

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
 2 Department of Industrial Relations
 3 State of California
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 10 BEFORE THE LABOR COMMISSIONER
 11 OF THE STATE OF CALIFORNIA
 12

13	MARTHA ROBI,)	Case No. TAC 29-00
14)	
15	Petitioners,)	
16	vs.)	DETERMINATION OF
17)	CONTROVERSY
18)	
19	HOWARD B. WOLF,)	
20)	
21	Respondents.)	
22)	

23 INTRODUCTION

24 The above-captioned petition was filed on September 1,
 25 2000, by MARTHA ROBI, (hereinafter "Robi" or "Petitioner"),
 26 alleging that HOWARD B. WOLF, (hereinafter "Wolf" or "Respondent"),
 27 booked performances on behalf of the petitioner's husband without
 a talent agency license, thereby acting as an unlicensed talent
 agent in violation of Labor Code §1700.5¹. Petitioner seeks a
 determination voiding *ab initio* several written and one oral
 management agreement between the parties.

28 ¹ All statutory citations will refer to the California Labor Code unless
 29 otherwise specified.

1 Respondent filed his answer with this agency on October
2 3, 2000, asserting laches, statute of limitations, and release as
3 his affirmative defenses. A hearing was scheduled before the
4 undersigned attorney, specially designated by the Labor
5 Commissioner to hear this matter. After several continuances, the
6 hearing commenced on August 14, 2001, in Los Angeles, California.
7 Petitioner was represented by Allen Hyman; respondent appeared
8 through his attorney Terran T. Steinhart. Due consideration having
9 been given to the testimony, documentary evidence, arguments
10 presented, and briefs submitted, the Labor Commissioner adopts the
11 following determination of controversy.

12
13 FINDINGS OF FACT

14 1. Petitioner's husband, Paul Robi was an original
15 member of the performing group, "The Platters". "The Platters"
16 established a string of #1 hits including, "Only You" and "The
17 Great Pretender" and performed internationally throughout the 50's,
18 60's. Several original members interchanged, but Paul Robi legally
19 retained the group's commercial name and continued to perform as
20 "The Platters" throughout the 70's and 80's.

21 2. In 1983 Paul Robi met Howard Wolf at the Tropicana
22 Hotel and Casino in Las Vegas, Nevada. On May 4, 1983, Paul Robi
23 and Wolf signed an agreement, whereby Wolf would produce a
24 nostalgia show utilizing "The Platters", called "Golden Memories on
25 Tour". Wolf's responsibilities for the tour, pursuant to the terms
26 of the agreement included, "negotiating on behalf of the show, and
27 coordinating the functions that go into the presentation of the

1 show." Soon thereafter, Wolf sought to exclusively manage Robi's
2 career as a performing artist.

3 3. On November 18, 1983, Paul Robi and Howard Wolf
4 signed a one-year agreement whereby Wolf agreed to personally
5 manage Robi's career in exchange for 10% of Robi's gross
6 compensation. The agreement provided that Wolf would advise and
7 counsel, *inter alia*, any and all matters pertaining to public
8 relations; the adoption of proper formats for presentation; and
9 other general practices in the entertainment industry. Notably, a
10 provision informing Robi that Howard could not act as a talent
11 agent or seek or obtain employment for Robi was also included. At
12 the expiration of the one-year agreement, Robi and Wolf agreed to
13 continue the relationship and executed ostensibly the same
14 agreement in both 1984 and 1985.

15 4. On July 28, 1986, Paul Robi and Wolf appeared
16 to terminate the agreement by executing a mutual release from
17 liability. The release provided in pertinent part:

18 "I hereby release you from any further liability or
19 obligation to perform services under the aforesaid
20 Personal Management agreement and I release you from any
21 obligation or claim to obligations for services rendered
22 or required to be rendered under that agreement in the
23 past. In doing so I waive all claims against you, known
24 or unknown..."

24 5. The testimony conflicted as to why the parties
25 executed the release and whether the release truly manifested the
26 parties intent. The petitioner argued the release was a sham
27 designed to protect the assets of the relationship from Wolf's

1 pending bankruptcy petition and further argued the parties
2 continued to function as they always had. The petitioner
3 established through documentary and testimonial evidence, that
4 irrespective of the mutual release, Wolf continued to act as Robi's
5 personal manager via an oral agreement under the same terms. Robi,
6 supplied deposit statements evidencing the collection of
7 commissions by Wolf for performances completed after the mutual
8 release was executed by the parties. In short, it was clear the
9 parties acted under the terms of an oral agreement for continued
10 representation and the mutual release, prepared by Wolf, was not
11 the true intent of the parties.

12 6. In support of Robi's allegation that Wolf acted as
13 a talent agency by procuring work, Robi introduced several
14 "Agreements". The "Agreements", admittedly prepared by Wolf,
15 contained all of the material terms between the artist [Robi], and
16 the purchaser of talent [venue], including compensation and
17 perquisites. Wolf unconvincingly argued that the petitioner would
18 procure the engagements herself on behalf of her husband, and then
19 phone in the information to Wolf who would simply fill in the terms
20 on his preprinted agreement forms. This testimony was not
21 credible. In sum, it was Wolf who negotiated the terms of the
22 deals and it was Wolf who procured these engagements on Robi's
23 behalf.

