

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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Special Hearing Officer for the Labor Commissioner

9 BEFORE THE LABOR COMMISSIONER
10 OF THE STATE OF CALIFORNIA

11 MARIO SOLIS, an individual,

12 Petitioner,

13 vs.

14 JAMES E. BLANCARTE, a
15 Professional Corporation,

16 Respondent.

CASE NO.: TAC-27089

DETERMINATION OF
CONTROVERSY

17 The above-captioned matter, a petition to determine controversy under Labor Code
18 §1700.44, came on regularly for hearing on January 10, 2013 in Los Angeles, California,
19 before the undersigned attorney for the Labor Commissioner assigned to hear this case.
20 Petitioner MARIO SOLIS (hereinafter "Petitioner") appeared personally and was
21 represented by attorney Miles J. Feldman. Respondent JAMES E. BLANCARTE
22 (hereinafter "Respondent") appeared personally and was represented by attorney Robert
23 D. Lipscomb.

24
25 This proceeding arises out of the Petition to Determine Controversy filed by
26 petitioner with the Labor Commissioner on April 30, 2012. The petition alleges that
27 respondent entered into a representation agreement with petitioner, pursuant to which
28

1 respondent agreed to act and acted as an unlicensed talent agent in violation of Labor
2 Code section 1700.5, a provision of the Talent Agencies Act (TAA), Labor Code section
3 1700 et seq. The petition seeks a declaration that the contract is void and unenforceable,
4 and that respondent is therefore barred from seeking any recovery under the terms of the
5 contract. Due consideration having been given to the evidence presented at the hearing
6 and to the documents and other papers on file in this proceeding, the Labor Commissioner
7 now renders the following decision.

8
9 **FINDINGS OF FACT**

10
11 1. Petitioner is a sports reporter and news anchor for a Los Angeles
12 television station, KNBC Channel 4. Apart from his talents and activities as a broadcast
13 journalist, petitioner's artistic pursuits include acting, script writing, voice overs, and
14 performing as an entertainer.

15
16 2. Respondent is a duly licensed attorney who is admitted by the state
17 bar to practice law in the State of California.

18
19 3. Prior to July, 2002, when the parties entered into the engagement
20 contract described below, respondent had on certain occasions provided legal services to
21 the petitioner. In addition, according to petitioner, respondent had provided management
22 type services to petitioner in connection with petitioner's interest in breaking into network
23 television; specifically, respondent advised petitioner that he would keep his eye open for
24 opportunities for petitioner to work in television.

25
26 4. Sometime prior to July 8, 2002, KNBC approached petitioner and
27 expressed an interest in hiring petitioner to work for the station as a sports reporter, news
28

1 anchor, commentator, and analyst, as well as in other roles related to the entertainment
2 programming offered by the station.

3
4 5. Following this expression of interest by KNBC, petitioner contacted
5 respondent and asked him to represent petitioner in handling the negotiation of the terms
6 of his employment with the station. Respondent was receptive to the proposal, and on
7 July 8, 2002 the parties entered into a written engagement contract set out in the form of
8 an engagement letter from respondent to petitioner. At the outset the letter states: "We
9 appreciate your asking us to represent you in connection with your broadcasting and
10 entertainment career, including without limitation, contract negotiations with KNBC
11 Channel 4."

12
13 6. The engagement contract provided that respondent would be paid a
14 five percent (5%) commission on all net monies paid to petitioner under the contract to be
15 negotiated by respondent with KNBC. According to petitioner, respondent wanted to be
16 paid a commission instead of a one-time fee because of the follow-up work he would do
17 on the contract and because he would be acting as petitioner's representative and agent.

18
19 7. At the time that respondent was brought in, there was no deal in
20 place with KNBC: neither the compensation arrangements, nor the length of the contract,
21 nor any of the other terms and conditions under which petitioner would be employed by
22 KNBC had been addressed or worked out. These were all matters that respondent had
23 been engaged to negotiate.

24
25 8. Thereafter, respondent proceeded to negotiate an employment
26 agreement for petitioner with KNBC, which was signed by both parties and became
27 effective August 5, 2002.

