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STATE OF CALIFORNIA  
2 DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
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5 Attorney for the Labor Commissioner  
6  
7

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

11 RICKY BELL, an individual; MIKE  
BIVENS, an individual; RON DEVOE, an  
12 individual; JOHNNY GILL, an individual;  
RALPH TRESVANT, an individual; and  
13 NEW EDITION ENTERPRISES, LLC a  
Florida limited liability company,

14  
15 Petitioners,

16 vs.

17 BENCHMARK ENTERTAINMENT,  
18 LLC, a California limited liability  
company,

19 Respondent.  
20

CASE NO. TAC 37001

**DETERMINATION OF  
CONTROVERSY**

21  
22 **I. INTRODUCTION**

23  
24 The above-captioned matter, a Petition to Determine Controversy under Labor  
25 Code section 1700.44, came on regularly for hearing in Long Beach, California, before  
26 the undersigned attorney for the Labor Commissioner assigned to hear this case.  
27  
28 Petitioner RICKY BELL, an individual; MIKE BIVENS, an individual; RON DEVOE, an

1 individual; JOHNNY GILL, an individual; RALPH TRESVANT, an individual; and  
2 NEW EDITION ENTERPRISES, LLC a Florida limited liability company, (hereinafter,  
3 referred to as “NEW EDITION” or “Petitioners”) appeared and were represented by  
4 Stephen D. Rothschild, Esq. of KING, HOLMES, PATERNO & SORIANO, LLP.  
5 Respondent BENCHMARK ENTERTAINMENT, LLC a California limited liability  
6 company, (hereinafter, referred to as “BENCHMARK” or “Respondent”) appeared  
7 through Christiane Cargill Kinney, Esq. of LECLAIRRYAN.  
8  
9

10 The above-captioned matter, a Petition to Determine Controversy under  
11 Labor Code section 1700.44, came on regularly for hearing in Long Beach,  
12 California, on January 21 and 22, 2016, before the undersigned attorney for the  
13 Labor Commissioner assigned to hear this case. The matter was taken under  
14 submission.  
15

16 Based on the evidence presented at this hearing and on the other papers on  
17 file in this matter, the Labor Commissioner hereby adopts the following decision.  
18

## 19 **II. FINDINGS OF FACT**

20 1. NEW EDITION is a well-known group that was celebrating its thirty-year  
21 anniversary and was the recipient of Soul Train’s 2012 Lifetime Achievement Award.  
22

23 2. BENCHMARK is an artist management company, also having decades of  
24 experience managing many famous artists. BENCHMARK has never been a California  
25 licensed talent agent.  
26

27 3. In or about August 2012, the parties began discussing a management  
28 agreement. BENCHMARK was eager to sign NEW EDITION who was fresh off a

1 successful 2012 tour. BENCHMARK met separately and collectively with members of  
2 NEW EDITION in an effort to convince NEW EDITION to enter into a management  
3 agreement and in doing so made many alluring representations. The representations made  
4 by BENCHMARK included a promise the band would receive more money for  
5 performances than they had in the past. In an effort to showcase BENCHMARK's  
6 management acumen and to induce the band into signing, BENCHMARK's principals,  
7 John Hammond (hereinafter "Hammond") and Kevin Gasser (hereinafter "Gasser")  
8 created an 18-month plan ("the Plan"). The Plan was a hypothetical tour that included  
9 venues both domestic and international. The hypothetical tour was presented to the band  
10 in the form of a spreadsheet. The spreadsheet consisted of 125 performance dates along  
11 with specific venues and corresponding dollar amounts the band could expect to receive  
12 for each performance. It was clear from the testimony of both parties that the Plan was  
13 created to induce NEW EDITION to enter into a management agreement.  
14  
15  
16

17 4. Along with the Plan, BENCHMARK's principals discussed potential movie  
18 and book opportunities. Additionally, Hammond promised to use his connections with  
19 Live Nation, a concert promoter, to obtain more lucrative terms for NEW EDITION. In  
20 short, BENCHMARK was selling themselves in every way possible as the management  
21 firm that could provide premier opportunities for NEW EDITION and cumulatively these  
22 representations proved to be a very effective sales tool.  
23  
24

25 5. In or around September of 2012, the parties entered into an oral agreement  
26 whereby BENCHMARK would act as NEW EDITION's management in exchange for a  
27 commission structure capping the fees paid to BENCHMARK to no more than the share  
28

1 of revenue received by each individual member of NEW EDITION.