24 7. On February 25, 1988, Paul Robi, unequivocally
25 terminated the relationship with Howard Wolf. In 1989 Paul Robi
26 passed away and control of the estate passed to the petitioner.
27 Throughout the latter part of Paul Robi's life and thereafter, the

1 petitioner was engaged in several lawsuits, litigating the right to
2 control "The Platters" name. In 1990, the petitioner prevailed in
3 one federal lawsuit and was awarded \$3,510,000.00. As a result of
4 petitioner's victory in the federal action, the respondent filed
5 two state court actions against the petitioner in 1996 and 1998,
6 seeking 10% of the \$3,510,000.00 award and 10% of all gross income
7 for the sale of a Platters' recording. The second state action is
8 stayed pending this Labor Commissioner's Determination of
9 Controversy.

10
11 CONCLUSIONS OF LAW

12 1. Labor Code §1700.4(b) includes "musical artists" in
13 the definition of "artist" and petitioner is therefore an "artist"
14 within the meaning of §1700.4(b).

15 2. The primary issue is whether based on the evidence
16 presented at this hearing, did the respondent operate as a "talent
17 agency" within the meaning of §1700.40(a). Labor Code §1700.40(a)
18 defines "talent agency" as, "a person or corporation who engages in
19 the occupation of procuring, offering, promising, or attempting to
20 procure employment or engagements for an artist or artists."

21 3. Labor Code section 1700.5 provides that "no person
22 shall engage in or carry on the occupation of a talent agency
23 without first procuring a license therefor from the Labor
24 Commissioner." There was some testimony that the respondent
25 obtained a talent agency license, but did not act as petitioner's
26 talent agency. The express relationship between Robi and Wolf was
27 a personal management agreement. Therefore, whether respondent

1 obtained a talent agency license is irrelevant for this proceeding.
2 A manager may not switch hats. If the manager embarks on a
3 personal management relationship with a client, and subsequently
4 obtains a talent agency license, the possession of a talent agency
5 license will not insulate a manager acting as an agent for his
6 client from liability. Any person obtaining employment for an
7 artist will be subject to all of the state's talent agency
8 requirements.

9 4. In Waisbren v. Peppercorn Production, Inc (1995) 41
10 Cal.App.4th 246, the court held that any single act of procuring
11 employment subjects the agent to the Talent Agencies Act's
12 licensing requirements, thereby upholding the Labor Commissioner's
13 long standing interpretation that a license is required for any
14 procurement activities, no matter how incidental such activities
15 are to the agent's business as a whole. Applying Waisbren, it is
16 clear respondent acted in the capacity of a talent agency within
17 the meaning of §1700.4(a).

18 5. Respondent argued the petitioner did not meet her
19 burden of proof. The burden of proof is found at Evidence Code
20 §115 which states, "[e]xcept as otherwise provided by law, the
21 burden of proof requires proof by preponderance of the evidence."
22 Further, McCoy v. Board of Retirement of the County of Los Angeles
23 Employees Retirement Association (1986) 183 Cal.App.3d 1044 at 1051
24 states, "the party asserting the affirmative at an administrative
25 hearing has the burden of proof, including both the initial burden
26 of going forward and the burden of persuasion by preponderance of

27

1 the evidence (cite omitted). "Preponderance of the evidence"
2 standard of proof requires the trier of fact to believe that the
3 existence of a fact is more probable than its nonexistence. In re
4 Michael G. 74 Cal.Rptr.2d 642, 63 Cal.App.4th 700.

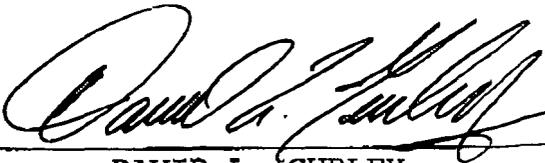
5 6. Here, the petitioner has established by a
6 preponderance of the evidence the respondent procured employment
7 reflected by the petitioner's credible testimony, and supported by
8 several "Agreements" between Robi and the purchaser of the
9 performance, negotiated and completed by the respondent. The
10 defense proffered by respondent that all of these "Agreements" were
11 actually procured by the petitioner was not supported by the
12 evidence. The evidence presented satisfies the minimal standard
13 described in Waisbren.

14 7. Finally, the respondent argues that the petition
15 should be dismissed because the statute of limitations for a
16 violation of the Act had run. Labor Code §1700.44(c) provides that
17 "no action or proceeding shall be brought pursuant to [the Talent
18 Agencies Act] with respect to any violation which is alleged to
19 have occurred more than one year prior to the commencement of this
20 action or proceeding.

21 8. Petitioner alleges violations that occurred between
22 1983 and 1988. The petition was filed on September 1, 2000. The
23 question arises whether the management agreements can be voided.
24 They can. The recent California Supreme Court case of Styne v.
25 Stevens 26 Cal.4th 42, held, "that statutes of limitations do not
26 apply to defenses..... Under well-established authority, a defense
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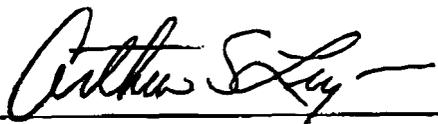
Dated: March 21, 2002



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: March 21, 2002



ARTHUR S. LUJAN
State Labor Commissioner

