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7

8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
10

11 ROSA A. RIVERA FLORES, AS
TRUSTEE OF THE DOLORES J.
12 RIVERA LIVING TRUST,

13
14 Petitioner,

15 vs.

16 GABRIEL VAZQUEZ individually and
17 dba TALENTO UNIVERSAL;
TALENTO UNIVERSTAL MUSIC
18 GROUP, A CA CORPORATION,

19 Respondents.
20

CASE NO. TAC 23007

**DETERMINATION OF
CONTROVERSY**

21 The above-captioned matter, a Petition to Determine Controversy under Labor
22 Code §1700.44, came on regularly for hearing in Los Angeles, California on June 12,
23 2012 and concluded on July 3, 2012, before the undersigned attorney for the Labor
24 Commissioner assigned to hear this case. Petitioner at the time, JANNEY RIVERA,
25 PROFESSIONALLY KNOWN AS JENNI RIVERA, (hereinafter, referred to as
26 "RIVERA"), appeared represented by Anthony Lopez, Esq. of Law Offices Lopez and
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1 Associates. Respondent Gabriel Vazquez individually and dba TALENTO UNIVERSAL
2 and TALENTO UNIVERSAL MUSIC GROUP, A CALIFORNIA CORPORATION¹
3 (hereinafter, collectively referred to as "Vazquez") appeared represented by Fredric R.
4 Brandfon, Esq. of Law Offices of Barry K. Rothman. Pete Salgado, Business Manager
5 for Jenni Rivera, Esteban Loiza, husband of Jenni Rivera, and Elena Jimenez, friend and
6 personal jeweler for Jenni Rivera, all appeared as witnesses on behalf of Petitioner Rivera.
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9 At the conclusion of the hearing on July 3, 2012, the hearing officer set a briefing
10 schedule consisting of: Petitioner's Closing Brief, Respondent's Opposing Brief, and
11 Petitioner's Reply Brief, all to be completed by September 28, 2012. On September 28,
12 2012, after receiving Petitioner's Reply Brief, the matter was taken under submission. On
13 December 9, 2012, Petitioner RIVERA passed away. On August 16, 2013, pursuant to
14 Code of Civil Procedure §377.11, Counsel for Petitioner, Anthony R. Lopez, filed a
15 pleading substituting in Rosa A. Rivera Flores, as Trustee of the Dolores J. Rivera Living
16 Trust, as Petitioner in this action.
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19 Based on the evidence presented at this hearing and on the other papers on file in
20 this matter, the Labor Commissioner hereby adopts the following decision.

21 **FINDINGS OF FACT**

22
23 Jenni Rivera was a recording and performing artist until her death on December 9,
24 2012. Gabriel Vazquez is a manager who has represents Mexican musical performers.
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27 ¹ At the hearing on this matter, Petitioner Rivera moved to amend the Petition to
28 Determine controversy to include Talento Universal Music Group, A California
Corporation, as an additional respondent. Respondent Gabriel Vazquez, an individual dba
Talento Universal did not object to this motion. Accordingly, we grant Petitioner's motion
to amend the Petition to include this additional respondent.

1 In 2001, the parties entered into an oral agreement in the City of Montebello,
2 California wherein Vazquez agreed to book performance dates for Rivera in the United
3 States and Mexico in exchange for a percentage of the fees paid to Rivera for the
4 performances. In the United States, Vazquez's commission was 10% of Rivera's fee; In
5 Mexico, the commission paid to Vazquez was 15% of Rivera's fee. Vazquez represented
6 Rivera as her booking agent and road manager until Rivera terminated his services in
7 April, 2011.

8 During the 10 years he represented Rivera, Vazquez lived in the following cities or
9 counties in the State of California: Montebello, Orange County, and San Diego. Vazquez
10 also maintained a home/office in Tijuana, Baja California during this time. Vazquez
11 possessed a California Driver's license listing his home address as San Diego, California.
12 Additionally, Vazquez's cell phone numbers and email accounts were set up in California.
13 Vazquez's corporation, Talento Universal Musical Group, Inc., was also incorporated in
14 the State of California and a Fictitious Business Name Statement was filed with the Los
15 Angeles County Recorder's Office identifying Vazquez's business as Talento Universal
16 with its address listed as 625 N. 5th Street, Montebello, California. Vazquez also had
17 Facebook and Twitter accounts which listed his residence as Los Angeles, California.

