

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

ALEX FERRER	)	Case No.: BC342454
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
ARNOLD PRESTON	)	
	)	
Defendant	)	

**FILED**  
LOS ANGELES SUPERIOR COURT  
DEC 07 2005  
JOHN A. CLARKE, CLERK  
*[Signature]*  
BY PAUL SOLIS, DEPUTY

Motion of Defendant to Compel Arbitration;  
Motion of Plaintiff for Preliminary Injunction;  
Motion to compel arbitration is denied; motion for preliminary  
injunction is granted.

This case arises from a claim for fees: Defendant Arnold M. Preston alleges that Plaintiff Alex E. Ferrer breached a written contract by failing to pay Defendant certain fees based on Plaintiff's earnings from his performance in a television program entitled "Judge Alex."

On June 10, 2005, Defendant filed an arbitration demand with the American Arbitration Association. Defendant provides a copy of the agreement on which the suit is based. Both sides acknowledge that they entered into the agreement. Paragraph 13 of the agreement provides:

1 "In the event of any dispute under or relating to the terms of this  
2 agreement, or the breach, validity, or legality thereof, it is agreed  
3 that the same shall be submitted to arbitration by the American  
4 Arbitration Association in the city of Los Angeles, California, and in  
5 accordance with the rules promulgated by the said association, and  
6 judgment upon the award rendered by the arbitrator(s), may be entered  
7 into any court having jurisdiction thereof." (Motion to Compel, Exhibit  
8 B).

9 Plaintiff moved the Arbitrator on July 1, 2005 for an order staying the  
10 arbitration pending the disposition of Plaintiff's petition to determine  
11 controversy before the Labor Commissioner. Plaintiff's motion to stay was  
12 made pursuant to Labor Code §1700.44 and §1700.45, section 12022 of the  
13 California Code of Regulations, and *Styne v. Stevens* (2001) 26 Cal.4<sup>th</sup> 42.  
14 (Motion to Compel, Exh. C).

15 Plaintiff filed a motion to stay the arbitration and a petition to  
16 determine controversy with the Labor Commissioner on July 5, 2005. This  
17 motion was premised on the same grounds as Plaintiff's motion to stay brought  
18 before the Arbitrator.

19 The Arbitrator denied Plaintiff's motion on October 12, 2005 and set  
20 the hearing on the merits for January 26, 2005, stating:

21 "Applicable authority cited by both parties acknowledges that 'the  
22 Talent Agencies Act specifically allows parties to provide in their contract  
23 that disputes thereunder shall be resolved by private arbitration, rather  
24 than by the Commissioner' (§1700.45). *Styne v. Stevenson*, 26 Cal. 4th 42, 58,  
25 fn. 9 (2001). Furthermore, the motion was predicated upon a favorable

1 resolution of disputed questions of fact which cannot be determined at this  
2 time without evidence or hearing." (Motion to Compel, Exh. D).

3 On November 2, 2005, Plaintiff filed this action against Defendant  
4 seeking (1) Declaratory Relief, and (2) Preliminary and Permanent  
5 Injunctions.

6 On November 8, 2005, the Labor Commissioner denied Plaintiff's motion  
7 to stay "on the grounds that the Labor Commissioner does not have the  
8 authority to stay arbitration proceedings. Such a motion must be made  
9 directly to the arbitrator or to the superior court." (Opposition to  
10 Preliminary Injunction, Exh. F). The Labor Commissioner also denied  
11 Defendant's motion to dismiss the case for lack of subject matter  
12 jurisdiction and scheduled a March 6, 2006 hearing on the matter, citing  
13 *Styne* and ruling that "this case presents a colorable basis for exercise of  
14 the Labor Commissioner's jurisdiction and therefore, the matter must be  
15 submitted to the Labor Commissioner for determination." (*Id.*)

16 Plaintiff moves this Court for an order, under C.C.P. §526, C.C.P. §527  
17 and Labor Code §1700.00-1700.47, preliminarily enjoining Defendant from  
18 proceeding with the pending arbitration against Plaintiff unless and until  
19 the Labor Commissioner determines that he or she is without jurisdiction over  
20 the disputes between Preston and Ferrer.

21 Defendant moves this Court for an order under C.C.P. §1281.2 compelling  
22 arbitration based on a written arbitration agreement.

23 The main issue before the Court is whether or not Labor Code §1700.45  
24 permits arbitration under the circumstances of this case, despite §1700.44's  
25 grant of original jurisdiction to the Labor Commissioner over "controversies  
arising under this chapter."

1        1. Motion to Compel Arbitration

2  
3        Labor Code 1700.45

4            Defendant argues, and Plaintiff does not dispute, that the signed  
5 written agreement between the parties contains an agreement to arbitrate  
6 under the rules of the AAA. (Motion 4:11-13; Exhibit B, ¶13).

