7. During the period of 2002 through June 2004 respondents were involved in either soliciting and procuring or negotiating at least a dozen engagements for petitioners. Respondent LA RODA's testimony that he only acted as a manager for the band is not credible nor is it supported by the evidence presented at this hearing. Likewise, respondent HARAMON's testimony that his role was only of a road/tour manager is also not supported by the evidence. Respondents solicited, procured and/or negotiated the following engagements on behalf of petitioners:

A. Royal Carribean Cruise (June 2002)

Petitioners performed on the Royal Carribean Cruise line in June, 2002. Petitioner Kennedy was contacted by a friend who worked for Royal Carribean Cruises. The friend notified him of an opportunity to perform on the ship. Petitioners referred the friend to their booking agent POW, Inc. to negotiate the deal. However, due to the deteriorating relationship between petitioners and POW, Inc., POW, Inc. failed to return any of Royal Carribean's calls and almost lost the opportunity for the band. Having just obtained respondents as their managers, petitioners then referred Royal Carribean's booking agent to respondents to finalize the engagement. Respondents attempted to negotiate a higher fee for petitioners and consequently, almost cost petitioners the opportunity. When petitioners learned that respondents were trying to negotiate a higher fee, petitioners informed respondents that they had already agreed on the lower fee.

Respondents claimed they did not have any involvement in the negotiation, procurement or solicitation of this event and that POW, Inc. was responsible for setting it up.

However, petitioners had already terminated their relationship with POW, Inc. when this event was finalized. And, since there was no other booking agent involved, the only way it could have been finalized, is through the efforts of respondents. This conclusion is supported by respondent LA RODA's testimony. Specifically, respondent LA RODA testified that he took care of signing the contracts for performances on behalf of petitioners because petitioners delegated this duty to him so they could focus on being artists.

B. NFL Hall of Fame (August, 2002), Charity Appearance (November, 2002), and Radio Station Appearance on the Delilah Show (March 2003), Grand Rapids, Michigan Radio Show (December, 2003), and Miss Vietnamese USA Beauty Pageant, Orange County (December, 2003).

Respondents testified that the foregoing appearances were procured by petitioners' record label, AMC. However, when petitioners and respondents commenced their relationship in early 2002, respondents presented petitioners with an overview of their goals for the band and each of the individual members. The very first goal listed for the band was to dissolve the AMC record deal based on petitioners' dissatisfaction and inability to communicate with AMC. While respondents produced a letter they sent to AMC on July 12, 2002 complaining about radio performances that AMC had been setting up, there is no mention in the letter of any future radio performances. In fact, the tone of the remainder of the letter demonstrates the deterioration of petitioners' relationship with AMC. Moreover, petitioners entered into a deal with a new record label, 2KSounds Inc., commencing on January 1, 2003. Thus, given petitioners' deteriorating relationship with AMC and their new contract with 2KSounds, Inc., it is unlikely that AMC would have been procuring engagements for the band in late 2002 and 2003.

Rather, the credible testimony established that the NFL Hall of Fame event was procured through the efforts of respondent HARAMAN. This is evidenced by the fact that no agent was involved and that the Program Director for the event indicated that he had been

dealing directly with respondent HARAMAN and expressed how much he liked him. Likewise, petitioners testified that they also learned of the Delilah radio show through respondent HARAMAN.

The evidence supports that the Grand Rapids, Michigan and Miss Vietnamese shows were also negotiated by respondents. No booking agents were involved in these shows and no evidence was presented that petitioners' record label at the time, 2KSounds, Inc., had anything to do with setting up these engagements. Thus, it is more likely than not that respondents negotiated the terms for these engagements.

C. South African Benefit - Arts Alive (September 26, 2003)

Petitioners performed at the South African Benefit on September 26, 2003. This performance was procured by respondent LA RODA through his relationship with Zinzi Mandela, Nelson Mandela's daughter. Ms. Mandela was putting together an Arts Alive conference and after learning that respondent LA RODA represented petitioners, became interested in the band performing at the conference. Respondent LA RODA, together with Ms. Mandela, contacted petitioner Jones by telephone to discuss performing at the event.