18 During the period he represented Rivera, Vazquez testified he received
19 approximately 60 phone calls each day from promoters seeking to book Rivera for
20 performances. Vazquez's practice was to ask the promoters who called him to email him
21 the details of the performance which he would communicate to Rivera, usually by
22 telephone. According to Vazquez, he did not negotiate offers; he only received them,
23 passed them onto Rivera and Rivera would decide if she wanted to accept the terms of the
24 offer. If she agreed to the terms, Vazquez would communicate to the promoter Rivera had
25 accepted the terms. He would then forward a written contract which he testified he
26 received a sample of from a friend in the business and which he stated he only provided to
27 promoters for the Mexican performances. The written contracts Vazquez provided to
28 promoters listed the event location, fee for the performance and other pertinent terms

1 related to the performance. The contracts were usually signed by Vazquez and Talento
2 Universal on behalf of Rivera. The contracts included a clause indicating the parties were
3 submitting any disputes to the "*jurisdiction of the competent courts of the City of Los*
4 *Angeles, California. Waiving from now any other jurisdictions that may correspond.*"
5 While the contracts also indicated they were being signed in Los Angeles, California, the
6 evidence presented established they were signed at the venue on the date of the
7 performance.

8 The parties testified Vazquez was also responsible for coordinating the logistics of
9 each performance such as organizing hotels for Rivera and her staff, members of the band,
10 and the mariachis. Vazquez also arranged flights, transportation, and catering, if these
11 items were not provided by the promoter. At each concert Rivera performed, including
12 those booked by other individuals, Vazquez was in charge of production which included
13 sound checks, stage equipment, lighting, and occasionally, pyrotechnics. At the end of
14 each performance, Vazquez had the written contracts with the promoters signed, collected
15 payment for the performance from the promoters, subtracted his commission, and paid the
16 expenses for the performance which included paying the band, mariachis and others on
17 Rivera's staff. Vazquez's post-concert duties also included escorting Rivera off the stage
18 to her dressing room, occasionally bringing her food, and driving her back to her hotel. At
19 some point after the performance, Vazquez would also present Rivera with payment from
20 the promoter, a copy of the Settlement statement which listed all income and expenses for
21 the performance and when asked by Rivera, Vazquez would provide her with a copy of
22 the contract with the promoter.

23 United States performances were similarly handled except for the *occasional*
24 concert at a large venue such as Nokia or an Indian casino, which were often, but not
25 always, negotiated by someone other than Vazquez. On those occasions where someone
26 else negotiated the performance, Vazquez still coordinated travel, hotel and other pre-
27 concert arrangements and handled logistics during and after the performance.

1 In approximately March, 2011, while at a performance in Mexico, Rivera
2 discovered a copy of a Settlement statement which Vazquez or his employees accidentally
3 dropped. According to Rivera, the Settlement statement showed her earnings being
4 \$20,000 more than the amount Vazquez had reported to her as her earnings for the
5 particular performance. Rivera testified she also discovered discrepancies in the expenses
6 being reported to her compared to the expenses on the Settlement statement she found.
7 The actual expenses were less than what Vazquez reported. Based on these discoveries,
8 Rivera confronted Vazquez who denied stealing any money from Rivera. Rivera
9 terminated her relationship with Vazquez on April 1, 2011.

10 On May 23, 2011, Rivera filed the instant Petition to Determine Controversy
11 seeking an order declaring her oral contract with Vazquez void *ab initio*. Rivera's petition
12 also seeks disgorgement of all commissions paid to Vazquez during the one year
13 preceding the filing of the petition. On August 8, 2011, Vazquez filed an Answer to the
14 Petition generally denying the allegations of Rivera's Petition and pleading affirmative
15 defenses such as lack of jurisdiction, among others. There is no superior court action
16 pending.

17 LEGAL ANALYSIS

18 During all relevant times, as a recording and performing artist, Rivera was an
19 "artist" within the meaning of Labor Code §1700.4(b). Labor Code §1700.4(a) defines
20 "talent agency" as "a person or corporation who engages in the occupation of procuring,
21 offering, promising, or attempting to procure employment or engagements for an artist or
22 artists." At no time during his representation of Rivera was Vazquez licensed as a "talent
23 agent." Labor Code §1700.5 provides "[n]o person shall engage in or carry on the
24 occupation of a talent agency without first procuring a license... from the Labor
25 Commissioner."

