

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 GIANNINI, GURNEY, DANFORTH, HERBERT,
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(Endorsed)

FILED

SEC 19
Labor Commissioner
State of California

Richard N. Dinallo
Clark

8 BEFORE THE LABOR COMMISSIONER
9 STATE OF CALIFORNIA

RECEIVED
DEC 22 1980

Ans'd.....

10 DUKE MCFADDEN, KEVIN RUSSELL,)
11 JIM McCLARTY and PHIL BRYANT,)
12 collectively professionally known as)
13 "707"; FRED RUPPERT, RONDI RUPPERT and)
14 PANTA PRODUCTIONS, INC.,)
15 Petitioners,)
16 v.)
17 ARTHUR RIPP, FAMILY PRODUCTIONS, INC.,)
18 HOME GROWN MUSIC, INC., and FIDELITY)
19 RECORDING STUDIO, INC.,)
20 Respondents.)

NO. SF MP 71
TAC 7-80

DETERMINATION
AND AWARD

21 The above-entitled Petition for Determination of Contro-
22 versy came on regularly for hearing on May 28, 1980, Richard N.
23 Dinallo, Esq., presiding as Special Hearing Officer for, and
24 on behalf of the Labor Commissioner of the State of California.
25 Stephen F. Rohde, Esq. appeared on behalf of the Petitioners,
26 and Alan D. Gross, Esq. appeared on behalf of the Respondents.

27 Evidence, both oral and documentary, having been intro-
duced, and the matter having been duly considered, and

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GOOD CAUSE APPEARING THEREFOR,

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2 It is hereby Ordered, Adjudged and Decreed that the
3 following constitutes the Determination of the Controversy:

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5 FINDINGS OF FACT

6 At the commencement of the hearing, the parties, through
7 their attorneys, stipulated as follows:

8 1. Exhibits A, B and C, are true and correct copies
9 of the originals, and were executed by the parties. None of
10 the documents was approved by the Labor Commissioner.

11 2. All pleadings on file herein, were amended to
12 substitute FIDELITY STUDIOS, INC. for FIDELITY RECORDING STUDIO,
13 INC.

14 3. None of the Respondents was licensed to conduct
15 business as a talent agency by the Labor Commissioner at all
16 times herein relevant (See pleadings).

17 The parties met in June of 1979, through FRED RUPPERT,
18 one of the Co-Petitioners herein, who, since March of 1979,
19 had been the Petitioners' manager. John Bishop, Assistant Secretary
20 of Corporate Respondents, and a Director of Business Affairs
21 of FAMILY PRODUCTIONS, INC., HOME GROWN MUSIC, INC., and FIDELITY
22 STUDIOS, INC., went to a nightclub, known as the Starwood, to
23 see Petitioners perform as a musical rock group known as "707".
24 On behalf of the Respondent, ARTHUR RIPP, Bishop offered to
25 financially aid Petitioners and represented that RIPP could
26 get people to see the band and "make a deal" with a record company
27 involving Petitioners. Further, RIPP said he would use his offices
28 to secure a record contract for Petitioners./

1 On or about August 31, 1979, the parties herein signed
2 a contract. The only Respondents/signatories were FAMILY PRODUC-
3 TIONS, INC., and HOME GROWN MUSIC, INC. At the same time,
4 Petitioners signed two promissory notes, apparently anterior
5 to re-payments of loans made to them by Respondents.

6 Subsequently, Respondents brought various record company
7 agents to watch Petitioners perform. RIPP told Petitioners that
8 there was a record deal available with Casablanca Records.
9 Petitioners subsequently signed with the record company. Credit
10 was taken by RIPP.

11 Kevin Benson, on behalf of Respondents, "booked" Peti-
12 tioners in several "live engagements" in Los Angeles. Respondents
13 commissioned several of these "live engagements". Invitations to a
14 November 20th appearance by Petitioners at the Whiskey-A-Go-Go,
15 were sent out and printed by Respondents. RIPP said that these
16 invitations were sent out to all the major record companies.
17 Approximately 150 invitations had been sent. The R.S.V.P., con-
18 tained therein, referred to FAMILY PRODUCTIONS, INC., named as
19 Respondent herein.