Respondent LA RODA testified that Peter Seitz of American Talent Agency (ATA) negotiated the fee for the band and entered into a contract with Ms. Mandela for the performance. While the ATA contract was signed by Ms. Mandela and Mr. Seitz, on behalf of petitioners, respondent LA RODA's initials appear next to many of the provisions and on each page of the contract. Thus, it shows that respondent LA RODA was very much involved in negotiation of the terms of this performance.

Petitioner Jones stated that he has never met Mr. Seitz and has never authorized him or anyone else, including respondents, to sign any contracts on his or the band's behalf. Additionally, he testified that he did not even know that a talent agent was involved in this engagement until he was in South Africa.

ATA, which is based in New York, is not licensed as a talent agent in the State of

California.

D. Blue Note Cafes - Japan (October 2003)

Petitioners performed twelve shows at Blue Note Cafes located in three different cities in Japan. Respondent LA RODA testified that Yuji Fukushima of Universal Attractions, Inc. (UA) served as the talent agent for this series of performances and that Yuji set up the fee and brought it to him. The contract for this series of events was entered into between The LaRoda Group, Inc. and Masato Kiiaguchi VP. Respondent HARAMAN signed the contract on behalf of petitioners.

Petitioners testified that they never authorized respondent HARAMAN to sign on their behalf, never saw the contract he signed for this series of performances, and, like the South Africa performance, did not even learn that there was a talent agent involved until they were in Japan.

UA is not licensed as a talent agency in the State of California.

E. Angola (February 14, 2004)

Petitioners were scheduled to play one show in Angola for a fee of $20,000. However, after they performed the first show, the promoters requested a second show which the petitioners performed before heading to the airport to return to the United States. Petitioners were promised a fee of $10,000 for the second show but were only paid $2,000 prior to going on stage and another $3,000 when they returned to the United States.

Petitioners stated that they never had any contact with anyone from ATA with regards to the first show and never authorized anyone to sign a contract on their behalf for this show. Like the previous contract entered into with ATA, the Angola contract for the first show was entered into between The LaRoda Group f/s/o All-4-One and the promoter, M Group. The copy of the contract provided does not bear any signatures. However, respondent LA RODA testified that he remembered negotiating the fee for this show with ATA.

With respect to the $3,000 paid to petitioners when they returned to the United States,

respondent LA RODA testified that this money was a loan to petitioners. However, the evidence does not support this contention. It is more likely that the $3,000 in checks paid to the three band members that went to Angola, was the $3,000 respondents were able to negotiate as a settlement for the second show performed in Angola.

F. Nigeria - Mother Land Beckons Conference (May 30, 2004)

On May 30, 2004, petitioners performed at the Mother Land Beckons Conference in Nigeria. Respondent LA RODA learned of this opportunity for the band through the man who was putting the conference together and worked it out so the band would perform at the opening ceremony. Petitioners testified that they were paid by respondents who were responsible for negotiating the fee for this show. Furthermore, they testified that they were not aware of a talent agent being involved in this engagement.

Respondent LA RODA testified that he did not solicit or procure this engagement and that he only dealt with ATA regarding negotiation of the fee. As with the two previous contracts entered into with ATA, the contract for this show was entered into between The LaRoda Group f/s/o and the promoter, Mother Land Beckons. In an email dated May 12, 2004, from respondent LA RODA to petitioners, it is evident that respondent LA RODA was involved in procuring and negotiating the terms of this engagement. Respondent LA RODA writes in the email: "We are working on a paid show in Lagos Nigeria to start our trip. The show will be 3 songs to track for "Mother Land Beckons" Press conference..."

