

1 **STATE OF CALIFORNIA**
Department of Industrial Relations
2 Division of Labor Standards Enforcement
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7 **BEFORE THE LABOR COMMISSIONER**
8 **OF THE STATE OF CALIFORNIA**
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10 ROSA BLASI, an Individual, and 609
11 MAPLE STREET PRODUCTIONS, INC., a
California Corporation,

12 Petitioners,

13 vs.

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15 MARATHON ENTERTAINMENT, INC., a
California Corporation, and RICK SIEGEL,
16 an Individual;

17 Respondents.

) CASE NO. TAC 15-03

) **DETERMINATION OF CONTROVERSY**

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19 The above-captioned petition was filed by Rosa Blasi, an Individual, and 609 Maple Street
20 Productions Inc., a California Corporation (hereinafter, collectively referred to as "petitioners") on
21 April 11, 2003. Petitioners allege that respondents Marathon Entertainment Inc., a California
22 Corporation and Richard Siegel, an individual (hereinafter, collectively referred to as "respondents")
23 have been performing unlawful activities as unlicensed talent agents by seeking and attempting to
24 procure, or procuring employment in the State of California for petitioner Blasi, without being
25 licensed to do so and in violation of the Talent Agencies Act (hereinafter, also referred to as the
26 "Act").

28 **DETERMINATION OF CONTROVERSY**

1 Petitioners and respondents entered into an oral agreement (hereinafter referred to as,
2 "Agreement") on or about November 8, 1998, whereby respondents agreed to act as a personal
3 manager for petitioner Blasi in the entertainment industry, in exchange for a percentage of petitioner
4 Blasi's earnings as an actress. Petitioners terminated the Agreement in October, 2001.

5 Petitioners herein seek an order and declaration that respondents have violated the Talent
6 Agencies Act, section 1700 et seq. of the California Labor Code and a determination that the
7 Agreement between the parties is void *ab initio* and unenforceable, and that petitioners have no
8 liability thereon to respondents and respondents have no rights or privileges thereunder and no
9 entitlement to any payments of any kind from petitioners.

10 Respondents argue that petitioner Blasi has no standing to enforce the Act because she is not
11 an "artist" as defined by Labor Code Section 1700.4 as she was not rendering services to respondents
12 and because she 'employed' respondents. Additionally, respondents argue that they were not at any
13 relevant time doing business in the capacity of a "talent agent" and their conduct did not at any
14 relevant time constitute "procurement." Finally, respondents argue that to the extent their conduct is
15 found to be "procurement" of employment, it was at all relevant times in conjunction with a licensed
16 talent agent.

17 The matter came on for hearing on December 4, 2003, before Edna Garcia Earley, Special
18 Hearing Officer, in Los Angeles, California. Petitioners appeared through their attorney, Michael J.
19 Plonsker of Alschuler Grossman Stein & Kahan LLP. Respondents appeared in pro per. Called as
20 witnesses by petitioner were: respondent Richard Siegel, petitioner Rosa Blasi, John Kelly and Paula
21 Hammerman. Called as witnesses by respondents were petitioner Rosa Blasi and respondent Richard
22 Siegel.

23 At the close of the hearing, the matter was taken under submission. Based upon the
24 testimony and evidence received at this hearing, the Labor Commissioner adopts the following
25 determination of controversy.
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1 you know, or pilot.” (R.T. 26:2-8). Yet, when asked if he ever gave respondent Siegel or any other
2 employee of Marathon instructions to submit petitioner Blasi or contact certain directors on her
3 behalf, Mr. Kelly testified: “Not generally, no.” (R.T. 100:2). In fact, the testimony presented clearly
4 showed that there were engagements procured for petitioner Blasi that Mr. Kelly had nothing to do
5 with. For instance, Mr. Kelly testified that he had nothing to do with getting petitioner Blasi an
6 audition for the play *Aida* and that it was respondent Siegel who procured this engagement for her.
7 Mr. Kelly also testified that he was not responsible for procuring engagements for petitioner Blasi on
8 talk shows such as *Kilborn*, *Politically Incorrect* and *Rendez-View*. His understanding was that
9 respondent Siegel was working with petitioner Blasi’s publicist on these projects.

