

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
4 BY: DAVID L. GURLEY (Bar No. 194298)
5 455 Golden Gate Ave., 9th Floor
6 San Francisco, CA 94102
7 Telephone: (415) 703-4863

8 Attorney for the Labor Commissioner

9
10 BEFORE THE LABOR COMMISSIONER
11 OF THE STATE OF CALIFORNIA
12

13 B.J. THOMAS, an individual,
14
15 Petitioner,
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17 vs.
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19 PAUL MICHAEL GOLDSTEIN, d.b.a.
20 GOLDWEST, an individual,
21
22 Respondent.

Case No. TAC 27-99

DETERMINATION OF
CONTROVERSY

23 INTRODUCTION

24 The above-captioned petition was filed on August 6, 1999,
25 by B.J. THOMAS, an individual, (hereinafter "THOMAS" or
26 "Petitioner") alleging PAUL MICHAEL GOLDSTEIN dba GOLDWEST,
27 (hereinafter "Respondent" or "GOLDSTEIN"), failed to secure the
required talent agency license pursuant to Labor Code §1700.5.
Petitioner seeks the personal services contract between the parties
be deemed void *ab initio* and unenforceable for all purposes and
Respondent ordered to disgorge all monies paid by petitioner
stemming from the personal services agreement between the parties.

Respondent filed his answer with this agency on February

1 7, 2000, claiming petitioner is not entitled to any sums and should
2 be barred from bringing the action which is untimely pursuant to
3 the one-year statute of limitations found at Labor Code 1700.44(c).

4 A hearing was scheduled before the undersigned attorney,
5 specially designated by the Labor Commissioner to hear this matter.
6 The hearing commenced on March 17, 2000, in Los Angeles,
7 California. Petitioner was represented by Robert S. Chapman and
8 JoAn H. Cho of Greenberg Glusker Fields Claman & Machtinger LLP;
9 respondent appeared through his attorneys Pamela G. Zahler and S.
10 Ralph Gordon. The determination of controversy was stayed pending
11 the California Supreme Court decision in Styne v. Stevens 26
12 Cal.4th 42. Due consideration having been given to the Styne case;
13 testimony; documentary evidence; and briefs submitted, the Labor
14 Commissioner adopts the following determination of controversy.

15
16 FINDINGS OF FACT

17 1. In August of 1993, petitioner, a well-known singer,
18 entered into a personal services contract with respondent Paul
19 Michael Goldstein, dba Goldwest, whereby respondent would act as
20 petitioner's personal manager in the entertainment industry
21 performing "all the functions normally associated with this
22 position." In exchange, respondent was compensated by 10% of
23 petitioner's revenues. The relationship lasted three years and
24 terminated in 1996. In February of 1998, respondent filed an
25 action in the United States District Court, Case No. 98-1402TJH1,
26 seeking in excess of \$91,000.00 from the petitioner for unpaid
27 loans stemming from an oral agreement between the parties. On July

1 16, 1999, the respondent amended the federal complaint and alleged
2 that the loans, "stemmed from the fiduciary relationship which
3 arose between the parties by virtue of the management agreement
4 [emphasis added]..."

5 2. In response to the amended federal complaint, the
6 petitioner filed this action, claiming that the respondent acted in
7 violation of the Talent Agencies Act (Labor Code §1700.00 *et. seq.*),
8 by procuring employment engagements on petitioner's behalf without
9 possessing a talent agency license. Petitioner files his petition
10 to determine controversy in defense of the amended federal
11 complaint. Petitioner's argument that the respondent secured
12 employment for the petitioner without a talent agency license and
13 consequently the agreement between the parties should be void *ab*
14 *initio* has merit.

15 3. The documentary evidence in the form of dozens of
16 booking slips, in conjunction with respondent's sworn deposition
17 testimony, clearly established that the respondent booked live
18 engagements for Thomas without the assistance of a booking agent or
19 talent agent and therefore in violation of Labor Code §1700.5.

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21
22 CONCLUSIONS OF LAW

23 1. Labor Code §1700.4(b) includes "actors" in the
24 definition of "artist" and respondent is therefore an "artist"
25 within the meaning of §1700.4(b).

26 2. Labor Code §1700.40(a) defines "talent agency" as,
27 "a person or corporation who engages in the occupation of

1 procuring, offering, promising, or attempting to procure employment
2 or engagements for an artist or artists."

3 3. Labor Code section 1700.5 provides that "no person
4 shall engage in or carry on the occupation of a talent agency
5 without first procuring a license therefor from the Labor
6 Commissioner."

7 4. Labor Code §1700.44(a) provides the Labor
8 Commissioner with the power and jurisdiction to hear and determine
9 matters falling under the Talent Agencies Act (§§1700.00 et seq.),
10 therefore the Labor Commissioner has jurisdiction to hear and
11 determine this matter.

