

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
4 JOAN E. TOIGO, Special Hearing Officer
5 State Bar No. 125578
6 30 Van Ness Ave., Room 4400
7 San Francisco, CA 94102
8 (415) 557-2516

6 Attorney for Labor Commissioner

9 BEFORE THE LABOR COMMISSIONER
10 OF THE STATE OF CALIFORNIA

11 JAMES A. JOHNSON, JR., aka RICK)
12 JAMES, and MARY JANE PRODUCTIONS,)
13 INC. formerly STONE CITY, INC., dba) CASE NO. TAC 20-88
14 STONE CITY MUSIC CO., A New York)
15 Corporation)
16 Petitioners,)
17 vs.) DETERMINATION
18 STROTE & WHITEHOUSE, A Professional)
19 Corporation, and JOEL R. STROTE)
20 Respondents.)

20 The above-entitled controversy came on regularly for
21 hearing before the Labor Commissioner, Division of Labor Stan-
22 dards Enforcement, Department of Industrial Relations, State
23 of California, by JOAN E. TOIGO, serving as Special Hearing
24 Officer under the provisions of Section 1700.44 of the Labor
25 Code of the State of California, Petitioners JAMES A. JOHNSON,
26 JR., aka RICK JAMES, and MARY JANE PRODUCTIONS, INC., formerly
27 STONE CITY, INC., dba STONE CITY MUSIC CO. appearing by the

1 law offices of McCAMBRIDGE, DEIXLER, MARMARO and GOLDBERG, by
2 SHINAAN S. KRAKOWSKY, and Respondents, STROTE and WHITEHOUSE,
3 A Professional Corporation, and JOEL R. STROTE, appearing by
4 the law offices of LEVINSON and LIEBERMAN, INC., by GEORGE W.
5 YOUNG.

6 Evidence, both oral and documentary, having been intro-
7 duced, and the matter having been briefed and submitted for
8 decision, the following determination is made:

9 It is the determination of the Labor Commissioner that:

10 1. Petitioners' claim is barred by the statute of
11 limitations; therefore, the Labor Commissioner lacks jurisdic-
12 tion over the controversy as presented to the Special Hearing
13 Officer.

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15 I

16 INTRODUCTION

17 On July 27, 1988, Petitioners filed a Petition to
18 Determine Controversy pursuant to Labor Code Section 1700.44.

19 Respondents had filed an action in Superior Court, Los
20 Angeles County, in or about May, 1986, to collect
21 "commissions" allegedly due under two separate recording
22 agreements executed in July, 1979.

23 The Petition alleges that it was not until Respondent,
24 Strote, first appeared for his deposition in connection with
25 the litigation, that Petitioners discovered that the
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1 "commissions" sought by Respondents pursuant to said recording
2 agreements were anything other than a fee for "legal services
3 and advice" rendered by Respondents.

4 Petitioners allege that Respondent, Strote, acted not
5 as an attorney providing legal services to a client but
6 rather, in his role as a "negotiator" of the recording con-
7 tracts, acted as an unlicensed talent agent as that term was
8 defined in Labor Code Section 1700.4 at the time the agree-
9 ments were executed.

10 Petitioners further allege that Respondent, Strote,
11 fraudulently concealed his claim to fees as a "negotiator" (as
12 opposed to a "lawyer") and, therefore, the statute of limita-
13 tions set forth in Labor Code Section 1700.44(c) did not begin
14 to run until June 27, 1988 when Respondent revealed, for the
15 first time during his deposition, that the fees were for his
16 services as a negotiator of said recording agreements rather
17 than a fee for legal services.

18 In petitioners' prayer for relief, petitioners have re-
19 quested:

20 1. A determination that Respondent, Strote, was acting
21 as an unlicensed talent agent at the time he negotiated the
22 1979 recording agreements;

23 2. An order that any agreement pursuant to which
24 Respondents contend they are entitled to monies from
25 Petitioners based on Strote's negotiation of the recording
26 agreements, be declared void and unenforceable;

27

1 3. An order that Respondents return to petitioners all
2 monies paid to Respondents pursuant to the agreements, includ-
3 ing interest thereon at the legal rate;

4 4. An order that Respondents pay the costs incurred by
5 Petitioners in the filing of the petition; and

6 5. An order for such other relief as the Labor Commis-
7 sioner deems just and proper.