2 6. In or around October of 2012, BENCHMARK obtained a business manager  
3 and a talent agent for NEW EDITION. Talent agent, Mark Siegel (hereinafter “Siegel”)  
4 of International Creative Management Partners (hereinafter “ICM”), testified that when he  
5 joined the NEW EDITION team, he worked closely with BENCHMARK and booked the  
6 “vast majority” of NEW EDITION’S performances.  
7

8 7. In 2013, BENCHMARK along with Siegel booked three concert events for  
9 NEW EDITION. In 2014, BENCHMARK along with Siegel organized and booked an  
10 entire tour, the “All Six Tour” which consisted of 27 performances.  
11

12 8. In organizing the “All Six Tour”, BENCHMARK’S services to NEW  
13 EDITION, included marketing, public relations, advertising and interfacing with other  
14 members of NEW EDITION’S team, including but not limited to their business manager  
15 and talent agent.  
16

17 9. In or around June of 2014, just prior to NEW EDITION embarking on the  
18 “All Six Tour”, NEW EDITION terminated the management agreement and, according to  
19 BENCHMARK, refused to pay BENCHMARK’S earned commissions associated with the  
20 “All Six Tour”.  
21

22 10. On or around September of 2014, BENCHMARK filed a complaint in the  
23 Supreme Court of the State of New York alleging a material breach of the management  
24 agreement seeking unpaid commissions. In defense of the New York action, NEW  
25 EDITION filed the instant petition to determine controversy on September 16, 2014  
26 alleging the BENCHMARK violated the Talent Agencies Act (hereinafter “the Act”).  
27  
28



1 It was clear from the testimony of both parties that the purpose of the Plan was to  
2 communicate to NEW EDITION that BENCHMARK could arrange these dates and NEW  
3 EDITION could expect the amounts paid as reflected in the Plan. According to  
4 Hammond, the purpose of the Plan was to show the members of NEW EDITION what  
5 BENCHMARK could do for them. NEW EDITION was persuaded by the Plan and the  
6 Plan was an instrumental vehicle inducing NEW EDITION to enter into the management  
7 agreement with BENCHMARK.  
8  
9

## 10 **2. Other Promises**

11  
12 In addition to the Plan, Hammond told NEW EDITION that he had a  
13 close relationship with Live Nation and could use that relationship to obtain benefits for  
14 NEW EDITION. Siegel confirmed Hammond's representations and remembered  
15 Hammond saying he had a "terrific" relationship with Live Nation, that he "could do  
16 things above and beyond," and that he had obtained good deals for other clients.  
17 Hammond did not deny that he had a good relationship with Live Nation and it was  
18 credible that he did. Notably, BENCHMARK also promised to procure tour bonuses for  
19 live performances, and television and movie deals.  
20  
21

### 22 **B. Benchmark's Alleged Solicitation of Offers for New Edition to Perform in** 23 **Baltimore, Washington D.C., New Orleans and Indio**

24  
25 NEW EDITION argued BENCHMARK solicited several engagements without the  
26 assistance of NEW EDITION'S talent agent, Siegel. Specifically, NEW EDITION  
27 suggested BENCHMARK solicited two shows for the "All Six Tour" on July 19 and 20,  
28

1 2014, in Washington D.C. and Baltimore, and February 8 and 9, 2013 in New Orleans and  
2 Indio, California.