12 5. In Waisbren v. Peppercorn Production, Inc (1995) 41
13 Cal.App.4th 246, the court held that any single act of procuring
14 employment subjects the agent to the Talent Agencies Act's
15 licensing requirements, thereby upholding the Labor Commissioner's
16 long standing interpretation that a license is required for any
17 procurement activities, no matter how incidental such activities
18 are to the agent's business as a whole. Applying Waisbren, it is
19 clear that respondent negotiating prices and booking petitioner's
20 services for live engagements establish that respondent acted as a
21 talent agency within the meaning of §1700.4(a). Moreover, Waisbren
22 adds, "[s]ince the clear object of the Act is to prevent improper
23 persons from becoming [talent agents] and to regulate such activity
24 for the protection of the public, a contract between an unlicensed
25 [agent] and an artist is void." Buchwald v. Superior Court, 254
26 Cal.App.2d at p. 351, 62 Cal.Rptr. 364.) "The general rule
27 controlling in cases of this character is that where a statute

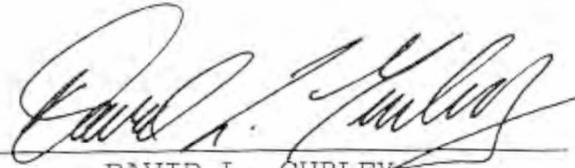
1 prohibits ... the doing of an act, the act is void, and this [is
2 the consequence], notwithstanding that the statute does not
3 expressly pronounce it so." Severance v. Knight-Counihan Co. (1947)
4 29 Cal.2d 561, 568, 177 P.2d 4.

5 6. The primary issue in this case is whether the
6 petitioner filed the petition untimely by filing after one-year
7 from the respondent's federal complaint. The respondent argues
8 the initial federal complaint was filed in July of 1998, and this
9 petition was not filed until August of 1999, and therefore untimely
10 pursuant to Labor Code §1700.44(c). Labor Code §1700.44(c)
11 provides that "no action or proceeding shall be brought pursuant to
12 [the Talent Agencies Act] with respect to any violation which is
13 alleged to have occurred more than one year prior to the
14 commencement of this action or proceeding."

15 7. Respondent's defense based on the statute of
16 limitations found at Labor Code §1700.44(c) was considered and
17 rejected after the California Supreme Court issued their decision
18 in Styne v. Stevens 26 Cal.4th 42. In that recent case, Styne held,
19 "that statutes of limitations do not apply to defenses..... Under
20 well-established authority, a defense may be raised at any time,
21 even if the matter alleged would be barred by a statute of
22 limitations if asserted as the basis for affirmative relief. The
23 rule applies in particular to contract actions. One sued on a
24 contract may urge defenses that render the contract unenforceable,
25 even if the same matters, alleged as grounds for restitution after
26 rescission, would be untimely. Styne, supra at p. 51; 3 Witkin,
27 Cal. Procedure (4th ed. 1996) Actions, § 423, p. 532. Here, Thomas

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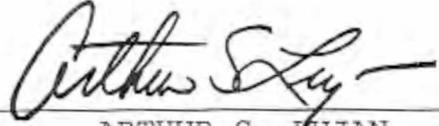
Dated: January 14, 2002



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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ARTHUR S. LUJAN
State Labor Commissioner

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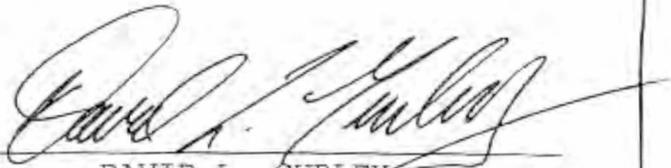
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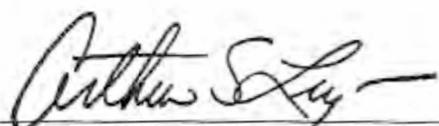
Dated: January 14, 2002



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: January 14, 2002



ARTHUR S. LUJAN
State Labor Commissioner

3 CERTIFICATION OF SERVICE BY MAIL
4 (C.C.P. §1013a)

5 B.J. THOMAS, an individual, vs. PAUL MICHAEL GOLDSTEIN, dba
6 GOLDWEST, an individual
7 SF 027-99 TAC 27-99

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

13 On January 14, 2002, I served the following document:

14 **DETERMINATION OF CONTROVERSY**

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

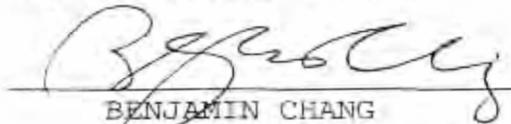
17 ROBERT S. CHAPMAN, ESQ.
18 JOAN H. CHO, ESQ.
19 GREENBERG GLUSKER FIELDS
20 CLAMAN & MACHTINGER LLP
21 1900 AVENUE OF THE STARS, STE. 2100
22 LOS ANGELES, CA 90067-4590

23 PAMELA G. ZAHLER, ESQ.
24 LAW OFFICES OF PAMELA G. ZAHLER
25 10433 WILSHIRE BOULEVARD, #PHC
26 LOS ANGELES, CA 90024

27 RALPH GORDON, ESQ.
28 GORDON, MARTIN, JONES & HARRIS
49 MUSIC SQUARE WEST, STE. 600
NASHVILLE, TENNESSEE 37203

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 ordinary first-class mail.

I certify under penalty of perjury that the foregoing is
true and correct. Executed on January 14, 2002,, at San
Francisco, California.


BENJAMIN CHANG