G. Asian Promotional Tour -Thailand, Korea, Malaysia and Singapore (June 2004)

Petitioners entered into a licensing deal with Korean Media Network, (KMN), which included a promotional tour to four Asian countries. A separate contract was drawn up for the promotional tour. Unlike the licensing contract which is signed by all four petitioners, the promotional tour contract is on respondents' letter head, is entered into between The LaRoda Group Inc. f/s/o/ All 4 One and COEX, the promoter, and is signed by respondent

LA RODA. Since petitioners would be on this promotional tour for approximately one month, respondents negotiated a fee for the Korea event. Petitioners were told by respondents that the fee was $20,000, however, while in Korea, they learned that respondents actually negotiated a fee of $31,500. While respondents have collected this fee, they have not turned any portion of it over to petitioners because they claim that it was agreed that the fee would be used to set off expenses incurred by respondents on behalf of petitioners. The parties terminated their relationship during this promotional tour.

Respondents claim all negotiations were done by Yuri, the talent agent for KMN. However, neither Yuri nor KMN is licensed as a talent agent in the State of California.

LEGAL ANALYSIS

1. The Talent Agencies Act, (hereinafter, referred to as "Act"), provides that "no person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." Labor Code §1700.5 "Even the incidental or occasional provision of such [procurement] services requires licensure." *Styne v. Stevens* (2001) 26 Cal.4th 42, 51.

2. Petitioners who are singers, songwriters and performers are "artists" within the meaning of Labor Code §1700.4(b).

3. Labor Code §1700.4(a) defines "talent agency" as "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter." The term "procure," as used in this statute, means "to get possession of: obtain, acquire, to cause to happen or be done: bring about." *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 628. Thus, under Labor Code §1700.4(a), "procuring employment" is not limited to initiating discussions with promoters; rather, "procurement" includes any active participation in a

communication with a potential purchaser of the artist's services aimed at obtaining employment for the artist, regardless of who initiated the communication or who finalized the deal. See *Hall v. X Management* (TAC No. 19-90).

4. Unlike a talent agent, a "personal manager" is not covered by the Act or any other statutory licensing scheme. The primary function of the personal manager is that of advising, counseling, directing and coordinating the artist in the development of the artist's career. Respondents claim that their only function was to serve as petitioners' managers. However, the evidence presented at the hearing demonstrates that respondents were more than just managers. Respondents took a very active role in procuring and/or negotiating the various engagements discussed in this decision. Respondents, however, argue that they did not procure any engagements or negotiate directly with the promoters. All negotiations were done through talent agents. In those instances where there were no talent agents, respondents claim that AMC, petitioners' former record label, set up the engagements and that they merely carried out their management duties.[1]

5. "Under certain very narrow circumstances set out at Labor Code §1700.44(d), a person who is not licensed as a talent agency may engage in limited activities that would otherwise require licensure. Section 1700.44(d) provides: 'It is not unlawful for a person or corporation which is not licensed pursuant to this chapter to act in conjunction with, and at the request of, a licensed talent agency in the negotiation of an employment contract.' This

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[1]Respondents also argue that petitioners did not meet their burden of proof in establishing that respondents were in violation of the Talent Agencies Act. We disagree. The burden of proof is found at Evidence Code §115 which states, '[e]xcept as otherwise provided by law, the burden of proof requires proof by preponderance of the evidence.' Further, *McCoy v. Board of Retirement of the County of Los Angeles Employees Retirement Association* (1986) 183 Cal.App.3d 1044 at 1051 states, "the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by preponderance of the evidence (cite omitted). '**Preponderance of the evidence' standard of proof requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence.** *In re Michael G.* 74 Cal.Rptr.2d 642, 63 Cal.App.4th 700." [Emphasis added]; See also *Robi v. Wolf*, TAC No. 29-00 at pp.6-7, *Behr v. Dauer*, TAC No. 21-00 at pp. 8-9.

exception to the general remedial license requirement must be read narrowly. The exception must be limited to the express language of the statute. Thus, the exception will only apply if the unlicensed person is acting 'in conjunction with **and** at the request of the licensed talent agency,' and the **only** covered activity that such unlicensed person may engage in consists of 'the negotiation of an employment contract.'" *Massey v. Landis* (TAC 42-03, p.11:13-26).