3  
4 As to the Baltimore and D.C. shows, Siegel testified that he solicited the “vast  
5 majority” of the shows for New Edition’s “All Six” 2014 tour. When asked about the  
6 Baltimore and D.C. shows, Siegel could not recall who initiated the communications for  
7 these dates and that point was not established. Siegel credibly testified that he attempted  
8 to obtain a better deal and that there was a conversation and discussion of terms between  
9 BENCHMARK and the promoter but he (Siegel) immediately “jumped into the  
10 conversation.” It was not clear whether BENCHCMARK initiated contact on these shows  
11 but it was clear that BENCHMARK acted in conjunction with Siegel. The evidence did  
12 not establish that BENCHMARK solicited these shows without Siegel.  
13  
14

15 With respect to the Indio show, Siegel testified he was involved in a conversation  
16 regarding the Indio show. Again, it was not established through documentary evidence or  
17 testimony that BENCHCMARK had any meaningful involvement in soliciting the Indio  
18 show, or negotiating appearances or fees without the involvement of Siegel.  
19

20 As to the New Orleans show, a November 15, 2012 email from Gasser to the band  
21 indicates Gasser received an offer and passed the offer directly to the band. Nothing was  
22 offered into the record that points to Gasser promising or attempting to negotiate any  
23 term, or soliciting the engagement himself.  
24

25 **C. European Tour**

26 On February 20, 2014, Gasser emailed the members of NEW EDITION as follows:

27 Guys I know we are trying to set a phone call for today. I am  
28 in Europe meeting with live nation (sic) as I am speaking to

1                   them about a New Edition European tour plus rest of world  
2                   opportunities and have a few meetings that can't be moved. ...

3                   Gasser admitted he "brought up the band as a possibility to come over and were  
4                   looking to be in Europe." Gasser's meeting with Live Nation in Europe in conjunction  
5                   with the email constitutes communication with a potential purchaser of the artists'  
6                   services aimed at obtaining employment for the artists. It was also consistent with earlier  
7                   promises to take NEW EDITION overseas for an international tour and to use their  
8                   relationship with Live Nation. Notably, a European tour never materialized.  
9

10                   **D.            Boston Strong Show**

11  
12                   On May 7, 2013, Gasser relayed an offer for NEW EDITION to perform at the  
13                   Boston Strong Concert, a charity event for victims of the Boston Marathon bombing.  
14                   Gasser testified he did not send the offer to Siegel because no money was involved.  
15

16                   NEW EDITION presented evidence from a May 15, 2013 email from Gasser to  
17                   Alicia Etheredge-Brown (Bobby Brown's wife), indicating Gasser had communications  
18                   with the charity organizer about the band having to use another group as the backup band  
19                   as well as communications about travel and lodging accommodations.  
20

21                   Those specific communications did occur, but a review of the evidence established  
22                   that the civic leaders in Boston reached out directly to NEW EDITION (the band was  
23                   from Boston) and charity organizers were hopeful NEW EDITION would participate.  
24                   The evidence suggested Gasser did speak with organizers, but the evidence failed to  
25                   establish Gasser negotiated any terms. Gasser was relaying a request for the band to  
26                   perform at the charity and nothing more. Gasser did not seek to change the terms that  
27                   perform at the charity and nothing more. Gasser did not seek to change the terms that  
28

1 were provided to him and instead simply passed on the information. As reflected in an  
2 email from Gasser to Etheredge-Brown, this was not an event to negotiate. This was a  
3 charity event and the proceeds were going to the victims of the Boston Marathon attack.  
4 Gasser did not attempt to improve any term of the offer.  
5

6 **E. Radio One Florida Private Party**  
7

8 On January 4, 2013, Hammond presented an offer to NEW EDITION to perform at  
9 a private event on February 8, 2013 for entertainment network, TV and Radio One in  
10 Florida. Hammond did not copy Siegel on the email. Hammond's testimony was less  
11 than clear about his recollection and involvement in the communications but remembered  
12 he thought the engagement was a bad idea.  
13

14 NEW EDITION produced a January 5 and 6 email exchange between Gasser and  
15 Alicia Etheredge in support of the allegation. On January 5, Etheredge-Brown wrote  
16 Gasser, "Get 50K more and I think we could talk :)." But the request for more money  
17 came from Etheredge-Brown and not Gasser. Again, like the Boston Strong event, Gasser  
18 and Hammond were simply passing on the information to the band. The band passed on  
19 this event. There is no evidence that either Gasser or Hammond did anything other than  
20 pass the information sent from TV One and Radio, CEO Alfred Liggins, directly to the  
21 band.  
22  
23