8 Respondents filed an answer to the Petition denying the
9 substantive allegations raised therein and raising the follow-
10 ing affirmative defenses:

11 1. Petitioners have failed to state a claim against
12 Respondents;

13 2. Petitioners have failed to establish a prima facie
14 case that Respondent, Strote, agreed to and did act as a
15 talent agent, thereby coming within the Labor Commissioner's
16 jurisdiction;

17 3. Petitioners' claim is barred by the statute of
18 limitations provided for in Labor Code Section 1700.44(c);

19 4. The act complained of in the Petition is specifi-
20 cally excepted from licensing by Labor Code Section 1700.4(a);

21 5. Petitioners' action is barred by laches;

22 6. Because Petitioners had a personal manager attempt
23 to negotiate the contracts at issue, and later removed that
24 personal manager and asked Respondent to renegotiate the con-
25 tract, Petitioners have waived any claim that Respondent,
26 Strote, acted as an unlicensed talent agent in doing the acts
27 complained of in the Petition; and

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7. Because Petitioners had a personal manager attempt to negotiate the contracts at issue, and later removed that personal manager and asked Respondent, Strote, to renegotiate the contract, Petitioners are equitably estopped from seeking to avoid the contract by now claiming that Respondents acted as an unlicensed talent agent in doing the things complained of in the Petition.

II

ISSUES

Inasmuch as Respondent was admittedly not licensed as a talent agent, the issues are threefold:

1. Is the Petitioners' claim barred by the one-year statute of limitations provision in Labor Code Section 1700.44(c)?

2. Did Respondent, Strote's, negotiation of the recording contracts in 1979 constitute unlicensed talent agent activity in violation of Labor Code Section 1700.4?

3. Is the act complained of specifically excepted from licensing pursuant to Labor Code Section 1700.4(a)?

III

APPLICABLE LAW

Petitioners brought this action under the provisions of Division 2, Part 6, Chapter 4 of the Labor Code commencing with Section 1700. This portion of the Labor Code is commonly known as the Talent Agency Act ("Act").

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2 In Section 1700.4 of the act the term "talent agency",
3 in 1979, was defined as follows:

4 "A talent agency is hereby defined to be a person
5 or corporation who engages in the occupation of
6 procuring, offering, promising, or attempting to
7 procure employment or engagement for an artist or
8 artists. Talent agencies may, in addition, coun-
9 sel or direct artists in the development of their
10 professional careers."

11 Labor Code Section 1700.44(c), which was added to the act
12 in 1982, provides:

13 "No action or proceeding shall be brought pursuant
14 to this chapter with respect to any violation
15 which is alleged to have occurred more than one
16 year prior to commencement of the action or
17 proceeding."

18 Labor Code Section 1700.44(d), which was enacted in 1982,
19 provides:

20 "It is not unlawful for a person or corporation
21 which is not licensed pursuant to this chapter to
22 act in conjunction with, and at a request of, a
23 licensed talent agency in the negotiation of an
24 employment contract."

25 IV

26 DISCUSSION AND FINDINGS

27 The threshold issue to be decided is whether the
28 Petitioners' claim is barred by the one year statute of
29 limitations set forth in Labor Code Section 1700.44(c).
30 Petitioners' arguments regarding this issue are as follows:

31 1. The one-year statute of limitations added to the
32 Labor Code in 1982 should not be retroactively applied to the
33 alleged unlicensed talent agent activity which occurred in
34 1979, and

1 2. Ignorance of a claim which is induced by fraud or
2 deceit tolls the applicable statute of limitations.

3 Petitioners argue that to apply the statute of limita-
4 tions would be to apply the law retroactively. Two cases were
5 cited by Petitioners in support of this position; however,
6 since neither were on point, they fail to provide persuasive
7 authority. Respondents, however, cite authority which is
8 squarely on point. The court in Wagner v. State (1978) 86
9 Cal. App. 3d 922, held that, while it is true that legislative
10 enactments are generally presumed to operate prospectively and
11 not retroactively, the application of a newly enacted period
12 of limitations whose operation depends upon some facts or con-
13 ditions which were in existence prior to the enactment does
14 not mean that the statute is being retroactively applied. The
15 court then determined that, since more than 4 years had passed
16 between the enactment of the statute of limitations and the
17 filing of the complaint, it was barred.

18 Thus, it is reasonable to conclude that the statute of
19 limitations began to run on January 1, 1983 for the alleged
20 violation which occurred in 1979. Petitioners' entire argu-
21 ment rests on the assertion that they did not know what
22 Respondent, Strote, was claiming in his civil action. The act
23 itself triggers the statute of limitations. The revealing of
24 an intention or the making of a claim does not.

25 It is, therefore, determined that the statute of
26 limitations provided for the Labor Code 1700.44(c) is ap-
27 plicable to the instant case.

1 Regarding the issue of alleged concealment, Petitioners
2 argue that their ignorance of a possible Talent Agencies Act
3 controversy resulted directly from Respondent, Strote, leading
4 Petitioners and their representatives to believe that the
5 royalty fee sought by Respondent, Strote, pursuant to the
6 recording agreements constituted a fee for "legal services"
7 rendered by Strote, and not a fee for the services rendered in
8 Strote's separate capacity as a "negotiator".

9 The overwhelming majority of Petitioners' evidence and
10 testimony consists of an attempt to label Respondent,
11 Strote's, services as "legal services" or "negotiation", and
12 to establish what Strote's state of mind was at the time the
13 agreements were negotiated and, likewise, what Petitioners
14 thought Respondent, Strote's, fees represented.

