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

Attorney for the Labor Commissioner

BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

JAMES MANERA, Petitioner, vs. PETER STAMELMAN, an individual and THE STAMELMAN GROUP, a corporation, Respondent.	Case No. TAC 32-96 DETERMINATION OF CONTROVERSY

INTRODUCTION

The above-captioned petition was filed on October 7, 1996, by JAMES MANERA (hereinafter "Petitioner"), alleging that PETER STAMELMAN dba THE STAMELMAN GROUP INC.,(hereinafter "Respondents"), acted in the capacity of a talent agency without possessing the required California talent agency license pursuant to Labor Code §1700.5[1]. Petitioner seeks from the Labor Commissioner a determination voiding the 1995 oral agreement *ab initio* and requests disgorgement of all payments made to respondent

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

arising from this agreement. Additionally, petitioner alleges respondent intentionally and/or negligently misrepresented material facts inducing petitioner to enter into a "deal memo" with Sony Pictures Commercial Division. Petitioner seeks general, specific, punitive and exemplary damages arising form respondent's tortious conduct.

Respondent was personally served with a copy of the petition on October 22, 1996. After respondent's Motion to Dismiss based on the Labor Commissioner's lack of jurisdiction was denied, the respondent filed his answer with this agency on May 6, 1999. Respondent alleged twenty six (26) affirmative defenses, most notably, respondent did not act in the capacity of a talent agency. A hearing was scheduled before the undersigned attorney, specially designated by the Labor Commissioner to hear this matter. The hearing commenced on September 3, 1999, in Los Angeles, California. Petitioner was represented by Michael J. Plonsker of Lavely & Singer. Respondent failed did appear. Due consideration having been given to the documentary evidence and arguments presented, the Labor Commissioner adopts the following determination of controversy.

FINDINGS OF FACT

1. In August of 1995 the parties entered into an oral agreement, whereby respondent would act as petitioner's personal manager in connection with all activities conducted within the entertainment industry. In exchange for those services, respondent would be entitled to 15% of petitioner's gross earnings.

Additionally, according the terms of the oral agreement, respondent would be reimbursed for all travel and related business expenses incurred by respondent who is domiciled in New York.

2. On August 31, 1995, at respondent's request, petitioner paid an initial $5,000.00 fee advance to respondent as a "good faith" payment for respondent's services. In October of 1995 respondent made the first of three trips to California attempting to secure employment on petitioner's behalf. Again, respondent requested a $500.00 advanced payment for traveling which petitioner paid. While in Los Angeles, respondent made various phone calls to production companies on petitioner's behalf resulting in two or three meetings between the parties and prospective employers. One such meeting culminated in petitioner's employment as a director with Off Duty Productions. Respondent's actions included, telephoning the producer, setting up the meeting and negotiating the terms of the contract. The evidence produced at the hearing demonstrated respondent received $3,705.00 as 15% of petitioner's earnings. Respondent recouped an additional $265.94 for travel related expenses.

3. Again in early November 1995, respondent requested an additional $5,000.00 payment, of which $4,500.00 petitioner reluctancy paid. At the end of November 1995, respondent embarked on his second trip to California attempting to secure employment for petitioner. Respondent telephoned numerous production companies attempting to set up meetings with prospective employers. These telephone calls produced two meetings rendering no employment. Respondent was reimbursed $520.55 for incurred travel

expenses.

4. Respondent's final trip to California occurred in March of 1996. Again the evidence demonstrated respondent's repeated efforts on petitioner's behalf, specifically repeated phone calls to production companies attempting to secure employment in the entertainment industry. Respondent contacted Sony's Commercial Division and arranged a meeting between respondent, petitioner, and Sony representatives. This meeting culminated in a "deal memo" negotiated by respondent containing the following express terms: Petitioner would be awarded a $150,000.00 signing bonus of which respondent would receive 15% or $22,500.00. Respondent would be paid $20,000.00 by Sony as a finders fee. Finally, respondent negotiated a 2% profit participation and producer screen credit. The aforementioned terms would be memorialized in a subsequent long form agreement.