24 **F. Promise to Grind Offers**  
25

26 In a January 8, 2014, email to the band, Gasser made a representation that  
27  
28

1 BENCHMARK would negotiate better deals. The e-mail states, “[w]e will now go back  
2 and grind offers, try to increase each one 10%.” Gasser did not copy Siegel on the email.  
3  
4 When questioned at the hearing, Gasser claimed the “we” in the email meant it would be  
5 Siegel to “grind offers” and not Benchmark. Importantly, Siegel supported this version of  
6 the event. Siegel repeatedly testified that he was the one to increase revenue. Siegel  
7 would work with BENCHMARK, but it was ICM through Siegel negotiating the terms for  
8 every performance. Siegel could not recall BENCHMARK negotiating the terms of any  
9 deal without him. The totality of the evidence established that Siegel attempted to  
10 increase revenues, or “grind offers” for NEW EDITION and not Gasser.  
11

12  
13 **G. Essence Festival**

14 On November 16, 2012, Hammond emailed the members of NEW EDITION that  
15 the Essence Festival “came back and upped offer to 350K.” Gasser and Hammond also  
16 told the group members words to the effect of “we got you more than what you did the  
17 last time you did the Essence Festival.” However, once again after hearing the credible  
18 testimony from Gasser, Hammond and Siegel, it was Siegel that negotiated all of the  
19 financial terms for this event, including the increased offer of 350K.  
20  
21

22 **H. “Soul Man”**

23  
24 On February 7, 2014, Gasser forwarded an offer for NEW EDITION to perform on  
25 the TV Land show “Soul Man,” writing, “[w]anted to send this to you to discuss. May be  
26 a good way to kick off tour promotion, etc.” Gasser did not include Siegel on the  
27  
28

1 communication and NEW EDITION claims Gasser's communication on the email was an  
2 offer to perform.

3  
4 13. A review of the entire e-mail established that it was Elizabeth Doornbos the  
5 Manager of Talent and Events for Viacom Entertainment Group who reached out directly  
6 to Hammond and Gasser. Ms. Doornbos's email to Hammond and Gasser contained  
7 specific terms of the engagement. But again, Gasser just forwarded the email to the band.  
8 Gasser did not seek to change any terms. It is also understandable that he did not include  
9 Siegel at this time as he was passing on the opportunity for the band to discuss. There  
10 was no reason for Siegel's involvement until the band expressed an interest in the  
11 engagement. Gasser again forwarded the opportunity to the band who decided to pass.  
12  
13

### 14 III. LEGAL DISCUSSION

#### 15 Issues

16  
17 1. Has the Respondent acted as an unlicensed talent agent and therefore  
18 violated the Talent Agencies Act?

19  
20 2. If Respondent violated the Act, is the appropriate remedy to void the entire  
21 contract *ab initio* or sever the offending practices under *Marathon Entertainment, Inc. v.*  
22 *Blasi* (2008) 42 Cal.4th 974.

#### 23 Analysis

24  
25 One primary issue is whether based on the evidence presented at this hearing, did  
26 BENCHMARK operate as a "talent agency" within the meaning of Labor Code section  
27 1700.4(a). Labor Code section 1700.4(a) defines "talent agency" as "a person or  
28

1 corporation who engages in the occupation of procuring, offering, promising, or  
2 attempting to procure employment or engagements for an artist or artists.”

3  
4 NEW EDITION is an “artist” within the meaning of Labor Code section 1700.4(b).  
5 Moreover, Labor Code section 1700.5 provides “[n]o person shall engage in or carry on  
6 the occupation of a talent agency without first procuring a license...from the Labor  
7 Commissioner.” It was stipulated BENCHMARK did not possess a talent agency license  
8 during the relevant period.  
9

10 In contrast, a person may counsel and direct artists in the development of their  
11 professional careers, or otherwise “manage” artists – while avoiding any procurement  
12 activity (procuring, promising, offering, or attempting to procure artistic employment of  
13 engagements) – without the need for a talent agency license. In addition, such person may  
14 procure non-artistic employment or engagements for the artist, without the need for a  
15 license. *Styne v. Stevens* (2001) 26 Cal.4th 42.  
16