7            Plaintiff argues that the contract's arbitration provision does not  
8 confer jurisdiction on the Arbitrator to resolve the parties' disputes as to  
9 the validity of the contract because jurisdiction lies exclusively with the  
10 Commissioner. (Opposition 2:26-27; 3:1-2).

11            Further, Plaintiff argues that even if an arbitrator has authority to  
12 determine the issue of a contract's validity where the contract meets the  
13 requirements of Labor Code §1700.45, the contract at issue here does not meet  
14 those requirements. (Opposition 6:14-17). Plaintiff contends that the  
15 contract does not meet the requirements of §1700.45(a) because (1) Defendant  
16 does not assert that he ever was or acted as a talent agency, (2) the  
17 contract does not comply with the Act's requirements for "contracts for  
18 services of talent agencies" set forth in Section 1700.23 of the Act, and (3)  
19 there is nothing in the contract that provides or suggests that Defendant  
20 "undertakes to endeavor to secure employment" for Plaintiff (Opposition 7:14-  
21 25; 8:1-6).

22            Labor Code §1700.45(a) provides:

23            Notwithstanding Section 1700.44, a provision in a contract providing  
24 for the decision by arbitration of any controversy under the contract or as  
25 to its existence, validity, construction, performance, nonperformance,  
breach, operation, continuance, or termination, shall be valid:

1 (a) If the provision is contained in a contract between a talent agency  
2 and a person for whom the talent agency under the contract undertakes to  
3 endeavor to secure employment...

4 Labor Code §1700.45(b)-(d) apply only if the arbitration agreement is  
5 pursuant to a collective bargaining agreement.

6 Buchwald v. Katz (1967) 254 Cal.App.2d 347

7 Plaintiff contends that the agreement is void because Defendant  
8 attempted to procure employment for Plaintiff while not being licensed as a  
9 talent agent by the Labor Commissioner. (Opposition 1:8-9). In addition,  
10 Plaintiff argues that Buchwald v. Katz (1967) 254 Cal.App. 2d 347 establishes  
11 that if a contract is void under the Talent Agencies Act, its arbitration  
12 clause is also invalid. (Opposition 4:1-2).

13 In Buchwald, defendant, Matthew Katz, claiming unpaid fees, commenced  
14 arbitration before the AAA, as provided for in the contracts with plaintiffs,  
15 with members of the musical group, Jefferson Airplane. Jefferson Airplane  
16 filed a petition to determine controversy with the Labor Commissioner. While  
17 the petition was pending, Jefferson Airplane filed an action against Katz in  
18 superior court, seeking to restrain him from proceeding with the arbitration.  
19 Katz countered with a motion to compel arbitration and to restrain the  
20 proceedings before the Labor Commissioner. The superior court compelled  
21 arbitration and enjoined the proceedings before the Labor Commissioner. (254  
22 Cal.App.2d at 353).

23 The Court of Appeal reversed, holding that the argument for arbitration  
24 overlooks the basic contention of petitioners that their agreement with Katz  
25 is wholly invalid because of his noncompliance with the Act. If the agreement

1 is void no rights, including the claimed right to private arbitration, can be  
2 derived from it." (*Id.* at 360).

3         Jefferson Airplane presented both to the superior court and to the  
4 Labor Commissioner "evidence" in support of their contentions that Katz had  
5 agreed to and had in fact procured employment for Jefferson Airplane without  
6 a license and without having the contracts approved by the Labor  
7 Commissioner. (*Id.* at 353). The Court stated that Jefferson Airplane's  
8 "petition filed with the labor commissioner alleges facts which if true  
9 indicate that the written contracts were but subterfuges and that Katz had  
10 agreed to, and did, act as an artists' manager." (*Id.* at 355) and that "a  
11 prima facie showing was made to the labor commissioner that Katz had so  
12 agreed and had so acted [as an artist's manager]." (*Id.* at 360).

13         Here, the Labor Commissioner has found that Plaintiff, in his petition  
14 to determine controversy, has presented a "colorable" claim that the Talent  
15 Agencies Act applies and has been violated by Defendant. In his petition,  
16 Plaintiff alleges that Defendant procured employment for Plaintiff. (Motion  
17 for Preliminary Injunction, Exh. B).

18         Here, the contract between the parties does not provide for Defendant  
19 to procure employment for Plaintiff. (Motion, Exhibit B). In fact, Defendant  
20 disputes that he is a "talent agent" and denies that he procured employment  
21 for Plaintiff. Therefore, the contract does not fall under Labor Code  
22 §1700.45(a), and that section specifically provides that "a provision in a  
23 contract providing for the decision by arbitration of any controversy arising  
24 under this chapter which does not meet the requirements of this section is  
25 not made valid by Section 1281 of the Code of Civil Procedure."

