

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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9 Special Hearing Officer for the Labor Commissioner

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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

MICHAEL NUTTALL,

Petitioner,

vs.

BOBBY JUAREZ, aka ROB JUAREZ, aka
ROB G. JUAREZ,

Respondent.

CASE NO.: TAC-22711

DETERMINATION OF
CONTROVERSY

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on June 13, 2012 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner MICHAEL NUTTALL (hereinafter "petitioner") appeared personally and represented himself. Respondent BOBBY JUAREZ, aka ROB JUAREZ, aka ROB G. JUAREZ (hereinafter "respondent") did not appear; however, attorney SURESH C. PATHAK appeared on behalf of respondent, as his counsel.

This proceeding arises out of the Petition to Determine Controversy filed by petitioner with the Labor Commissioner on May 9, 2011. The petition alleges that respondent entered into a representation agreement with petitioner, pursuant to which

1 respondent agreed to act and acted as an unlicensed talent agent in violation of Labor
2 Code section 1700.5, a provision of the Talent Agencies Act (TAA), Labor Code section
3 1700 et seq. The petition seeks a declaration that the contract is void and unenforceable,
4 and an order requiring respondent to repay all of the commissions collected by respondent
5 under the contract during the year preceding the filing of the petition. Due consideration
6 having been given to the evidence presented at the hearing and to the documents and
7 other papers on file in this proceeding, the Labor Commissioner now renders the
8 following decision.

9
10 **FINDINGS OF FACT**

11
12 1. Petitioner is a singer and musician. He is the founding member and
13 head of the band When In Rome.

14
15 2. Petitioner met Respondent in 2006. At the time, Respondent offered
16 to book shows and engagements for Petitioner and his band, and to act as their agent.

17
18 3. Respondent operated under the name The Boss Booking Agency,
19 and his practice was to book engagements on behalf of several bands together as a
20 package deal.

21
22 4. Respondent offered to provide his services as an agent for a
23 commission of 15% of all bookings obtained for Petitioner and the band. Thereafter,
24 Petitioner entered into an oral contract hiring Respondent as his agent on the terms
25 specified.

26
27 5. Respondent acted as Petitioner's agent, booking shows for Petitioner
28

1 and the band, from 2006 until sometime in February, 2011, when the relationship ended.
2 During this period, in accordance with the parties' contract, Respondent received a
3 commission of 15% of the gross amount paid on each of the engagements that
4 Respondent was able to secure for Petitioner and the band.
5

6 6. Throughout the period that he acted as Petitioner's agent,
7 Respondent was not licensed as a "talent agency" under the provisions of the TAA.
8

9 7. Apart from acting as Petitioner's agent, Respondent also became a
10 member of the When In Rome band. For his services as a drummer with the band,
11 Respondent was paid a certain amount of monetary compensation for each live
12 performance, in the same manner as the other band members. This amount, which was
13 specifically determined by Petitioner for each performance, was separate and distinct
14 from the 15% of the gross that Respondent received as an agent for each booking.
15

16 8. Between May 1, 2010 and September 18, 2010, Respondent obtained
17 11 separate engagements for Petitioner and the band. The gross total amount paid by the
18 different venues for the 11 bookings was \$21,000.00, and from this amount, respondent
19 collected and retained commissions totaling \$3,125.00
20

21 9. In his Response to the Petition to Determine Controversy filed in this
22 case, Respondent alleges facts which constitute an admission of the basic facts recited
23 above.
24

25 LEGAL ANALYSIS

26
27 1. Labor Code section 1700.5 provides in relevant part as follows:
28

1 No person shall engage in or carry on the occupation of a talent agency
2 without first procuring a license therefor from the Labor Commissioner.

3
4 2. Under Labor Code section 1700.4, subdivision (a), “[t]alent agency”
5 is defined in relevant part as follows:

6 “Talent agency” means a person or corporation who engages in the
7 occupation of procuring, offering, promising, or attempting to procure
8 employment or engagements for an artist or artists, except that the activities
9 of procuring, offering, or promising to procure recording contracts for an
10 artist or artists shall not of itself subject a person or corporation to
11 regulation and licensing under this chapter.

12 3. Labor Code section 1700.4, subdivision (b) defines “[a]rtists” as
13 follows:

14 “Artists” means . . . musical artists, . . . composers, lyricists, arrangers, . .
15 .and other artists and persons rendering professional services in motion
16 picture, theatrical, radio, television and other entertainment enterprises.

17 4. In this case, it is clear Petitioner was an artist within the meaning of
18 section 1700.4, subdivision (a).

19
20 5. In addition, it is clear that here Respondent engaged in the
21 occupation of a talent agency without first procuring a license. During the entire period
22 that Respondent represented Petitioner as an agent, Respondent was plainly and
23 indisputably engaged in the occupation of procuring engagements for Petitioner and his
24 band and of offering and attempting to procure such engagements. Respondent carried on
25 these activities without being licensed as a talent agency, and therefore his conduct was in
26 direct violation of the prohibition on unlicensed activities contained in Labor Code
27 section 1700.5.
28

1 6. When a person contracts to act as a talent agent without first having
2 obtained a talent agency license as required by the TAA, the contract that has been
3 entered into is illegal, void, and unenforceable. “Since the clear object of the Act is to
4 prevent improper persons from becoming [talent agents] and to regulate such activity for
5 the protection of the public, a contract between an unlicensed [talent agent] and an artist
6 is void.” (*Buchwald v. Superior Court* (1967) 254 Cal.App. 2d 347, 351.).

7
8 7. As recognized in *Marathon Entertainment, Inc. v. Blasi* (2008) 42
9 Cal.4th 974, in some cases there may be a basis for severing the illegal portions of a
10 contract violative of the TAA’s licensure requirements from the other parts of the
11 contract. However, this will be permissible only where there are both illegal and legal
12 aspects to the contract and where the two aspects can be properly severed in accordance
13 with the legal standards governing application of the severance doctrine. In the present
14 case, there are absolutely no legal aspects to the representation contract that the parties
15 entered into and that Petitioner seeks to have declared void. The contract was concerned
16 exclusively with compensating respondent for the illegal activity of procuring
17 engagements for Petitioner and his band without being licensed as a talent agent. As a
18 consequence, the severance doctrine cannot apply and does not apply in this case.

19
20 8. Petitioner seeks to recover the \$3,125.00 in commissions paid to
21 respondent during the period May 1, 2010 through September 18, 2010. Since the funds
22 were collected pursuant to an illegal and void contract, Respondent cannot retain the
23 money, and Petitioner is entitled to an order directing restitution of the illegally obtained
24 sum of \$3,125.00.

ORDER

For the reasons set forth above, **IT IS HEREBY ORDERED** as follows:

1. The contract between Petitioner and Respondent is declared to be illegal, void and unenforceable, and Petitioner is found to be entitled to restitution, as hereinbelow specified, of the funds illegally collected by Respondent.

2. Respondent BOBBY JUAREZ, aka ROB JUAREZ, aka ROB G. JUAREZ shall pay to petitioner MICHAEL NUTTALL the sum of \$3,125.00, together with interest thereon at the rate of 10% per annum from September 18, 2010 in the amount of \$591.62, for a total of \$3,716.62.

Dated: 9-7-12


William A. Reich
Special Hearing Officer

Adopted:

Dated: 9-11-12


Julie A. Su
State Labor Commissioner