5. Petitioner expressed reservation regarding the terms of the "deal memo". Specifically, petitioner objected to respondent receiving a finders fee, profit participation and screen credits. Petitioner opined his interests were not being properly safeguarded, complaining of inherent conflicts of interest. Petitioner relayed these concerns to respondent who assured petitioner that any concerns regarding the "deal memo" could be rectified prior to the completion of the long form agreement. Prior to finalizing the long form agreement, respondent received the $20,000.00 finders fee and $22,500.00 in commissions. Petitioner suggested independent counsel negotiate the long form agreement, but respondent insisted his personal counsel draft the

long form agreement. Communications deteriorated and the relationship was formally severed in June of 1996.

CONCLUSIONS OF LAW

1. Labor Code §1700.4(b) includes "directors" in the definition of "artist" and petitioner is therefore an "artist" within the meaning of §1700.4(b).

2. Respondent is not a licensed California talent agency[2].

3. The primary issue is whether based on the evidence presented at this hearing, did the respondent operate as an unlicensed "talent agency" within the meaning of §1700.40(a). Labor Code §1700.40(a) defines "talent agency" as, "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists." The statute also provides that "talent agencies may in addition, counsel or direct artists in the development of their professional careers."

4. Labor Code section 1700.5 provides that "no person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." In Waisbren v. Peppercorn Production, Inc (1995) 41 Cal.App.4th 246, the court held that any single act of procuring

---

[2] The Labor Commissioner's Licensing and Registration Unit maintains records of all talent agencies that are, or have been licensed by the State Labor Commissioner. A search of these records reveals that no license has ever been issued to a business operating under the name "Peter Stamelman or The Stamelman Group."

employment subjects the agent to the Talent Agencies Act's licensing requirement, thereby upholding the Labor Commissioner's long standing interpretation that a license is required for any procurement activities, no matter how incidental such activities are to the agent's business as a whole. Applying Waisbren, it is clear respondent acted in the capacity of a talent agency within the meaning of §1700.4(a).

5. Respondent's actions on behalf of petitioner included repeated phone calls to production companies attempting to procure employment for petitioner. Respondent on various occasions organized meetings between the parties and production companies and negotiated the material terms of an employment contract. This activity clearly falls within the definition of procuring employment or engagements for an artist within the meaning of §1700.4(a).

6. Having determined respondent acted as an unlicensed talent agent, it follows respondent is subject to all laws regulating talent agencies. Labor Code §1700.39, states, "[n]o talent agency shall divide fees with an employer, an agent or other employee of an employer." Respondent's negotiations with Sony, ostensibly conveys upon respondent compensation from the employer contingent upon profit margins received by the employer. Respondents efforts to secure a 2% profit participation contained in the "deal memo" with Sony violates Labor Code §1700.39.

7. Further, respondent accepted a $20,000.00 finders fee from the employer. This practice commonly called "double dipping", is a breach of fiduciary duty, and a violation of the

Talent Agencies Act. It has long been the historical policy of the Labor Commissioner to preclude agents from receiving finders fees. Acquiescence of this practice would encourage agents to negotiate monies benefitting the agent over and above the commission percentage required to be filed with the Labor Commissioner. This would effectively supercede the amount of compensation approved by the Labor Commissioner and render regulatory control over compensation meaningless.

8. As a result of respondent's unlawful conduct, the aforementioned agreement between respondent and petitioner is hereby void *ab initio* and is unenforceable for all purposes. Waisbren v. Peppercorn Inc., supra, 41 Cal.App. 4th 246; Buchwald v. Superior Court, supra, 254 Cal.App.2d 347.

9. With respect to petitioner's claim for damages stemming from intentional or negligent misrepresentation, the Labor Commissioner is without jurisdiction over tort causes of action.

ORDER

For the above-stated reasons, IT IS HEREBY ORDERED that the 1995 oral contract between respondent PETER STAMELMAN dba THE STAMELMAN GROUP and petitioner JAMES MANERA is unlawful and void *ab initio*. Respondent has no enforceable rights under that contract.

Petitioner is entitled to recoup $32,279.87 in payments made to respondent resulting from the aforementioned illegal contract. Petitioner is precluded from recouping the initial October 31, 1995 $5,000.00 "good faith" payment, as respondent

collected this payment outside the one-year statute of limitations prescribed by Labor Code §1700.44(c).

Dated: 11/10/99

DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 11/10/99

MARCY SAUNDERS
State Labor Commissioner