17 An agreement that violates the licensing requirements of the Talent Agencies Act is  
18 illegal and unenforceable. “Since the clear object of the Act it to prevent improper  
19 persons form becoming [talent agents] and to regulate such activity for the protection of  
20 the public, a contract between and unlicensed [agent] and an artist is void.” *Buchwald v.*  
21 *Superior Court* (1967) 245 Cal.App.2d 347, 351.  
22

### 23 24 **A. Offers and Promises Prior to Representation**

25  
26 BENCHMARK put on a full-court press in their efforts to induce NEW EDITION  
27 into entering into the management agreement. Not only did BENCHMARK provide a  
28 comprehensive plan to their prospective client showcasing what they could do for the

1 artist; but they also promised to procure tour bonuses for live performances and television  
2 and movie deals. The Plan included 125 proposed domestic and international  
3 engagements along with specific dates and venues, and corresponding dollar amounts  
4 NEW EDITION could expect from each show. The Plan was a promise for millions of  
5 dollars. Similarly, Hammond's representations that he could use his relationships with  
6 Live Nation to benefit New Edition were yet another promise to lure the band. All of  
7 these representations were sales tools used to obtain the client.  
8  
9

10 A manager's promises to induce talent are closely scrutinized and it is often these  
11 representations that lead to chicanery. Promises, offers and attempts to procure  
12 employment without a talent agency license are violations of the Act. Here, the promises  
13 did not lead to chicanery but were promises and offers to procure employment.  
14

15 In *Waisbren v. Peppercorn Production, Inc.* (1995) 41 Cal.App.4th 246, the court  
16 held that any single act of procuring employment subjects the agent to the Talent  
17 Agencies Act's licensing requirement, thereby upholding the Labor Commissioner's long  
18 standing interpretation that a license is required for any procurement activities, no matter  
19 how incidental such activities are to the agent's business as a whole. Applying *Waisbren*,  
20 it is clear Respondent acted in the capacity of a talent agency within the meaning of Labor  
21 Code section 1700.4(a) and it is clear that the Respondent indeed procured employment  
22 without a license in violation of Labor Code section 1700.5 on this occasion.  
23  
24

25 **B. Benchmark's Alleged Solicitation of Offers for New Edition to Perform in**  
26 **Baltimore, Washington D.C., New Orleans and Indio**

27 It was not established BENCHMARK solicited either the Indio, New Orleans,  
28 Baltimore or D.C. shows. Siegel testified he solicited the "vast majority" of the shows for

1 New Edition's "All Six" 2014 tour. The evidence did not establish BENCHMARK  
2 promised, attempted or procured these shows. Siegel booked the shows and negotiated the  
3 amounts paid to NEW EDITION. Notably, ICM received a commission on all of the  
4 shows and the totality of the evidence leads to the conclusion that Siegel was the driving  
5 force behind all negotiations. BENCHMARK did not attempt to or procure employment  
6 on this occasion and consequently did not violate the Act with respect to these shows.  
7

8 Specifically, as to the New Orleans show, the email from Gasser to the band  
9 established Gasser passed on an unsolicited offer directly to the band. Managers often  
10 receive unsolicited offers and it is logical for a manager to pass offers directly to the band.  
11 Absent evidence the manager promised, attempted or actually negotiated any terms of an  
12 unsolicited engagements, we are unable to conclude that passing on an unsolicited offer  
13 can in any way violate the Talent Agencies Act.  
14  
15

16 **C. European Tour**  
17

18 On February 20, 2014, Gasser emailed the members of New Edition as follows:  
19

20 Guys I know we are trying to set a phone call for today. I am  
21 in Europe meeting with live nation as I am speaking to them  
22 about a New Edition European tour plus rest of world  
23 opportunities and have a few meetings that can't be moved. ...

24 The email is instructive. Gasser's meeting with Live Nation in Europe along with  
25 the email constitutes communication with a potential purchaser of the artists' services  
26 aimed at obtaining employment for the artist. Consequently, it is clear BENCHMARK  
27 acted in the capacity of a talent agency within the meaning of Labor Code section  
28

1 1700.4(a) and it is clear BENCHMARK attempted to procure employment without a  
2 license in violation of Labor Code section 1700.5 on this occasion.

