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DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
State of California
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7
8 BEFORE THE LABOR COMMISSIONER
9 . STATE OF CALIFORNIA

10
11 ETHAN RIEFF, an individual; and) No. TAC 20-02
CYRUS VORIS, an individual,)
12)
Petitioners,)
13)
vs.)
14)
STEVEN FREEDMAN, an individual) DETERMINATION OF
15 sometimes doing business as) CONTROVERSY
FREEDMAN LITERARY MANAGEMENT,)
16)
Respondent.)
17)

18
19 The above-captioned matter, a petition to determine
20 controversy under Labor Code §1700.44, came on regularly for
21 hearing on May 14, 2003 in Los Angeles, California, before the
22 Labor Commissioner's undersigned hearing officer. Petitioners
23 were represented by Martin D. Singer and Paul N. Sorrell, and
24 Respondents were represented by Jay M. Coggan and David N.
25 Tarlow. Based on the evidence presented at this hearing and on
26 the other papers on file in this mater, the Labor Commissioner
27 hereby adopts the following decision.
28 //

1 employment for Artist."

2 4. In 1993, Freedman sent the 'Demon Knight' script to
3 Scott Fay, then vice president of production and development for
4 Full Moon Entertainment, a film production studio. Freedman told
5 Fay that the script was available for production. Full Moon
6 Entertainment unsuccessfully tried to buy the script from
7 Freedman. Ultimately, Freedman sold the script to Universal
8 Pictures, and the petitioners were hired as screen writers for
9 the production.

10 5. Petitioners sent other scripts to Freedman, including
11 'Slayer' and 'Blown Away,' in response to his requests to send
12 him anything else they write, in order to either sell these other
13 scripts to producers or to use them as writing samples as part of
14 his effort to obtain script writing work for the petitioners.
15 Freedman submitted the scripts for 'Blown Away' and 'Slayer' to
16 various production companies, and the scripts were eventually
17 purchased by production companies as a result of Freedman's
18 efforts.

19 6. Freedman called petitioners, who were then living in New
20 York, to advise them that Fries Entertainment was looking for
21 writers to re-write the script of 'Under Surveillance.'
22 Petitioners traveled to Los Angeles, and along with respondent,
23 met with Fries. Freedman negotiated a deal on behalf of the
24 petitioners to re-write the script.

25 7. In 1993 or 1994, Freedman set up a meeting with the
26 director and producers of 'Men of War,' and succeed in getting
27 them to hire petitioners to re-write the script. Freedman
28 negotiated the terms of the petitioners' contract to do this re-

1 write.

2 8. In 1993 or 1994, Freedman introduced petitioners to
3 Melanie Weiner, then an assistant, responsible for reading
4 scripts, at August Entertainment. Freedman asked Weiner to
5 submit petitioners' names for consideration on projects that
6 might be appropriate, and as a result of Freedman's efforts,
7 Weiner submitted petitioners' names for writing projects on
8 numerous occasions over the course of a two year period. These
9 efforts led to a writing job for a film called 'Bear Fire - The
10 Hot Pit.'

11 9. Sometime around 1995, Full Moon Entertainment hired the
12 petitioners for script writing services in connection with 'Josh
13 Kirby - Time Warrior.' Scott Fay sent the "deal memo" setting
14 out the terms of the proposed contract to the respondent, and
15 held discussions with the respondent about "deal points," i.e.,
16 the terms of petitioners' compensation. Scott Fay only dealt
17 with the respondent in this regard, and did not deal with anyone
18 else purporting to represent petitioners.

19 10. In 1995, after 'Demon Knight' was produced by
20 Universal, petitioners became a "hot commodity" in Hollywood, and
21 their services were in high demand. Freedman then apparently
22 decided that the petitioners would be best served by having a
23 licensed talent agency to procure and negotiate employment deals,
24 so he then advised the petitioners that they should retain the
25 services of a talent agency, and that he would limit his
26 activities to personal management. Petitioners then hired a
27 talent agency, and from then on, have been represented by a
28 licensed talent agency -- first UTA, later APA, and now William

1 Morris Agency.

2 11. For a while, petitioners continued using the services
3 of Freedman as their personal manager, even though all of the
4 procurement and negotiation services he used to perform were
5 instead being provided by licensed talent agents, or attorneys
6 working in conjunction with licensed talent agents. Finally,
7 petitioners concluded that Freedman was no longer providing any
8 services to them, and they notified him that they were
9 terminating their Agreement with him.

10 12. Freedman filed a now pending court action against the
11 petitioners, seeking payment of commissions purportedly under the
12 Exclusive Management Agreement. On June 20, 2002, this petition
13 was filed. The parties have stipulated that petitioners have not
14 paid any commissions to Freedman in the one year period prior to
15 the filing of this petition.

16 LEGAL ANALYSIS

17 Petitioners are artists within the meaning of Labor Code
18 §1700.4(b), which defines "artists" to include "writers ...
19 rendering professional services in motion picture, theatrical,
20 radio, television and other entertainment enterprises." The
21 issue here is whether Respondent functioned as a "talent agency"
22 within the meaning of Labor Code §1700.4(a), and if so, what
23 consequences should flow from the fact that Respondent was not
24 licensed by the Labor Commissioner as a talent agency.

25 Labor Code §1700.4(a) defines "talent agency" as "a person
26 or corporation who engages in the occupation of procuring,
27 offering, promising, or attempting to procure employment or
28 engagements for an artist or artists." Labor Code §1700.5

1 provides that "[n]o person shall engage in or carry on the
2 occupation of a talent agency without first procuring a license
3 therefor from the Labor Commissioner."