6. The evidence established that even though respondents did not initiate discussions with Royal Carribean, the mere fact that they attempted to negotiate a higher fee for the performance, is a violation of the Act. Similarly, while respondents' may not have initiated the talks with KMN's agent, Yuri, regarding the Asian Promotional Tour, their active participation in the negotiation of the various fees for the tour, constitutes a violation of the Act. As to the South Africa, Angola, and Nigeria shows, it is evident that respondents were responsible for soliciting and procuring those performances despite the use of ATA to draw up contracts for the events. With respect to the Blue Note Cafe performances in Japan, we believe the testimony of petitioner Jones who stated that he asked respondent LA RODA to look into setting up some performances for the band in the Asian Blue Note cafes where they had previously performed.

Respondents cannot rely on Labor Code §1700.44(d) as a defense, for several reasons. Significantly, none of the talent agents used in the engagements at issue, are licensed as talent agents in the State of California. Additionally, there is no evidence that negotiation of any of the contracts entered into between respondents on behalf of petitioners and ATA, UA or KMN, were <u>at the request of</u> or <u>in conjunction with</u> those talent agents. Rather, it appears that respondents solicited or participated in negotiation of the various engagements and then brought a talent agency into the process in order to appear as if they were complying with the requirements of the Talent Agency Act. In most cases, respondents hired talent agents unbeknownst to petitioners and without petitioners' approval. In fact, petitioners weren't even aware that respondents were signing contracts on their behalf.

Respondents' testimony regarding their authority to sign contracts on behalf of petitioners is not credible given that this was a serious issue with petitioners and their former management and was communicated to respondents at the commencement of the relationship.

In *Pamela Denise Anderson v. Robert D'Avola*, TAC No. 63-93, the respondent (manager) engaged in similar conduct as have respondents herein, although unlike this case, he did so with *licensed* talent agents. In that decision, we determined that Labor Code §1700.44(d) did not apply to any period prior to the artist's retention of a licensed talent agency. In reaching this conclusion, we stated: "This type of "hip pocket" agency arrangement is a transparent subterfuge designed solely as a means of attempting to evade the licensing requirements of the Act. To allow an unlicensed person to enter into an arrangement with a licensed talent agent for the purpose of procuring employment for an artist, when the artist is unaware of this arrangement and never gave any sort of approval to this arrangement, would create a gaping hole in the Act's licensing requirements–requirements that are designed to protect artists." *Pamela Denise Anderson v. Robert D'Avola*, TAC No. 63-93, p. 10:12-23.

Labor Code §1700.44(d) does not apply in this case since the talent agents involved in the various engagements were not California licensed talent agents. Even if they were licensed, we would come to the same conclusion we did in the *Pamela Anderson* case, as we find that respondents' use of ATA, UA and KMN in the various engagements at issue, was a subterfuge to avoid the licensing requirements of this state.

7. Given that respondents do not have a valid defense under Labor Code §1700.44(d), we find that respondents repeatedly violated the Talent Agency Act by soliciting, procuring or negotiating the terms of the various engagements at issue, without first obtaining a talent agency license from the State of California.

8. Having found that respondents acted as talent agents without the requisite license, we must necessarily conclude that the management agreement between the parties is

void *ab initio*, and that respondents have no enforceable rights thereunder. Respondents are therefore not entitled to the recovery of any commissions or expenses purportedly owed under this agreement.

ORDER

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

1. The management agreement between petitioners and respondents is void *ab initio*. Respondents have no enforceable rights under that agreement, and nothing is owed to respondents for the services they provided to petitioners pursuant to that agreement, including expenses incurred on behalf of petitioners.

2. Within 15 days of the date this decision is served, respondents shall provide petitioners with an accounting of all amounts that they collected in gross fees paid to petitioners from October 5, 2003 to October 4, 2004 and shall reimburse petitioners for all such gross fees that have not been paid out to petitioners, with interest at 10% per annum, from the date any such fees were collected, to the present.

Dated: December 30, 2005

Edna Garcia Earley
EDNA GARCIA EARLEY
Special Hearing Officer

Adopted:

Dated: 12/30/05

Robert A. Jones
ROBERT JONES
Acting State Labor Commissioner