3  
4 **D. Boston Strong Show**

5 Gasser, on behalf of BENCHMARK, passed on an offer for NEW EDITION to  
6 perform at the Boston Strong Concert, a charity event for victims of the Boston Marathon  
7 bombing. Gasser did not send the offer to Siegel because there was no money involved.  
8

9 This was a charity event and in a time of crisis for Boston. The civic leaders in  
10 Boston reached out directly to NEW EDITION. Gasser simply relayed a request for the  
11 band to perform at a charity event. Gasser did not seek to amend or increase the terms  
12 that were given to him in any way and instead just passed on the message. The band  
13 passed on the opportunity and it would have been illogical for Gasser not to pass on the  
14 offer to the band. This was not a violation of the Act.  
15  
16

17 **E. Radio One Florida Private Party**

18  
19 Similarly, Hammond passed this offer to New Edition to perform at a private event  
20 on February 8, 2013 for TV and Radio One in Florida. The e-mail exchange between  
21 Gasser and Alicia Etheredge-Brown was insufficient to establish a violation. If an  
22 opportunity is presented to the band unsolicited, and management passes on that  
23 information to the band, without attempting to negotiate any term, the passing of the  
24 unsolicited offer can hardly be construed as a violation of the Act. The testimony of  
25 BENCHMARK was not contradicted by the evidence.  
26

27 ///  
28

1           **F. Promise to Grind Offers**

2  
3           The January 8, 2014, Gasser email stating, “[w]e will now go back and grind  
4 offers, try to increase each one 10%.” did not establish a violation of the Act. The “we”  
5 could have meant anything or anybody on the NEW EDITION team, including NEW  
6 EDITION’S agent. And it was Siegel’s testimony that was credible when he stated he  
7 could not recall BENCHMARK ever negotiating the terms of any deal without him.  
8

9           NEW EDITION did not meet their burden of proof. The burden of proof is found  
10 at Evidence Code section 115 which states, “[e]xcept as otherwise provided by law, the  
11 burden of proof requires proof by preponderance of the evidence.” Further, *McCoy v.*  
12 *Board of Retirement of the County of Los Angeles Employees Retirement Association*  
13 (1986) 183 Cal.App.3d 1044 at 1051 states, “the party asserting the affirmative at an  
14 administrative hearing has the burden of proof, including both the initial burden of going  
15 forward and the burden of persuasion by preponderance of the evidence (cite omitted).  
16 “Preponderance of the evidence” standard of proof requires the trier of fact to believe the  
17 existence of a fact is more probable than its nonexistence. *In re Michael G.* 74  
18 Cal.Rptr.2d 642, 63 Cal.App.4th 700. It was not established by a preponderance of the  
19 evidence BENCHMARK was negotiating an employment contract or “grinding offers”  
20 within the meaning of Labor Code section 1700.4(a) as alleged by NEW EDITION.  
21  
22  
23

24           **G. Essence Festival**

25  
26           The November 16, 2012, Hammond email that the Essence Festival “came back  
27 and upped offer to 350K” did not establish BENCHCMARK negotiated the additional  
28

1 compensation for NEW EDITION. The communication from Gasser and Hammond that  
2 “we got you more than what you did the last time you did the Essence Festival” amounts  
3 to nothing more than affirmation that the team is working hard for you. And again, it was  
4 the credible testimony of Siegel that he negotiated all of the financial terms for this event  
5 that was persuasive.  
6

#### 7 **H. Soul Man**

8  
9 Finally, Gasser’s February 7, 2014, email forwarded to NEW EDITION to perform  
10 on the TV Land show “Soul Man,” writing, “[w]anted to send this to you to discuss. May  
11 be a good way to kick off tour promotion, etc.” is yet another example of passing an  
12 unsolicited offer form a third party directly to the band and nothing more. A review of the  
13 email provided by NEW EDITION established that it was Viacom Entertainment Group  
14 that reached out directly to Hammond and Gasser. Gasser forwarded the email to the  
15 band and did not seek to change any terms.  
16  
17