10 Conflicting testimony was also presented on the purpose of the Client Submission Reports,
11 Exhibits 2 and 3. Respondent Siegel testified that the Client Submission Report was submitted to
12 Bressler-Kelly for the purpose of notifying Bressler-Kelly of the projects respondents thought
13 Bressler-Kelly should submit on if they hadn’t already done so. In contrast, both Mr. Kelly and Ms.
14 Hammerman testified that the purpose of the Client Submission Reports was to inform Bressler-Kelly
15 as to the projects that respondents *had already submitted* on behalf of petitioner Blasi. After being
16 asked what the purpose of sending the Client Submission Report to Bressler-Kelly was, Ms.
17 Hammerman answered, “so that the agents would know what we’re doing on behalf of the clients.”
18 When followed up with the question: “the purpose was not to let the agents know what they we’re
19 supposed to do?,” Ms. Hammerman answered, “we had already done it.” Thus, it is evident that
20 respondents made submissions on behalf of petitioner Blasi without first being requested to do so by
21 Bressler-Kelly.

22 CONCLUSIONS OF LAW

23 1. Labor Code section 1700.5 provides that “no person shall engage in or carry on the
24 occupation of a talent agency without first procuring a license therefor from the Labor
25 Commissioner.”

26 2. Respondents argue that they were not at any time relevant, acting as a “talent
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1 agency." Labor Code section 1700.4(a) defines "talent agency" as, "a person or corporation who
2 engages in the occupation of procuring, offering, promising, or attempting to procure employment or
3 engagements for an artist or artists." The evidence and testimony presented establish that
4 respondents Marathon Entertainment Inc. and Richard Siegel, procured employment in the
5 entertainment industry for petitioner Blasi. Respondents were responsible for obtaining an audition
6 on the play *Aida* for petitioner. They were also instrumental in securing appearances for petitioner
7 Blasi on talk shows such as *Kilborn, Politically Incorrect* and *Rendez-View*. Additionally, they
8 procured work for her as an actress on the made-for-pay cable film, *Noriega: God's Favorite*, and
9 the Lifetime television series, *Strong Medicine*. By procuring these engagements for petitioner Blasi,
10 respondents acted as "talent agents."

11 3. Respondents argue that petitioner is not an "artist" within the meaning of the
12 Talent Agencies Act because she did not render professional services directly to respondents. Labor
13 Code section 1700.4(b) defines "artists" as "actors and actresses *rendering services on the legitimate*
14 *stage and in the production of* motion pictures, radio artists, musical artists, musical organizations,
15 directors of legitimate stage, motion picture and radio productions, musical directors, writers,
16 cinematographers, composers, lyricists, arrangers, models and other artists and persons rendering
17 professional services in motion picture, theatrical, radio, television and other entertainment
18 enterprises." Nowhere in the code does it require the artist to render services *directly to*
19 respondents. In this case, petitioner Blasi is an actress who has rendered services in television and
20 theater. Accordingly, the Labor Commissioner has jurisdiction to determine this controversy
21 pursuant to the provisions of Labor Code section 1700.4(b).

22 4. Respondents also argue that petitioners have no standing to enforce the act as an
23 'employer' since they hired and fired respondents. Respondents ignore the fact that there exists an
24 entire statutory scheme in the Labor Code specifically set up to protect "artists" as defined in Labor
25 Code section 1700.4(b). Statutes must be given a reasonable and common sense construction in
26 accordance with the apparent purpose and intention of the lawmakers..." *Buchwald v. Katz* (1967)

1 254 Cal.App.2d 347, 355 citing to 45 Cal.Jur.2d, Statutes, §116, pp. 625-626. Here, the California
2 legislature has determined that the act of "procuring employment" for artists is an occupation
3 necessitating regulatory oversight and statutory protection. Respondents' argument that petitioners
4 have no standing because they hired respondents to be their personal managers and subsequently
5 fired them, completely ignores the legislature's intent to protect "artists". As stated below, petitioner
6 Blasi is an "artist" as defined in Labor Code section 1700.4(b) and therefore has standing to enforce
7 the Talent Agencies Act.

