

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

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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

10	KEITH BROCK,)	Case No. TAC 03-01
)	
	Petitioner,)	
11	vs.)	DETERMINATION OF
)	CONTROVERSY
12)	
)	
13	MARIO and KAREN TAMBELLINI,)	
	individually and dba ENTERTAINMENT)	
14	CONSULTANTS, ,)	
)	
15	Respondent.)	
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INTRODUCTION

19 The above-captioned petition was filed on January 30,
20 2001, by KEITH BROCK, (hereinafter "Brock" or "Petitioner"),
21 alleging that MARIO and KAREN TAMBELLINI dba ENTERTAINMENT
22 CONSULTANTS, (hereinafter "EC" or "Respondents"), acted in the
23 capacity of a talent agency without possessing the required
24 California talent agency license pursuant to Labor Code §1700.5¹.
25 The petitioner seeks from the Labor Commissioner a determination
26 voiding the parties' 1995, representation agreement *ab initio* and
27 requests disgorgement of all commissions paid to respondent

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

1 nuptials on the horizon. The respondent testified that he could
2 not only provide the entertainment for the event, but also furnish
3 limousines, tuxedos and the photographer and/or videographer.

4 3. For several years the relationship progressed very
5 smoothly and eventually the petitioner became the respondent's most
6 consistently engaged entertainer. The respondent offered credible
7 evidence that the petitioner performed often utilizing all aspects
8 of his aforementioned talents. In fact, the relationship initially
9 proved to be so mutually beneficial that Brock and EC partnered in
10 the creation of a one-hour marketing video designed to showcase
11 both the services offered by the respondent and the talents of the
12 petitioner.

13 4. The video was widely distributed at local bridal
14 shops. If an interested third party contacted the respondent for
15 information, the respondent would discuss the possible booking with
16 the petitioner and ask him how much he needed to earn for that
17 particular engagement. The respondent would then use that figure
18 to negotiate the price for services with the third party. In most
19 cases, the respondent would double Brock's price when submitting
20 the bid to the third party. If the entertainment was booked, the
21 respondent would keep 50% for himself and remit the remaining 50%
22 to the petitioner.

23 5. In 2000, the parties had a falling out and according
24 to the petitioner, Brock discovered that the respondent was not a
25 licensed talent agent and as a result seeks to void the contract
26 between them and requests disgorgement of all commissions paid to
27 the respondent during the length of the relationship. The
28 respondent alleges that the Talent Agencies Act should be narrowly

1 incorrect. The percentage of time in which the petitioner performs
2 as a wedding D.J. in ratio to his performances as a guitar player
3 or band leader is insignificant. He is a guitar player and leader
4 of a band and conducts these activities consistently for the
5 respondent. Consequently, the petitioner is an artist within the
6 meaning of Labor Code §1700.4(b).

7 2. The only remaining issue is whether based on the
8 evidence presented at this hearing, did the respondent operate as
9 a "talent agency" within the meaning of Labor Code §1700.40(a)?
10 And if so, are there any applicable defenses afforded the
11 respondent?

12 3. Labor Code §1700.40(a) defines "talent agency" as,
13 "a person or corporation who engages in the occupation of
14 procuring, offering, promising, or attempting to procure employment
15 or engagements for an artist or artists." In Waisbren v.
16 Peppercorn Production, Inc (1995) 41 Cal.App.4th 246, the court
17 held that any single act of procuring employment subjects the agent
18 to the Talent Agencies Act's licensing requirement, thereby
19 upholding the Labor Commissioner's long standing interpretation
20 that a license is required for any procurement activities, no
21 matter how incidental such activities are to the agent's business
22 as a whole.

23 4. Again, respondent contends that his primary duty was
24 to book the petitioner as a D.J. and not as a guitar player and
25 therefore the Act should not apply. This primary duties test is
26 inapplicable to the analysis. Waisbren, supra., rejects the idea
27 that incidental procurement is not covered by the Act and maintains
28 that this view "[does] not consider the remedial purpose of the

1 Act, the decisions of the Labor Commissioner, or the Legislature's
2 adoption of the view (as expressed in the California Entertainment
3 Commission's Report) that a license is necessary for incidental
4 procurement activities." Waisbren, supra, at 261. As a result,
5 the Labor Commissioner continues to follow Waisbren and the long-
6 standing policy that even incidental procurement of employment as
7 an artist requires a license. Applying Waisbren, it is clear
8 respondent acted in the capacity of a talent agency within the
9 meaning of Labor Code §1700.4(a).

10 5. Labor Code section 1700.5 provides that "no person
11 shall engage in or carry on the occupation of a talent agency
12 without first procuring a license therefor from the Labor
13 Commissioner." It was stipulated the respondent did not possess a
14 talent agency license during the course of the relationship.

15 6. Finally, respondent argues that the petitioner
16 mistakenly seeks affirmative relief, in the form of a request for
17 disgorgement of all commissions paid to the respondent throughout
18 the relationship. Respondent contends that a request for damages
19 beyond the one-year statute of limitations found at Labor Code
20 section 1700.44(c) is counter to the express language of the Act.
21 The statute provides that "[n]o action or proceeding shall be
22 brought pursuant to [the Talent Agencies Act] with respect to any
23 violation which is alleged to have occurred more than one year
24 prior to the commencement of this action or proceeding."
25 Respondent contends that any violations occurring prior to January
26 30, 2000 are not recoverable. He is correct. Disgorgement is
27 limited to the commissions paid during the one-year prior to the
28 filing of the action with the Labor Commissioner.

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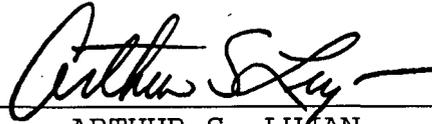
Dated: December 17, 2001



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: December 17, 2001



ARTHUR S. LUCAN
State Labor Commissioner