#### 18 **Appropriate Remedy for Violations of the Act**

19 In accord with *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 991,  
20 Respondent urges us to apply the doctrine of severability if we find they violated the Act  
21 in any of the identified engagements at issue herein. In *Marathon*, the court recognized  
22 that the Labor Commissioner may invalidate an entire contract when the Act is violated.  
23 The court left it to the discretion of the Labor Commissioner to apply the doctrine of  
24 severability to preserve and enforce the lawful portions of the parties’ contract where the  
25 facts so warrant. As the Supreme Court explained in *Marathon*:  
26  
27  
28

1 Courts are to look to the various purposes of the contract. If  
2 the central purpose of the contract is tainted with illegality,  
3 then the contract as a whole cannot be enforced. If the  
4 illegality is collateral to the main purpose of the contract, and  
5 the illegal provision can be extirpated from the contract by  
6 means of severance or restriction, then such severance and  
7 restriction are appropriate. [Citations omitted].  
8 *Marathon, supra* at p.996.

9 In this case, we find “the interests of justice...would be furthered by severance.”

10 *Id.* Specifically, we find that BENCHMARK was primarily engaged in management  
11 duties while representing NEW EDITION. We conclude BENCHMARK violated the Act  
12 on two occasions. BENCHMARK violated the Act when trying to induce NEW  
13 EDITION into the management agreement by promising millions of dollars, but the act of  
14 selling itself to the band did not directly cause any harm to NEW EDITION other than  
15 persuading the band to enter the management agreement. This can hardly be enough to  
16 invalidate an entire contract. Also, Gasser’s email that BENCHMARK discussed a  
17 possible European tour that never materialized likewise did not directly damage the band.  
18 We conclude the illegality of these two acts was certainly collateral to the main purpose of  
19 the parties’ management relationship. Accordingly, under the doctrine of severability, we  
20 sever those two acts of illegal procurement and any rights and entitlements stemming  
21 from those two acts. Since BENCHMARK did not receive any commissions from the  
22 promise of a hypothetical tour or conversations for a European tour, there is nothing to  
23 disgorge. The management agreement is not invalidated due to illegality.

24  
25  
26 NEW EDITION’s engagements were negotiated by his licensed talent agency,  
27 ICM. We in no way condone the unlawful activity undertaken by BENCHMARK,  
28

1 however, we do not find it to be "substantial" in comparison to the many lawful  
2 management responsibilities undertaken by BENCHMARK. Consequently,  
3 BENCHMARK'S violations of the Act, as discussed herein, are severed.  
4

5 **IV. ORDER**

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

7 1. The oral management agreement between Petitioner NEW EDITION and  
8 Respondent BENCHMARK is not invalid and unenforceable under the Talent Agencies  
9 Act.  
10

11 DATED: July 6, 2016

Respectfully submitted,

12  
13 

14  
15 DAVID L. GURLEY  
16 Attorney for the Labor Commissioner

17  
18 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER  
19

20  
21  
22 Dated: July 15, 2016

23   
24 JULIE A. SU  
25 State Labor Commissioner  
26  
27  
28

**PROOF OF SERVICE**

STATE OF CALIFORNIA            )  
  ) S.S.  
COUNTY OF LOS ANGELES        )

I, Tina Provencio, declare and state as follows:

I am employed in the State of California, County of Los Angeles. I am over the age of eighteen years and not a party to the within action; my business address is: 300 Oceangate, Suite 850, Long Beach, CA 90802.

On July 15, 2016, I served the foregoing document described as: **DETERMINATION OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

**(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our office address in Long Beach, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

**(BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.

**(BY OVERNIGHT DELIVERY)** I served the foregoing document(s) by FedEx, an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

**(BY FACSIMILE)** I caused the above-referenced document to be transmitted to the interested parties via facsimile transmission to the fax number(s) as stated above.

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

Executed this 15<sup>th</sup> day of July, 2016, at Long Beach, California.

  
Tina Provencio  
Declarant

**SERVICE LIST**

**RICKY BELL, et al. vs. BENCHMARK ENTERTAINMENT, LLC**  
**CASE NO.: TAC-37001**

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**JOHNNY GILL, An Individual; RALPH TRESVANT, An Individual;**  
**And NEW EDITION ENTERPRISES, LLC, A Florida Limited**  
**Liability Company**