15 The evidence presented established the following
16 chronology:

17 In the fall of 1978, the parties entered into an oral
18 agreement whereby Respondents were to act as Petitioners'
19 music counsel. At that time, Petitioner was already under
20 recording and production contracts with Motown Record Corpora-
21 tion. Included among the services to be rendered by Respon-
22 dents, was aid in the renegotiation of these 1977 recording
23 contracts with Motown. For this service, Respondents were to
24 receive royalties of five percent (5%). Petitioners' personal
25 manager, Shep Gordon, was to renegotiate the "deal points" of
26 the contract, as is customary in the industry, and for this
27 service was to receive royalties of fifteen percent (15%).

1 Respondent, Strote's, responsibilities were to review and ne-
2 gotiate, if necessary, the contract's boilerplate language
3 after the deal points had been negotiated by Mr. Gordon and,
4 thereafter, to "service" the contract by being available to
5 help resolve any disputes that arose under the contract in the
6 future.

7 Sometime thereafter, however, Mr. Gordon experienced
8 difficulties, and the negotiations with Motown broke down. It
9 was then decided that Respondent, Strote, would assume Mr.
10 Gordon's role as the negotiator with Motown and attempt to
11 salvage the deal. As compensation for his increased respon-
12 sibility, it was agreed by the parties that Respondent,
13 Strote, since he was now performing the service which should
14 have been performed by Mr. Gordon, would receive an additional
15 five percent (5%), to be taken out of Mr. Gordon's fifteen
16 percent (15%) share. Thus, there was no increase in the over-
17 all percentage charged to Petitioners, merely the reallocation
18 of the fee. Respondents and Mr. Gordon were each to receive
19 ten percent (10%) under the new arrangement. This arrangement
20 was clearly understood and agreed to by Petitioners as
21 evidenced by testimony given by Mr. James during his deposi-
22 tion.

23 The negotiations with Motown were ultimately success-
24 ful, and Respondents received fees on the renegotiated con-
25 tracts until approximately the end of 1983.

26 In or about April 1984, Petitioners terminated their
27 professional relationship with Respondents.

1 Petitioners' entire position regarding the issue of
2 concealment is that:

3 1. Respondent, Strote, was hired by Petitioner, James,
4 as his music "lawyer",

5 2. That Respondent, Strote, never told Petitioners or
6 their representatives that any of the services which he per-
7 formed in connection with the Motown contracts were anything
8 other than "legal" services,

9 3. That Respondent, Strote, wrote a letter to
10 Petitioners' counsel in which he defends the amount of fees
11 paid to him for his "legal" services in connection with the
12 Motown contract negotiations, and

13 4. That Respondent, Strote, has included a "Notice of
14 Clients Right to Arbitrate" in his verified complaint in the
15 lawsuit, which is required to be used in connection with the
16 dispute between a "lawyer and client over legal fees".

17 As mentioned above, Petitioner's entire case is based
18 upon the labeling of Respondent, Strote's, services as either
19 "legal" services or "negotiation" services. However, the
20 evidence simply does not indicate any concealment on the part
21 of Respondent. In fact, the evidence indicates that
22 Petitioner requested Respondent, Strote, to take over the
23 renegotiation of the Motown agreements after the negotiations
24 with Petitioner's personal manager, Shep Gordon, had broken
25 down, yet Petitioners take the position that they did know in
26 what capacity Respondent, Strote, was acting when he
27 renegotiated the contracts.

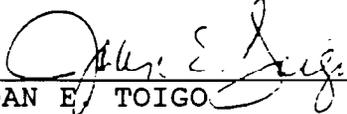
1 Thus, Petitioners assert that since they did not know
2 Respondent, Strote's, state of mind (that he sought fees as a
3 "negotiator" as opposed to "legal" fees) this constitutes con-
4 cealment sufficient to toll the statute of limitations.

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6 V

7 CONCLUSION

8 In summary, Petitioners have simply not established
9 that Respondents engaged in any fraud or deceit sufficient to
10 toll the applicable statute of limitations. As such, it is
11 unnecessary to reach the remaining issues as the Labor Commis-
12 sioner lacks jurisdiction over the controversy as presented to
13 the Special Hearing Officer.

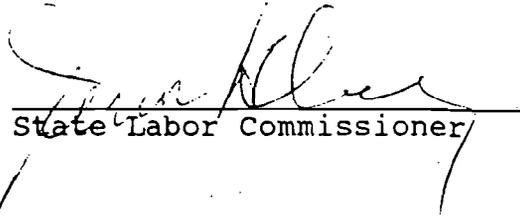
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18 Dated: April 9, 1990



JOAN E. TOIGO
Special Hearing Officer

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21 ADOPTED:

22 Dated: April 11, 1990



State Labor Commissioner