26 The evidence presented establishes Vazquez was Rivera's booking agent from
27 2001 to April 1, 2011 when the relationship was terminated. While Vazquez also
28 performed road management duties during this time, including coordinating all the

1 logistics for Rivera's performances, arranging travel to paying musicians and collecting
2 Rivera's fees for performances, it is clear his main job for Rivera was to sell her
3 performance dates to promoters in Mexico and the United States.

4 Unlawful Procurement and/or Negotiation

5 Vazquez first argues the Labor Commissioner does not have jurisdiction over this
6 matter because he did not act as an unlicensed talent agent and did not violate the Talent
7 Agencies Act ("Act"). Vazquez argues he did not violate the Act because he did not
8 procure or negotiate any performance dates for Rivera. His function was simply to take in
9 offers, pass them onto Rivera and she would decide whether to accept or decline the offer.
10 Vazquez would then communicate Rivera's decision to the promoter. We find Rivera met
11 her burden of proof in establishing Vazquez was negotiating terms of the contracts when
12 he was setting the fee she was paid for each performance. It simply is not credible
13 Vazquez was only serving as a messenger from the promoter to Rivera. Nor is it credible
14 he did not negotiate her fees. The fact Rivera's fees varied for each concert is evidence
15 there was some type of negotiation going on. If no negotiation was taking place, as
16 Vazquez wants us to believe, the fee charged would be standard. It would not change from
17 concert to concert. Moreover, Rivera testified she overheard Vazquez negotiating terms
18 on the telephone on many occasions for performances in the United States and Mexico.

19 Rivera also testified Vazquez would provide her with a list of her concert locations and
20 dates as well as the fees which he negotiated. Rivera explained Vazquez would only seek
21 her approval of the venue, dates or fees 30% of the time. The remainder of the time, he
22 handled the negotiations and provided her with the information *after the fact*. The
23 witnesses who testified for Rivera, including her business manager, all confirmed
24 Vazquez was her "booking" agent and his job was to secure "gigs" for Rivera. Several of
25 the witnesses testified to overhearing Vazquez negotiate fees with promoters after
26 concerts. Based, on the totality of the evidence, we are convinced Vazquez negotiated the
27 fees on most of Rivera's performances.

1 We also find Vazquez engaged in negotiations with promoters each time he
2 provided them with a contract specifying the terms under which Rivera agreed to perform.
3 Although Vazquez testified he used these contracts only for the purpose of having a
4 written record to present to Rivera, the evidence supports a finding the contracts were
5 binding contracts which could be used in the event there was a dispute with a promoter.

6 Lastly, evidence was presented showing Vazquez solicited offers for Rivera when
7 he agreed to present two advertisements in the magazine *Triunfo*, which is distributed to
8 musical promoters. Vazquez initially testified this magazine is mainly distributed in
9 Mexico, but later conceded the magazine is also distributed in the United States.
10 Regardless, the ads both clearly advertise Talento Universal as Rivera's manager and
11 provide telephone, fax, cell and email information promoters could use to book Rivera for
12 performances.

13 Jurisdiction

14 Vazquez next argues the Labor Commissioner does not have jurisdiction over this
15 proceeding because the majority of the contracts with promoters were signed in Mexico,
16 performed in Mexico, paid in Mexican currency and the proceeds were deposited into
17 Mexican accounts.

18 The evidence unequivocally establishes the Labor Commissioner has jurisdiction
19 over the parties. Rivera was a resident of the State of California. Likewise, Vazquez was
20 also a resident of the state. While Vazquez may have a home/office in Tijuana, Baja
21 California, Vazquez also lived in several California cities and counties such as
22 Montebello, Orange County, and San Diego during the time he represented Rivera. The
23 evidence clearly established Vazquez conducts the majority of his business in California.
24 In particular, he filed Fictitious Business Name Statements with the Los Angeles Recorder
25 for his company, Talento Universal. He also incorporated his corporation Talento
26 Universal Music Group in the State of California as evidenced by the Secretary of State
27 records. Vazquez's phone numbers, fax numbers and email accounts all referenced
28 California area codes and American internet service providers. These numbers were

1 advertised in the magazine *Triunfo* for the purpose of booking Rivera both in the United
2 States and Mexico. Vazquez also listed his residence as Los Angeles in his Facebook and
3 Twitter accounts. Consequently, there is no question the Labor Commission has personal
4 jurisdiction over the parties.