20 Pursuant to the party's agreement, Respondents were
21 to receive "royalty prints," a re-payment of loans, and 10%
22 interest. Respondents charged Petitioners for "studio time"
23 at their recording studios and encouraged Petitioners to use
24 their studios to record. Cassette tapes were made of Petitioners
25 by RIPP, and sent by Kevin Benson, on behalf of FAMILY PRODUC-
26 TIONS, INC., to at least 100 record companies.

27 Kevin Benson, on behalf of Respondents, "booked"

1 Petitioners in Anaheim, and on several occasions, to wit: The
2 Crescendo; Whiskey-A-Go-Go and Madam Wong's.

3 During the Hearing, Larry David Allman, Esq., testified
4 that in February, 1980, RIPP phoned him and admitted that he
5 (RIPP) had been responsible for putting the entire Casablanca
6 Record deal together; that he had gotten the deal for Petitioners,
7 and that there was enough money in the deal to repay Respondents
8 for the loans made to Petitioners, because RIPP, himself, had
9 negotiated the deal.

10 H. Richard Etlinger testified, as vice-president for
11 Casablanca Records, that the record contract between it and
12 Petitioners did not involve Respondents. He did not know whether
13 or not Casablanca Records had dealings with Respondents prior
14 to the negotiations which resulted in the record contract.

15 Mr. Benson disputed that Respondents, or any of them,
16 booked Petitioners at Madam Wong's. Admittedly, however, Whiskey-
17 A-Go-Go was arranged through FAMILY PRODUCTIONS, INC., whereby
18 a third party actually effected the booking. He did admit having
19 tried to get others, including someone at Columbia Records,
20 interested in the Petitioners, however. He had telephoned several
21 talent agents and a vice-president of R.C.A.

22 Mr. Benson testified that employees at FAMILY PRODUC-
23 TIONS, INC., marked the invitations heretofore referred to.
24 Further, it manufactured tapes which were subsequently sent
25 to record companies.

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ISSUES

WERE PETITIONERS ARTISTS AND WERE RESPONDENTS
A TALENT AGENCY AS THOSE TERMS ARE DEFINED
BY THE ACT?

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CONCLUSIONS OF LAW

5 The Labor Commissioner has jurisdiction in the first
6 instance, to determine whether or not he has jurisdiction over
7 the controversy before him. Because we find all Petitioners
8 (except FRED RUPPERT, RONDI RUPPERT, and PANTA PRODUCTIONS, INC.),
9 to be "artists" and all Respondents to have been talent agencies,
10 we find that we have original jurisdiction over the Controversy
11 before us.

12 An "Artist" refers to "musical artists and other artists
13 and persons rendering professional services in . . . theatrical
14 . . . entertainment enterprises." Labor Code, §1700.44, (herein-
15 after referred to as "The Act"). FRED RUPPERT, RONDI RUPPERT
16 and PANTA PRODUCTIONS, INC., we find were not artists for purposes
17 of The Act, and not, therefore, subject to our jurisdiction in
18 these proceedings, and consequently, they are herewith dismissed
19 as Co-Petitioners. We find, however, that each of the remaining
20 Petitioners -- being singers of a rock musical group, are artists
21 within the meaning of The Act, supra.

22 A Talent Agency is a "person or corporation who engages
23 in the occupation of procuring, offering, promising or attempting
24 to procure employment or engagements for a artist or artists. . . .
25 In addition, (they may) counsel or direct artists in the develop-
26 ment of their professional careers." id.

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1 The evidence showed that Bishop and Benson, as authorized
2 agents for each of the other Respondents, sought to procure
3 engagements at various nightclubs and/or record companies and
4 brought various representatives from major record companies
5 to see Petitioners perform so as to interest them in signing
6 petitioners, albeit after August 31st through Respondents, to
7 a record contract. In some cases, Respondents, by and through
8 their agents, whether that be RIPP, Bishop or Benson, succeeded
9 in securing Petitioners engagements. Invitations were sent out
10 by Respondents, whose purpose could have only been to interest
11 outsiders in purchasing the product, to wit: the Petitioners'
12 talent. While Etlinger testified that Respondents had nothing
13 to do with the Petitioners' contract with Respondents, he admitted
14 that he did not know what had transpired prior to negotiations.
15 In any event, we find that Respondent RIPP'S admission is conclu-
16 sive on the issue. Respondents took full credit and were,
17 therefore, responsible.