4 The Talent Agencies Act is a remedial statute; its purpose
5 is to protect artists seeking professional employment from the
6 abuses of talent agencies. For that reason, the overwhelming
7 judicial authority supports the Labor Commissioner's historic
8 enforcement policy, and holds that "[E]ven the incidental or
9 occasional provision of such [procurement] services requires
10 licensure." *Styne v. Stevens* (2001) 26 Cal.4th 42, 51.

11 Here, we are confronted with much more than incidental or
12 occasional procurement. Rather, the evidence herein establishes
13 pervasive and ongoing employment procurement activities.

14 An agreement that violates the licensing requirement of the
15 Talent Agencies Act is illegal and unenforceable. "Since the
16 clear object of the Act is to prevent improper persons from
17 becoming [talent agents] and to regulate such activity for the
18 protection of the public, a contract between an unlicensed
19 [agent] and an artist is void." *Buchwald v. Superior Court*
20 (1967) 254 Cal.App.2d 347, 351. Here, as in *Buchwald*, the
21 contractual provisions which purport that Respondent will not
22 procure employment and is not a talent agent are mere subterfuge
23 for the unlicensed performance of employment procurement
24 services, and cannot control over the true facts of Respondent's
25 role as a "talent agent" within the meaning of Labor Code
26 §1700.4.

27 Having determined that a person or business entity procured,
28 promised or attempted to procure employment for an artist without

1 the requisite talent agency license, "the [Labor] Commissioner
2 may declare the contract [between the unlicensed agent and the
3 artist] void and unenforceable as involving the services of an
4 unlicensed person in violation of the Act." *Styne v. Stevens*,
5 *supra*, 26 Cal.4th at 55. "[A]n agreement that violates the
6 licensing requirement is illegal and unenforceable"
7 *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th
8 246, 262. Moreover, the artist that is party to such an
9 agreement may seek disgorgement of amounts paid pursuant to the
10 agreement, and "may . . . [be] entitle[d] . . . to restitution of
11 all fees paid the agent." *Wachs v. Curry* (1993) 13 Cal.App.4th
12 616, 626. This remedy of restitution is, of course, subject to
13 the one year limitations period set out at Labor Code
14 §1700.44(c).

15 Having found that from the very inception of their business
16 relationship, Respondent promised petitioners to procure
17 employment -- and thereafter did procure employment -- on their
18 behalf, we necessarily conclude that the Management Agreement
19 between Respondent and petitioners is void *ab initio*, and that
20 Respondent has no enforceable rights thereunder. In addition,
21 Respondent is not entitled to any recovery of from petitioners
22 under a theory of *quantum meruit*, for to allow recovery on this
23 or any other basis would subvert the clear remedial purpose of
24 the Act.

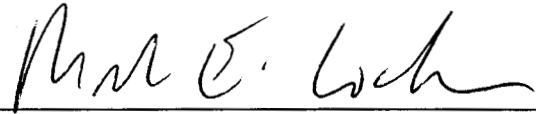
25 Turning to petitioners' prayer for disgorgement of certain
26 amounts previously paid to Respondent, we conclude that since all
27 payments made to Respondent under this Agreement were made more
28 than one year prior to the filing of this petition, the one year

1 limitations period set out at Labor Code §1700.44(c) precludes an
2 order for disgorgement. Hence, there is no reason to order an
3 accounting of amounts that were previously received. We note, of
4 course, that this statute of limitations is not applicable to a
5 "defensive" petition seeking a determination that a contract is
6 void *ab initio*, so as to prevent an unlicensed talent agent from
7 maintaining a legal action against an artist for amounts
8 allegedly due under that contract. *Styne v. Stevens, supra.*

9 ORDER

10 For the reasons set forth above, IT IS HEREBY ORDERED that
11 the Management Agreement between petitioners and respondent is
12 unlawful and void *ab initio*; that Respondent has no enforceable
13 rights thereunder; and is not entitled to any amounts for
14 services that were rendered under that Agreement.

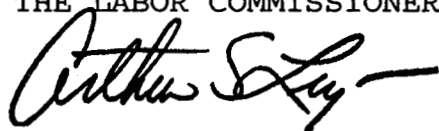
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16 Dated: 12/9/03



17 _____
MILES E. LOCKER
Attorney for the Labor Commissioner

18
19 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

20
21 Dated: 12/9/03



22 _____
ARTHUR S. LUJAN
State Labor Commissioner

3 CERTIFICATION OF SERVICE BY MAIL

4 (C.C.P. §1013a)

5 IN THE MATTER OF STEVEN FREEDMAN, an individual v. ETHAN
6 REIFF, an individual; CYRUS VORIS, an individual; and DOES 1
7 through 20, inclusive.
8 TAC 20-02

9 I, Victoria McGunagle, do hereby certify that I am employed
10 in the county of San Francisco, over 18 years of age, not a party
11 to the within action, and that I am employed at and my business
12 address is 455 Golden Gate Avenue, 9th Floor, San Francisco, CA
13 94102.

14 On December 9, 2003, I served the following document:

15 **Determination of Controversy**

16 by placing a true copy thereof in envelope(s) addressed as
17 follows:

18 Paul N. Sorrell, Esq.
19 LAVELY & SINGER
20 2049 Century Park East, Ste. 2400
21 Los Angeles, CA 90067

22 Jay M. Coggan
23 David N. Tarlow
24 Heather E. Sterling
25 JAY M. COGGAN & ASSOCIATES
26 1925 Century Park East, Ste. 2320
27 Los Angeles, CA 90067

28 and then sealing the envelope with postage thereon fully prepaid,
depositing it in the United States mail in the city and county of
San Francisco by certified mail with a return receipt.

I certify under penalty of perjury that the foregoing is
true and correct. Executed on December 9, 2003, at San
Francisco, California.



VICTORIA MCGUNAGLE