8 5. Since it has been established that respondents acted as talent agents, that petitioner
9 Blasi is an artist as defined in Labor Code Section 1700.4(b), and that the Labor Commissioner has
10 jurisdiction to hear this controversy, the sole remaining issue to be decided is whether respondents
11 are exempt from the prohibitions of the law under the provisions of Labor Code section 1700.44(d).
12 The assertion of this defense necessitates careful analysis. To qualify under these express provisions
13 requires the satisfaction of a twofold burden of proof, i.e., the person claiming the exemption must
14 prove the he or she acted both (1) "at the request of," and (2) "in conjunction" with, a licensed talent
15 agent during the course of the events in question.

16 Petitioners argue that the exemption provided in Labor Code section 1700.44(d) only applies
17 to negotiation of an employment contract and not to solicitation and procurement. The definition of
18 negotiation, however, includes "*the process of submission and consideration of offers until*
19 *acceptable offer is made and accepted; the deliberation, discussion, or conference upon the terms*
20 *of a proposed agreement; and the act of settling or arranging the terms and conditions of a*
21 *bargain, sale, or other business transaction.*" Blacks Law Dictionary, Fifth Addition. We believe the
22 definition of "negotiation" as stated hereinabove, includes solicitation and procurement in this
23 context. Thus, any solicitation or procurement of entertainment opportunities made on behalf of
24 petitioner Blasi, are exempt if respondents can show that each procurement activity was done at the
25 request of and in conjunction with Bressler-Kelly.

26 Here, the testimony of petitioner Blasi's talent agent John Kelly and former manager for
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1 respondents, Paula Hammerman, demonstrate that respondents were not being requested to solicit,
2 procure or attempt to procure many of the entertainment engagements they procured or attempted to
3 procure on behalf of petitioner Blasi. Rather, it is quite clear that respondent Siegel took the lead on
4 many of the submissions he made on behalf of petitioner Blasi *before* discussing it with Mr. Kelly.
5 Respondents made submissions on roles they thought petitioner Blasi was right for and sent out
6 demo tapes of petitioner Blasi to some casting directors without the request of Bressler-Kelly.
7 Respondents' practice of first making the submission and sending out demo tapes on behalf of
8 petitioner Blasi and then running it by Bressler-Kelly either by fax or through its weekly Client
9 Submission Reports can only be seen as a subterfuge designed to evade the Act's licensing
10 requirements.

11 Furthermore, in the case of obtaining an audition on the play *Aida* and appearances on the
12 talk shows *Kilborn*, *Politically Incorrect* and *Rendez-View*, it is clear that respondents procured
13 those engagements without working in conjunction with Bressler-Kelly. The testimony revealed that
14 respondent Siegel arranged the talk show appearances in conjunction with petitioner Blasi's publicist
15 who is not a licensed talent agent, and not with Bressler-Kelly.

16 In sum, petitioners have proved that respondents procured or attempted to procure work for
17 petitioners through contacting casting directors, sending out demo tapes of petitioner Blasi,
18 submitting petitioner Blasi for certain roles as an actress, and securing auditions in plays and
19 appearances on talk shows. Respondents, however, have not met their burden of proving that each
20 one of these engagements was requested by Bressler-Kelly and done in conjunction with Bressler-
21 Kelly. Consequently, respondents are in violation of the Act.

22 ORDER

23 For the above-stated reasons, IT IS HEREBY ORDERED that respondents have violated the
24 Talent Agencies Act, Section 1700 et seq. of the Labor Code and that the Agreement between the
25 parties is void *ab initio* and unenforceable. It is also ORDERED that petitioners Rosa Blasi, An
26 Individual, and 609 Maple Street Productions Inc. have no liability thereon to respondents Marathon
27 Entertainment Inc., a California Corporation and Richard Siegel, an individual and respondents

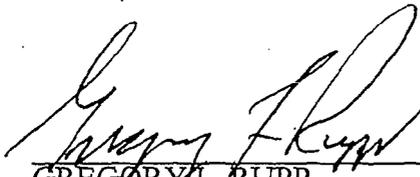
1 Marathon Entertainment Inc., a California Corporation and Richard Siegel, an individual, have no
2 rights or privileges thereunder and no entitlement to any payments of any kind from petitioners Rosa
3 Blasi, An Individual, and 609 Maple Street Productions Inc.

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5 Dated: 1/30/04


EDNA GARCIA EARLEY
Attorney for the Labor Commissioner

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10 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:**

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13 Dated: 1-30-04


GREGORY L. RUPP
Acting Deputy Chief Labor Commissioner

