

1 STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
2 DIVISION OF LABOR STANDARDS ENFORCEMENT  
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5

6 Special Hearing Officer for the State Labor Commissioner  
7

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

11 INTERNATIONAL CREATIVE ) Case No. TAC-24469  
MANAGEMENT PARTNERS LLC, dba ICM )  
12 PARTNERS (formerly known as International )  
Creative Management, Inc.) ) **DETERMINATION OF CONTROVERSY**  
13 )

14 Petitioner, )  
15 v. )  
16 JAMES BATES, )  
17 Respondent. )

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18 JAMES BATES, )  
19 Cross- Petitioner, )  
20 v. )  
21 INTERNATIONAL CREATIVE )  
MANAGEMENT PARTNERS LLC, dba ICM )  
22 PARTNERS )  
23 Cross- Respondent. )  
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1 This proceeding arose under the provisions of the Talent Agencies Act (the "Act"), Labor  
2 Code §§ 1700-1700.47<sup>1</sup>. On September 16, 2011, Petitioner, International Creative Management  
3 Partners LLC, (hereinafter "Petitioner" or "ICM Partners") filed a petition with the Labor  
4 Commissioner pursuant to §1700.44 seeking a determination for an alleged controversy with  
5 respondent James Bates, (hereinafter "Respondent" or "Bates"). Bates filed a response to ICM  
6 Partner's Petition on October 6, 2011 and submitted a Cross-Complaint on August 14, 2016, shortly  
7 after the matter was set for hearing.

9 A full evidentiary hearing was held on October 19, 2016 in Los Angeles, California, before  
10 Jessenya Y. Hernandez, attorney for the Labor Commissioner assigned as hearing officer. Petitioner  
11 appeared, represented by attorney Gregory L. Doll, of Doll Amir Eley, and attorney Joseph R.  
12 Trofino, ICM Partners' in house counsel. Respondent appeared via Skype. Respondent's  
13 representative, Rick Siegel, appeared in person. Erin Oremland appeared as a witness on behalf of  
14 Petitioner. Based on the evidence presented at this hearing and on the other papers on file in this  
15 matter, the Labor Commissioner hereby adopts the following decision.

### 17 FINDINGS OF FACT

18 1. Petitioner is a Delaware corporation with its principal place of business located in the  
19 County of Los Angeles, California. Petitioner is, and at all times relevant hereto was licensed as a  
20 talent agency by the Labor Commissioner of the State of California.

22 2. Respondent is a television personality who worked as a sports anchor for Mountain  
23 West Sports Network (a subsidiary of Comcast) (hereinafter "THE MTN") under a two-year Talent  
24 Agreement (hereinafter "2007 MW Agreement") that was set to expire on August 14, 2009.

25 3. Respondent's personal manager, Rick Siegel (hereinafter "Siegel"), procured employment  
26 for James Bates with the THE MTN in 2007. Siegel is not a licensed talent agent.

28 <sup>1</sup> Unless otherwise specified, all subsequent statutory references are to the Labor Code.

1 4. In March of 2009, Siegel and Respondent met with several talent agents in Los Angeles,  
2 including ICM Partners, to find a talent agent for Respondent. Respondent chose Nick Khan  
3 (hereinafter "Khan"), an agent with ICM Partners, to represent him as his talent agent.

4 5. On or around August 2009, Khan re-negotiated Respondent's employment with THE MTN  
5 for an additional two-year period. The new agreement (hereinafter "2009 MW Agreement")  
6 commenced August 14, 2009 and terminated August 13, 2011.<sup>2</sup>

7 8. On October 21, 2009, Siegel emailed Khan and asked if it was "...cool for James to pay  
8 [Petitioner] commission at 5% on the 2009 MW Agreement. Khan accepted Siegel's offer of 5% for  
9 his work on the 2009 MW Agreement.<sup>3</sup>

10 7. Per the 2009 MW Agreement, Respondent received One Hundred Fifty-Two  
11 Thousand Dollars (\$152,000) for the period of August 14, 2009 to August 13, 2010 and One Hundred  
12 Fifty-Nine Thousand Dollars (\$159,000) for the period of August 14, 2010 to August 14, 2011.

13 8. Per the parties oral agreement, Respondent was obligated to pay ICM Partners \$7,600.00  
14 in connection with its 5% Commission for Year 1 and \$7,975.00 for Year 2.

15 9. Respondent remitted a total of nine commission payments to ICM from October 29, 2009  
16 to June 24, 2010 for a total of \$5,699.99.