1 9. During the four-year period covered by petitioner's employment
2 agreement, August 5, 2002 through August 6, 2006, respondent was paid the
3 commissions due to him under the engagement contract.
4

5 10. Prior to August 7, 2006, respondent negotiated a three year renewal
6 of petitioner's employment agreement, which included an increase in annual
7 compensation for each of the three years. The agreement was signed and became
8 effective August 7, 2006.
9

10 11. During the period August 7, 2006 through the end of 2007,
11 respondent received his 5% share of petitioner's net monthly income under the
12 employment agreement, representing the commissions due pursuant to the engagement
13 contract. Thereafter, petitioner made no further commission payments to respondent.
14

15 12. Prior to June 2, 2009, respondent negotiated a two-year further
16 renewal of the employment agreement set to expire in August, 2009. Because prevailing
17 economic conditions resulted in a decrease in the compensation offered to and ultimately
18 accepted by petitioner, respondent is making no claim for commissions due under this
19 second renewal of the employment agreement.
20

21 13. At one point, apparently during the time that respondent was still
22 being paid his commissions, an opportunity arose for petitioner to go to work for ESPN.
23 Petitioner asserts that this opportunity was arranged by and presented to petitioner by
24 respondent. Respondent, on the other hand, asserts that the ESPN opportunity was
25 brought to his attention by petitioner, and that it was petitioner himself who was contacted
26 directly by ESPN.
27
28

1 14. Throughout the period encompassing respondent's asserted
2 entitlement to commissions under the engagement contract, July 8, 2002 to August 31,
3 2009, respondent was not licensed as a "talent agency" under the provisions of the TAA.

4
5 15. On December 30, 2011, respondent filed a civil action against
6 petitioner in the Los Angeles County Superior Court, Central District—Blancarte v. Solis,
7 Case No. BC476169. The complaint sought to recover the commissions due under the
8 engagement contract based on the net monies paid to petitioner between January 1, 2008
9 and August 31, 2009 pursuant to the employment agreement with KNBC.

10
11 16. After filing an answer to the complaint, which included an
12 affirmative defense based on the TAA, petitioner filed the instant petition with the Labor
13 Commissioner seeking a determination that the engagement contract was entered into is
14 violation of the TAA and was therefore void and unenforceable.

15
16 **LEGAL ANALYSIS**

17
18 1. Labor Code section 1700.5 provides in relevant part as follows:

19 No person shall engage in or carry on the occupation of a talent
20 agency without first procuring a license therefor from the Labor
21 Commissioner.

22
23 2. Under Labor Code section 1700.4, subdivision (a), "[t]alent agency"
24 is defined in relevant part as follows:

25 "Talent agency" means a person or corporation who engages in the
26 occupation of procuring, offering, promising, or attempting to procure
27 employment or engagements for an artist or artists, except that the activities
28 of procuring, offering, or promising to procure recording contracts for an
artist or artists shall not of itself subject a person or corporation to

1 regulation and licensing under this chapter.

2
3 3. Labor Code section 1700.4, subdivision (b) defines “[a]rtists” in part
4 as follows:

5 “Artists” means actors and actresses . . . , radio artists, . . . writers, . . . and
6 other artists and persons rendering professional services in motion picture,
7 theatrical, radio, television and other entertainment enterprises.

8
9 4. In the present case, the evidence establishes that petitioner was a
10 person rendering artistic and professional services in the medium of television for
11 purposes of entertaining the public. Thus, it is clear petitioner was an artist within the
12 meaning of section 1700.4, subdivision (b).

13
14 5. The next, and crucial question, is whether respondent was engaged in
15 the occupation of a talent agency, that is to say, whether he was engaged in procuring or
16 in offering, promising, or attempting to procure employment or engagements for
17 petitioner.

18
19 6. The principal and dominant activities that respondent performed on
20 behalf of petitioner pursuant to the engagement contract involved the negotiation of the
21 compensation and other terms of the agreements for the employment of petitioner by
22 KNBC. The Labor Commissioner has long recognized that the acts undertaken in the
23 course of negotiating an agreement for the employment of an artist constitute “procuring .
24 . . or attempting to procure employment” within the meaning of section 1700.4,
25 subdivision (a).