5 The Labor Commissioner also has jurisdiction over this matter despite many of the
6 concerts at issue being performed in Mexico. It is settled law the Labor Commissioner has
7 original and exclusive jurisdiction over issues arising under the Act. *Styne v. Stevens*
8 (2001) 26 Cal.4th 42, 54-56; Labor Code §1700.44(a).² This dispute is between two
9 California residents who entered into a verbal agreement for representation in the State of
10 California. The dispute centers on whether Vazquez unlawfully acted as a talent agent
11 without being licensed. A personal manager who solicits or procures employment for his
12 artist-client is subject to and must abide by the Act. *Marathon, supra* 42 Cal.4th at 986. As
13 such, the dispute between Rivera and Vazquez is properly before this tribunal.

14 The fact concerts took place outside of the State of California does not deprive the
15 Labor Commissioner of jurisdiction to hear and determine this controversy, which falls
16 under the Act. It is not uncommon for artists under the Act, especially musical artists, to
17 engage in work out of the state or even out of the country. By its nature, the entertainment
18 industry is worldwide. Moreover, we have presided over and determined many

19 controversies under the Act where the artist was performing outside of California. (*Gloria*
20 *Estefan v. Stan Moress*, TAC 1988-36; *David Crane Agency Inc. v. Lloyd Lindsey Young*,
21 TAC 13-89; *Reeves v. Morris*, TAC 17-89; *Broadus v. Knight*, TAC 50-97; *Cher v.*
22 *Sammeth*, TAC 17-99; *Nipote v. Lapidés*, TAC 13-99; *Stone v. Richardson*, TAC 7-02;
23 *Marradi v. Maresch*, TAC 47-03; *Jones v. The La Roda Group*, TAC 35-04; *Rodriguez v.*
24 *Nichols*, TAC 49-05; *Burnett v. Riggs*, TAC 10192; *Flowers v. Merrick*, TAC 10-06;
25 *Yoakam v. The Fitzgerald Hartley Co.*, TAC 8774). Our focus here is on the oral

26 ² Labor Code §1700.44(a) provides, "In cases of controversy arising under this chapter,
27 the parties involved shall refer the matters in dispute to the Labor Commissioner, who
28 shall hear and determine the same, subject to an appeal within 10 days after determination,
to the superior court where the same shall be heard de novo."

1 management contract between Rivera and Vazquez. We are here to determine the validity
2 of the parties' oral contract under the Act. We are not here to determine the legality of the
3 third party contracts Vazquez prepared and entered into on behalf of Rivera with third
4 party promoters.³ For purposes of our review, it is inconsequential concerts were
5 performed outside of the state or that Rivera was paid in "pesos", or even that she
6 deposited some of her earnings into accounts held in Mexico. What is relevant to our
7 consideration is whether Vazquez unlawfully procured concerts for Rivera in violation of
8 the Act. And, as we have concluded, the evidence presented establishes Vazquez's main
9 function as Rivera's manager was to book as many performances for her in the United
10 States and Mexico, as he could. Consequently, Vazquez has violated the Act.

11 Appropriate Remedy for Violations of the Act

12 In *Marathon, supra*, 42 Cal.4th at 991, the court recognized the Labor
13 Commissioner may invalidate an entire contract when the Act is violated. The court also
14 left it to the discretion of the Labor Commissioner to apply the doctrine of severability to
15 preserve and enforce the lawful portions of the parties' contract where the facts so
16 warrant. As the Supreme Court explained in *Marathon*:

17 "Courts are to look to the various purposes of the contract. If
18 the central purpose of the contract is tainted with illegality,
19 then the contract as a whole cannot be enforced. If the
20 illegality is collateral to the main purpose of the contract, and
21 the illegal provision can be extirpated from the contract by
22 means of severance or restriction, then such severance and
23 restriction are appropriate." [Citations omitted].

24 *Marathon, supra* at p.996.

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27 ³ While we are not here to determine the legality of the third party contracts, it is worth
28 mentioning even those contracts contain a choice of law provision conferring jurisdiction
on the courts of Los Angeles.