17 10. The Parties' relationship ended sometime in August 2010 and Respondent ceased  
18 commission payments to ICM Partners due in connection with the 2009 MW Agreement. The  
19 Petitioner argues they are entitled to \$9,875.01 in unpaid commission for the 2009 MW Agreement.

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23 **LEGAL ANALYSIS**

24 1. There is no dispute that Petitioner is a "talent agency" within the meaning of Labor  
25 Code § 1700.4(a) and Respondent is an "artists" under Labor Code §1700.4(b).

26  
27 <sup>2</sup> The 2009 MW Agreement took effect on August 14, 2009, Respondent and THE MTN fully  
executed it on November 2009.

28 <sup>3</sup> Under the terms of the new agreement, ICM would be entitled to a 5% commission for the 2009  
MW Agreement and 10 % commissions for future employment ICM Partners procured for Bates.

1           2. Labor Code § 1700.23 grants the Labor Commissioner jurisdiction over “any controversy  
2 between the artist and talent agency relating to the terms of the contract” and the Labor  
3 Commissioner’s jurisdiction has been held to include the resolution of contract claims brought by  
4 artists or agents seeking damages for breach of a talent agency contract. *Garson v. Div. of Labor Law*  
5 *Enforcement* (1949) 33 Cal.2d 861, 865 [206 P.2d 368]; *Robinson v. Superior Court* (1950) 35 Cal.2d  
6 379, 387-388 [218 P.2d 10]. The Labor Commissioner, has jurisdiction to hear and determine this  
7 controversy pursuant to Labor Code sections 1700.23 and 1700.44(a).  
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9           3. The issues in this case are as follows:

10                   A. Did ICM Partners “procure employment” for Respondent within the meaning of  
11                   Labor Code section 1700.4(a) when they negotiated the 2009 MW Agreement.

12                   B. If so, is Petitioner entitled to Post-Termination Commissions?

13                   **A. ICM Partners Procured Employment for Respondent by Negotiating the 2009**  
14                   **MW Agreement**  
15

16           4. Labor Code § 1700.4(a) defines “talent agency” as “a person or corporation who engages  
17 in the occupation of procuring, offering, promising, or attempting to procure employment or  
18 engagements for an artist or artists,” and further provides that a talent agency “may, in addition,  
19 counsel or direct artists in the development of their professional careers.” Labor Code § 1700.5  
20 provides that “[n]o person shall engage in or carry on the occupation of a talent agency without first  
21 procuring a license...from the Labor Commissioner.”  
22

23           5. Respondent argues ICM is not entitled to commissions on the 2009 MW Agreement  
24 because Respondent was already working with THE MTN under the 2007 MW Agreement. In other  
25 words, Respondent alleges ICM Partners did not initiate Respondent’s employment with THE MTN.  
26 Further, Respondent agrees ICM Partners negotiated his 2009 MW Agreement with THE MTN,  
27 however, he contends the act of negotiating a contract is not “procuring employment” within the  
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1 meaning of Labor Code section 1700.4(a).

2         6. Under the Talent Agencies Act, “procuring employment” is not limited to soliciting  
3 of employment or the initiating of contacts with employers. “Procurement” within the meaning of  
4 Labor Code section 1700.4(a) includes an active participation in a communication with a potential  
5 purchaser of the artist’s services aimed at obtaining employment for the artist, regardless of who  
6 initiated the communication. *Hall v. X Management* (TAC No. 19-90, pp. 29-31). In this instance,  
7 although Respondent had an existing employment agreement with THE MTN in 2007, the agreement  
8 expired on August 14, 2009. The 2009 MW Agreement was not an amendment or an extension of the  
9 2007 MW Agreement. It was a new agreement for a two-year term containing additional provisions, a  
10 higher pay rate, and a clause stating all prior agreements were void.

11         7. The term “procure,” as used in Labor Code § 1700.4(a), means “to get possession of:  
12 obtain, acquire, to cause to happen or be done: bring about.” *Wachs v. Curry* (1993) 13 Cal.App.4<sup>th</sup>  
13 616, 628. The Labor Commissioner has long held that “procurement” includes the process of  
14 negotiating an agreement for an artist’s services. *Pryor v. Franklin* (TAC 17 MP 114). The Talent  
15 Agencies Act specifically provides an unlicensed person may nevertheless participate in negotiating  
16 an employment contract for an artist, provided he or she does so “in conjunction with, and at the  
17 request of a licensed talent agent.” Labor Code § 1700.44(d). This limited exception to the licensing  
18 requirement would be unnecessary if negotiating an employment contract for artists did not require a  
19 license in the first place. *Danielewski v. Agon Investment Company, et al.* (TAC No. 41-03, p. 16).