26 The term “procure,” as used in Labor Code §1700.4(a),
27 means “to get possession of: obtain, acquire, to cause to
28 happen or be done: bring about.” *Wachs v. Curry* (1993) 13

1 Cal.App.4th 616, 628. Thus, "procuring employment" under
2 the Talent Agencies Act is not limited to initiating discussions
3 with potential purchasers of the artist's professional services
4 or otherwise soliciting employment; rather, "procurement"
5 includes any active participation in a communication with a
6 potential purchaser of the artist's services aimed at obtaining
7 employment for the artist, regardless of who initiated the
8 communication. *Hall v. X Management* (TAC No. 19-90, pp.
9 29-31.) The Labor Commissioner has long held that
10 "procurement" includes the process of negotiating an
11 agreement for an artist's services. *Pryor v. Franklin* (TAC 17
12 MP 114). Significantly, the Talent Agencies Act specifically
13 provides that an unlicensed person may nevertheless
14 participate in negotiating an employment contract for an artist,
15 provided he or she does so "in conjunction with, and at the
16 request of a licensed talent agent." Labor Code §1700.44(d).
17 This limited exception to the licensing requirement would be
18 unnecessary if negotiating an employment contract for an
19 artist did not require a license in the first place.

20 (*Danielewski v. Agon Investment Company* (Cal.Lab.Com., October 28, 2005) TAC No.
21 41-03, pages 15-16.)

22 7. The negotiation of petitioner's employment agreements with KNBC
23 represented the bulk of the activities that respondent engaged in on behalf of petitioner
24 under the engagement contract. Indeed, the contract was entered into for the purpose of
25 having respondent conduct such negotiations, and respondent carried out the contract by
26 effectuating and accomplishing that purpose. By negotiating the KNBC agreements on
27 petitioner's behalf, respondent attempted to procure and procured employment for
28 petitioner. As a consequence, respondent engaged in and carried out the occupation of a
talent agency; because he did so without having first obtained a talent agency license
from the Labor Commissioner, respondent violated the provision of Labor Code section
1700.5.

1 8. Respondent contends that because he is a duly licensed attorney, his
2 activities in negotiating the KNBC agreements on behalf of petitioner should be treated as
3 exempt from the licensing requirements of section 1700.5. The provisions of the TAA do
4 not contain or recognize any such exemption. Moreover, respondent has provided no
5 authority that would support the propriety of applying or creating such an exemption.

6
7 9. The applicable scope of the TAA has been delineated by the
8 Supreme Court:

9
10 The Act establishes its scope through a functional, not a
11 titular, definition. It regulates *conduct*, not labels; it is the act
12 of procuring (or soliciting), not the title of one's business, that
13 qualifies one as a talent agency and subjects one to the Act's
14 licensure and related requirements. (§1700.4, subd. (a).) Any
15 person who procures employment—any individual, any
16 corporation, any manager—is a talent agency subject to
17 regulation. (§§1700.4, subd. (a).)

18 (*Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 986.) As the foregoing
19 makes perfectly clear, anyone who procures or solicits engagements for an artist is
20 carrying on the occupation of a talent agency and must be licensed.

21 10. It is evident that the functional scope of the TAA admits of no
22 exceptions and encompasses the procurement activities of respondent, even though he is
23 an attorney. In this regard, it is of no moment that some of the skills respondent may have
24 brought to the negotiations on behalf of petitioner are the result of skills for which he has
25 been licensed as an attorney. As Labor Code section 1700.44 makes unequivocally clear,
26 when someone who is not licensed under the TAA wishes to bring such skills to bear on
27 the negotiation of an artist's contract, he must do so "in conjunction with, and at the
28 request of, a licensed talent agency." Here, respondent acted entirely on his own and

1 without a talent agency license; consequently, his conduct constituted a clear violation of
2 the licensure requirements of section 1700.5.