1 We recognize Vazquez performed many duties which can be characterized as
2 duties of a road manager. Prior to each of Rivera's performances, Vazquez was
3 responsible for coordinating all flights, hotel and transportation for Rivera and
4 occasionally for the band and mariachis. During the concerts, Vazquez engaged in
5 production duties, including making sure lighting, sound and pyrotechnics were in order
6 and working. After Rivera finished her performances, Vazquez would escort her off the
7 stage, occasionally coordinated meet and greets with fans, provided her with meals,
8 escorted her back to her hotel and returned to the concert locations to settle all outstanding
9 accounts with the band, mariachis and other players who were involved in putting the
10 performances together.

11 We also recognize, however, Vazquez's main job was to secure employment for
12 Rivera. Vazquez was hired to sell Rivera's performance dates to promoters. During the 10
13 years he worked for Rivera, Vazquez was known in the industry as the person who
14 booked Rivera's concerts. Promoters went directly to him to present offers. Vazquez
15 negotiated the fees Rivera was paid for most performances. He entered into written
16 contracts with promoters on most concerts. Vazquez also collected the fees from the
17 promoters once the concerts were concluded.

18 Because booking engagements for Rivera (in violation of the Act) was the main
19 purpose of the parties' oral contract, severance is not appropriate under *Marathon, supra*.
20 Accordingly, we hold the oral management contract between Rivera and Vazquez is void
21 *ab initio*. Petitioner Rosa A. Rivera Flores, as Trustee of the Dolores J. Rivera Living
22 Trust, is entitled to disgorgement of all commissions Rivera paid to Vazquez within the
23 year preceding Rivera's filing of the petition in this case on May 23, 2011. The parties
24 stipulated the amount of commissions Rivera paid to Vazquez from May 23, 2010 through
25 December 31, 2010 is \$541,013.99 and from January 1, 2011 through the filing of the
26 petition on May 23, 2011 is \$205,750.90 for a total of \$746,764.89.

1 ORDER

2 For the reasons set forth above, IT IS HEREBY ORDERED the Oral Agreement
3 between JANNEY RIVERA, PROFESSIONALLY KNOWN AS JENNI RIVERA and
4 GABRIEL VAZQUEZ individually and dba TALENTO UNIVERSAL; TALENTO
5 UNIVERSTAL MUSIC GROUP, A CA CORPORATION is void *ab initio*. GABRIEL
6 VAZQUEZ individually and dba TALENTO UNIVERSAL; TALENTO UNIVERSTAL
7 MUSIC GROUP, A CA CORPORATION is ORDERED to disgorge a total of
8 \$746,764.89 to Petitioner ROSA A. RIVERA FLORES AS TRUSTEE OF THE
9 DOLORES J. RIVERA LIVING TRUST, immediately.

10 DATED: August 20, 2013

Respectfully submitted,

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12 By: ES/

EDNA GARCIA EARLEY

Attorneys for the Labor Commissioner

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17 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER
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21 Dated: August 20, 2013

By: Julie A. Su

JULIE A. SU

State Labor Commissioner

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Division of Labor Standards Enforcement, Department of Industrial Relations, 320 West Fourth Street #430, Los Angeles, CA 90013.

On August 20, 2013, I served the foregoing document described as PROOF OF SERVICE, on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, addressed as follows:

Anthony R. Lopez
Law Offices Lopez & Associates
9025 Wilshire Blvd., Suite 500
Beverly Hills, CA 90211

Frederic R. Brandfon
Law Offices of Barry K. Rothman
1901 Avenue of the Stars, Suite 370
Los Angeles, CA 90067

By Mail: I am readily familiar with the firm's business practices of collection and processing of correspondence for mailing with the United States Postal Service and said correspondence is deposited with the United States Postal Service the same day with postage fully prepaid thereon.

By Electronic Mail: I electronically served documents listed above as follows:

Anthony R. Lopez, Law Offices Lopez & Associates, on behalf of Petitioner
ALOPEZ@MUSICATTY.COM

Frederic R. Brandfon, Law Offices of Barry K. Rothman, on behalf of Respondents
bkr@bkrlegal.com

Executed this 20th day of August, 2013, at Los Angeles, California, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Randi Guerrero