20         8. Respondent offers the dictionary definition of the words procure and negotiate in an  
21 attempt to persuade the Labor Commissioner of their difference by illustrating the difference in their  
22 meanings. However, Respondent’s interpretation is technical and not practical. The word “procure”  
23 when used with the word “employment” means either to secure employment or to bring about  
24 employment or cause employment to occur. That is the common sense meaning of “procure” in this  
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1 context. It means to arrange employment. It means to negotiate for employment. *Hall v. X*  
2 *Management* (TAC No. 19-90, p. 31). Here, contrary to Respondent's argument, negotiation of the  
3 2009 MW Agreement not only *can* be considered procurement; it *must* be based on existing law.

4 **B. Is Petitioner Entitled to Post-Termination Commissions?**

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6 9. A talent agency is entitled to receive post-termination commissions for all employment  
7 secured by the agency prior to its termination. *Paradigm Talent Agency v. Charles Carroll, et al.*  
8 (TAC No. 12728, pp. 13, 16). The analysis set forth above makes clear ICM procured employment  
9 for Respondent when negotiating the 2009 MW Agreement.

10 10. Respondent contends Petitioner is not entitled to post-termination commissions because  
11 ICM Partners failed to procure other employment opportunities. During the hearing, Petitioner  
12 introduced emails, establishing ICM Partners attempted to procure employment for Respondent with  
13 several television networks. Respondent did not rebut the evidence presented, nor establish  
14 procurement of other employment was a condition to receiving commission on work already procured.  
15

16 11. Commissions are owed post termination for monies negotiated by the agent during the  
17 term of the agreement and the artist cannot unilaterally determine there is no further obligation to pay  
18 for work already performed. *The Endeavor Agency, LLC v. Alyssa Milano* (TAC No. 10-05 pp. 7, 8).  
19 ICM Partners, procured employment for Respondent for a two-year period. The 2009 MW  
20 Agreement sets forth the amount due to Respondent from August 14, 2009 to August 13, 2011.  
21 Respondent is not excused from paying the agreed upon 5% commissions to ICM Partners even  
22 though he ended his relationship prematurely.  
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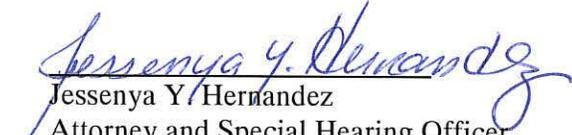
24 **ORDER**

25 For the above-stated reasons, IT IS HEREBY ORDERED that Petitioner is entitled to 5%  
26 commission for all earnings connected with the 2009 MW Agreement in the amount of \$9,875.01 and  
27 \$6,912.50 in interest calculated at 10% per annum for a total award of \$16,487.51.  
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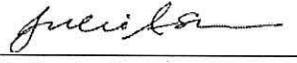
Respondent/Cross-Petitioner Bates' claims are dismissed.

Dated: 9/18/2017

  
Jessenya Y. Hernandez  
Attorney and Special Hearing Officer  
for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 09/18/2017

  
Julie A. Su  
Labor Commissioner

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )

3 COUNTY OF LOS ANGELES )

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
5 and not a party to this action. My business address is Division of Labor Standards Enforcement,  
6 Department of Industrial Relations, 320 W. 4th Street, Room 600, Los Angeles, California  
7 90013.

8 On September 25, 2017, I served the following documents described as:

9 **DETERMINATION OF CONTROVERSY**

10 on the persons below as follows:

12 GREGORY L. DOLL  
13 DOLL, AMIR, ELEY  
14 1888 CENTURY PARK EAST  
SUITE 1850  
LOS ANGELES, CA 90067

JOSEPH R. TROFINO  
ICM PARTNERS  
10250 CONSTELLATION BLVD.  
LOS ANGELES, CA 90067

16 RICK SIEGEL  
17 3379 TARECO DRIVE  
LOS ANGELES, CA 90068

18  (BY MAIL) By placing the envelope for collection and mailing following our ordinary  
19 business practices. I am readily familiar with this business's practice for collecting and  
20 processing correspondence for mailing. On the same day that correspondence is placed  
21 for collection and mailing, it is deposited in the ordinary course of business with the  
United States Postal Service in a sealed envelope with postage fully prepaid.

22  (BY E-MAIL SERVICE) I caused such document(s) to be delivered electronically via e-  
23 mail to the e-mail address of the addressee(s) listed above.

24  (STATE) I declare under penalty of perjury, under the laws of the State of California that  
25 the above is true and correct.

Executed on September 25, 2017, at Los Angeles, California.

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Marco A. Gomez