3 11. The consequences that flow from a violation of the TAA are well
4 settled. When a person contracts to act as a talent agent without first having obtained a
5 talent agency license as required by the TAA, the contract that has been entered into is
6 illegal, void, and unenforceable. "Since the clear object of the Act is to prevent improper
7 persons from becoming [talent agents] and to regulate such activity for the protection of
8 the public, a contract between an unlicensed [talent agent] and an artist is void."
9 (*Buchwald v. Superior Court* (1967) 254 Cal.App. 2d 347, 351.).

10
11 12. As recognized in *Marathon Entertainment, Inc. v. Blasi, supra*, in
12 some cases there may be a basis for severing the illegal portions of a contract violative of
13 the TAA's licensure requirements from the other parts of the contract. However, this will
14 be permissible only where there are both illegal and legal aspects to the contract and
15 where the two aspects can be properly severed in accordance with the legal standards
16 governing application of the severance doctrine.

17
18 13. There is no basis for applying the doctrine of severability in the
19 circumstances of this case. It is established law that if the central purpose of a contract is
20 illegal, the entire contract is void and will not be enforced. In the present case, the central
21 purpose of the engagement contract was to enable respondent to act as petitioners'
22 unlicensed talent agent. This illegal purpose contaminated the entire contract, and
23 rendered it void and unenforceable. (See *Marathon Entertainment, Inc. v. Blasi, supra*,
24 42 Cal.4th at pp. 997-998.) In addition, in this case respondent is seeking to preserve his
25 right to recover certain commissions under the engagement contract; the commissions that
26 he seeks to protect are based on the income that respondent generated for petitioner
27 through his illegal procurement activities. Plainly, respondent cannot capitalize on and
28

1 gain a benefit from illegal conduct under a contract; in these circumstances, the illegality
2 permeates the entire engagement contract and renders it void and unenforceable. In light
3 of these conclusions, it is unnecessary to consider whether, in rendering services under
4 the engagement contract, respondent engaged in other conduct violative of the TAA.

5
6 14. In sum, for the reasons stated above, it is determined that in entering
7 into the engagement contract with petitioner, and in performing under that contract,
8 respondent engaged in the occupation of a talent agency without having obtained a
9 license from the Labor Commissioner. Because it was pervaded by illegality, the entire
10 contract is found to be void and unenforceable.

11
12 **ORDER**

13
14 For the reasons set forth above, **IT IS HEREBY ORDERED** as follows:


15
16 The contract between petitioner and respondent is declared to be illegal,
17 void and unenforceable, and respondent is barred from enforcing or seeking to enforce
18 the contract against petitioner in any manner.

19
20 Dated: 9-30-2013

21 
22 William A. Reich
Special Hearing Officer

23 Adopted:

24
25 Dated: 9.30.2013

26 
Julie A. Su
State Labor Commissioner

DECLARATION OF SERVICE BY MAIL

Case No. TAC - 27089

Legal Case No. VE02075

I, the undersigned, say: my business address is 1901 N. Rice Ave., Suite #200, Oxnard, California
93030 I am over the age of eighteen years, not a party of the above-entitled action, and at the
time of the mailing, was employed or resided in the County where said mailing occurred. On ____
September 30, 2013 I served the within **DETERMINATION OF**

CONTROVERSY

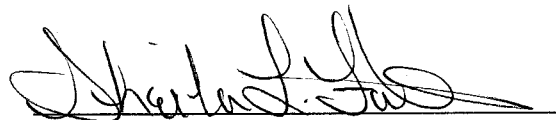
on the interested parties in the above-entitled proceeding by depositing copies thereof, enclosed in
separate, sealed envelopes, with the postage thereon fully prepaid, in the United States mail at
Oxnard, County of Ventura, California, which envelopes were addressed respectively as follows:

Robert D. Lipscomb, Esq.
1359 Spazier Ave.
Glendale, CA 91201

Miles J. Feldman, Esq.
Paul A. Kroeger, Esq.
RAINES FELDMAN LLP
9720 Wilshire Blvd., 5th Floor
Beverly Hills, CA 90212

Executed on September 30, 2013 at Oxnard, California

I declare under penalty of perjury that the foregoing is true and correct.



Sheila L. Fountain
Declarant