18 We, therefore, find that Respondents acted, functioned,
19 and therefore, were, at all times relevant herein, talent agencies
20 within the meaning of The Act. This is true, regardless of how
21 the Respondents attempt to characterize the August 31st agreement.
22 Form over substance prevails. Buchwald v. Superior Court,
23 254 C.A. 2d 347; 62 Cal. Rptr. 364 (1967). The Labor Commissioner
24 is free to ferret out illegality which operates to defeat the
25 intended purposes of The Act. id.

26 We find that the August 31st agreement between the
27 parties constitutes a subterfuge, whereby Respondents would tie

1 petitioners to an arrangement whereby they would be directed,
2 and controlled in the development of their artistic careers.
3 Respondents also procured employment insofar as they procured
4 the signing of Petitioners to the August 31st agreement whereby,
5 conditioned on the terms therein, Petitioners would be remunerated.
6 ARTHUR RIPP, being instrumental in bringing the parties together,
7 sought and procured employment for Petitioners, and was a talent
8 agent as defined by law.

9 The remaining Respondents sought to, through their
10 agents, get record deals whereby both they and the Petitioners
11 would reap economic benefit. They too, then, acted as talent
12 agents.

13 All Respondents having acted in concert as talent
14 agencies, and none of them having been licensed as required
15 by law (Labor Code, §1700.5), their conduct was ipso facto
16 unlawful. All profits derived by their, and each of their, unlawful
17 conduct must be disgorged. Buchwald, supra. The fact that Respon-
18 dents may not have actually received any moneys, in connection
19 with their unlawful conduct, does not render that conduct any
20 the more laudatory, or less offending.

21 Moreover, all written agreements between the artists
22 and agency must be approved by the Labor Commissioner. Labor
23 Code, §1700.23. All agreements between the parties herein, specifi-
24 cally but not necessarily introduced into evidence, not having
25 been approved, are null and void for all purposes. Buchwald, supra.
26 Respondents, nor any of them, may not derive any benefits --
27 either directly or indirectly -- therefrom. id.

1 Accord gly, it is hereby Ordere that Petitioners
2 be awarded a determination as follows:

3 1. That the August 31st, 1979, agreement, together
4 with all negotiable promissory notes introduced into evidence
5 herein, are null and void, and that neither Petitioners, nor
6 any of them, have any obligations or liabilities thereunder
7 to Respondents, or any of them; and that neither Respondents,
8 nor any of them, have any rights or privileges thereunder; and,

9 2. That neither Respondents, nor any of them, are
10 entitled to any reimbursement, claim or offset for any moneys
11 purportedly or actually spent by Respondents, or any of them,
12 on behalf of Petitioners, or any of them, in the amount of
13 \$26,208.66, or any other sum; and,

14 3. That Petitioners, and each of them, are entitled
15 to an accounting whereby Respondents, and each of them, shall
16 forthwith account to Petitioners by submitting a written statement
17 reflective of any and all moneys received or to be received
18 by them as a result of their, and each of their dealings with

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1 or on behalf of Petitioners, or any of them, and thereafter
2 to forthwith pay or return all such moneys, commissions, royalties
3 or things of value received by Respondents, directly or indirectly,
4 pursuant to the August 31, 1979 agreement or any other business
5 arrangement whatsoever.

6 DATED: _____

RICHARD N. DINALLO, ESQ.
Special Hearing Officer for
the Labor Commissioner

9 APPROVED: DEC 12 1980

10 Louis Giannini
LOUIS GIANNINI, Esq.
11 Chief Counsel & Supervising
12 Special Hearing Officer of
the Labor Commissioner



14 ADOPTED: 12/18/80

JAMES L. QUILLIN
Labor Commissioner