1 Styne v. Stevenson (2001) 26 Cal.4<sup>th</sup> 42

2 Styne at fn. 9 states: "the Talent Agencies Act specifically allows  
3 parties to provide in their contract that disputes thereunder shall be  
4 resolved by private arbitration, rather than by the Commissioner. (§1700.45).  
5 Nothing in our reasoning restricts this right." 26 Cal.4th at 58, fn. 9.  
6 Plaintiff contends that *Styne* does not overrule *Buchwald*. (Opposition 5:10).

7 *Buchwald* appears to stand for the proposition that an allegation that  
8 respondent is acting as an artist's manager (talent agent here) without a  
9 license is enough for the Talent Agencies Act to apply to the underlying  
10 contract. The text of *Styne* does not disagree. It stands for the proposition  
11 that when the Talent Agencies Act is invoked in the course of a contract  
12 dispute, the Labor Commissioner has exclusive jurisdiction over the matter,  
13 including whether the contract involved the services of a talent agent. *Styne*  
14 cites extensively to *Buchwald* and never disapproves it.

15 Further, the Labor Commissioner has determined that Plaintiff has a  
16 "colorable claim" under the Talent Agencies Act and *Styne* holds that "the  
17 Commissioner, whose interpretation of a statute he is charged with enforcing  
18 deserves substantial weight." (26 Cal.4th at 53).

19 Defendant refers to footnote 9 on page 58 of *Styne* and argues that it  
20 provides that arbitration is available under the circumstances of this case  
21 notwithstanding *Buchwald*. However, it appears that the footnote means that  
22 §1700.45 makes arbitration available for disputes under §1700.44, but only  
23 when it is undisputed that the dispute is between a "talent agency and a  
24 person for whom the talent agency under the contract undertakes to endeavor  
25 to secure employment..." (§1700.45(a)). *Buchwald* is consistent with this  
conclusion (254 Cal.App.2d at 373).

1 The Artist's Managers Act

2 Defendant further argues that *Buchwald* is not applicable as it was  
3 decided under a repealed statute, the "Artist's Managers Act." Defendant  
4 argues that the Talent Agencies Act eliminated the requirement that managers  
5 must have a license. (Reply 2:1-14). That is irrelevant.

6 The Artist's Managers Act and the Talent Agencies Act are closely  
7 similar in relevant respects. While they differ slightly in the definitions  
8 of "artist's manager" and "talent agent," both are primarily aimed at  
9 requiring that anyone who procures employment for an "artist," as defined by  
10 statute, is licensed. (See Labor Code §1700.5, and the Artist's Managers Act  
11 Section 1700.5). Sections 1700.44 and 1700.45 of both are identical in  
12 relevant points.

13 "It is a cardinal principal of statutory construction that where  
14 legislation is framed in the language of an earlier enactment on the same or  
15 an analogous subject, which has been judicially construed, there is a very  
16 strong presumption of intent to adopt the construction as well as the  
17 language of the prior enactment." *Greve v. Leger, Ltd.*, (1966) 64 Cal.2d 853,  
18 965.

19 Waiver / Estoppel

20 Defendant argues that over the past six months Plaintiff has actively  
21 participated in the arbitration and thereby waived his objection to  
22 arbitration. (Motion 3:4-19). Yet, Defendant presents no authority in support  
23 of this argument.

1 "Territorial-Jurisdiction"

2 Defendant also argues that Plaintiff has not demonstrated the  
3 "territorial jurisdiction" of the Talent Agencies Act: he claims that  
4 Plaintiff is a resident of Florida, employed in Texas, and signed the  
5 arbitration agreement in Nevada, and has not adduced territorial-  
6 jurisdictional facts to show the California Labor Code applies to him.  
7 (Motion 5:15; 6:1-4).

8 Defendant presents no authority in support of this argument.

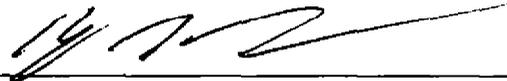
9 **2. Motion for Preliminary Injunction**

10 Plaintiff moves the Court for an order preliminarily enjoining Defendant  
11 from proceeding with the pending arbitration against Plaintiff unless and  
12 until the Labor Commissioner determines that he or she is without  
13 jurisdiction over the disputes between Preston and Ferrer.

14 The parties present the same arguments in support of and in opposition  
15 to this motion as they do in respect to Defendant's motion to compel  
16 arbitration.

17 Therefore, in light of the Court's ruling above, and the need to avoid  
18 inconsistent rulings on the same issues between the same parties, the motion  
19 for preliminary injunction is granted.

20 Dated: December 7, 2005

21   
22 \_\_\_\_\_  
23 HALEY J. FROMHOLZ

24 JUDGE OF THE SUPERIOR COURT  
25