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The Talent Agencies Act After Marathon: How California Polices Procurement vs. Mere Advice

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The Talent Agencies Act defines a talent agency by the act of procuring employment, so a personal manager who procures work without a license is subject to it.

The Talent Agencies Act (Lab. Code, § 1700 et seq.) turns on what a representative does, not what the representative is called. Advice is unregulated. Procurement requires a license. This memorandum examines where California draws that line, who decides disputes over it, and what follows when an unlicensed manager crosses it.

I. Question Presented

When does a personal manager's work for an artist become unlicensed talent agency activity, which tribunal decides, and what remedy follows under *Marathon Entertainment, Inc. v. Blasi*?

II. Short Answer

Anyone who procures, offers, promises, or attempts to procure employment or engagements for an artist must hold a talent agency license, whatever the person's title. Even incidental procurement counts. Counseling and directing a career does not require a license, and procuring recording contracts does not by itself trigger licensing. Disputes arising under the Act go first to the Labor Commissioner, even when the Act is raised only as a defense. The one-year limitations period bars untimely claims for affirmative relief but not defenses. Under *Marathon*, the Commissioner and courts may void the entire contract or **sever the unlawful procurement and enforce the rest**. Neither result is mandatory.

III. Governing Law

A. Definitions and Licensing

- "Person" includes any individual, company, corporation, limited liability company, "manager," or their agents or employees. (Lab. Code, § 1700.)
- A "talent agency" is "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." Procuring, offering, or promising to procure **recording contracts** "shall not of itself" subject a person to licensing. Talent agencies "may, in addition, counsel or direct artists in the development of their professional careers." (Lab. Code, § 1700.4, subd. (a).)
- "Artists" include actors, musical artists, directors, writers, cinematographers, composers, lyricists, arrangers, models, and others rendering professional services in entertainment enterprises. (*Id.*, subd. (b).)
- No person shall engage in the occupation of a talent agency "without first procuring a license therefor from the Labor Commissioner." (Lab. Code, § 1700.5.)

B. Forum, Limitations, and Safe Harbor

Controversies arising under the Act must be referred to the Labor Commissioner, who hears and determines them. Either party may appeal within 10 days to the superior court for a hearing de novo. A stay of a money award requires a bond of up to twice the judgment. (Lab. Code, § 1700.44, subd. (a).) Unlicensed activity is not a crime. (*Id.*, subd. (b).) No action or proceeding may be brought "with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding." (*Id.*, subd. (c).) An unlicensed person may act "in conjunction with, and at the request of, a licensed talent agency in the negotiation of an employment contract." (*Id.*, subd. (d).) Arbitration clauses in contracts with talent agencies are valid only if they meet the conditions of section 1700.45, including notice to the Commissioner and the Commissioner's right to attend hearings.

C. Severability

"Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest." (Civ. Code, § 1599.)

IV. Analysis

A. Conduct, Not Title

In *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, a personal manager sued an actress for unpaid commissions on a television series. The Labor Commissioner found the manager had procured engagements without a license and voided the contract. The Supreme Court held that the Act applies to managers as well as agents. (*Id.* at p. 980.) The Act "establishes its scope through a functional, not a titular, definition." It "regulates conduct, not labels." Any person who procures employment is a talent agency subject to regulation. (*Id.* at p. 986.)

B. Incidental Procurement Suffices

The Act refers to the "occupation" of procuring employment. The court acknowledged that, read in isolation, the word might confine the Act to those who procure regularly. It instead followed the weight of authority, previously noted in *Styne v. Stevens* (2001) 26 Cal.4th 42, 51, that "even the incidental or occasional provision of such services requires licensure." (*Marathon*, *supra*, 42 Cal.4th at p. 987.) The Labor Commissioner has uniformly taken the same view, and the court concluded that the Act "extends to individual incidents of procurement." (*Id.* at pp. 987–988.)

C. Where Advice Ends

Marathon describes the personal manager's traditional role as advising and counseling the artist, coordinating the artist's career, and managing business and personal affairs. (*Marathon*, *supra*, 42 Cal.4th at pp. 983–984.) That work requires no license. The statute itself treats counseling as an activity a licensed agency may perform "in addition" to procurement. (§ 1700.4, subd. (a).) The boundary is therefore the act of procuring, offering, promising, or attempting to procure engagements. Two statutory carve-outs narrow it further: recording-contract procurement, which does not "of itself" require a license, and negotiation conducted with and at the request of a licensed agency. (§§ 1700.4, subd. (a), 1700.44, subd. (d).)

D. The Remedy: Voiding or Severance

The Act "is silent—completely silent—on the subject of the proper remedy for illegal procurement." (*Marathon*, *supra*, 42 Cal.4th at p. 991.) The court read Civil Code section 1599 together with the Act. It declined to hold that unlawful procurement always voids the whole contract. Full voiding may be "often, or even almost always, appropriate," but that "does not support the position that it is always proper." (*Id.* at p. 995.) Its conclusion: "the full voiding of the parties' contract is available, but not mandatory; likewise, severance is available, but not mandatory." (*Id.* at p. 996.)

The test is equitable. "The overarching inquiry is whether 'the interests of justice . . . would be furthered' by severance." If the central purpose of the contract is tainted with illegality, the contract cannot be enforced. If the illegality is collateral and can be extirpated, severance is appropriate. (*Marathon*, *supra*, 42 Cal.4th at p. 996.)

The court rejected two categorical objections. First, an undifferentiated percentage commission does not by itself bar severance. It compared the arrangement to a contingency fee. (*Id.* at p. 997.) Second, one act of procurement does not taint all other services. A manager who spends 99 percent of the time counseling is not insulated from the Act by the remaining 1 percent; equally, the 1 percent "does not thereby render illegal the 99 percent." (*Id.* at pp. 997–998.) Courts may void the entire contract where the parties intended the representative to function as an unlicensed agency, or where the representative engaged in substantial procurement inseparable from managerial services. But "an isolated instance of procurement does not automatically bar recovery for services that could lawfully be provided without a license." (*Id.* at p. 998.) On the summary judgment record, a triable issue existed, and the court affirmed the Court of Appeal. (*Id.* at pp. 980–981.)

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E. Forum and Timing Under Styne

Styne addresses who decides and when. Controversies colorably arising under the Act are within the Commissioner's exclusive original jurisdiction "even when Act-based issues are first raised as an affirmative defense to a court suit." (*Styne*, *supra*, 26 Cal.4th at p. 59.) The Commissioner also has exclusive jurisdiction to determine whether the contract involved talent agency services. (*Id.* at p. 54.) Courts do not share original jurisdiction. (*Id.* at p. 58.)

The one-year period of section 1700.44, subdivision (c), does not bar a pure defense. The court applied the general rule that a defense may be raised at any time, even if the same matter would be time-barred as a claim for affirmative relief. (*Styne*, *supra*, 26 Cal.4th at pp. 51, 54.) An artist who seeks only to defeat a commission claim is asserting a defense, not seeking affirmative relief. (*Id.* at p. 53.)

V. Practical Considerations

- **Map each engagement.** Severance analysis under *Marathon* depends on what was procured, by whom, and on what terms. Commission records should be tied to specific engagements.
- **Use the safe harbor deliberately.** Section 1700.44, subdivision (d), protects negotiation undertaken in conjunction with, and at the request of, a licensed agency. Written requests from the agency help establish it.
- **Refer before litigating.** A party invoking the Act in a superior court action should expect the matter to be referred to the Commissioner under *Styne*.
- **Calendar the appeal.** Review of a Commissioner determination is by appeal to the superior court within 10 days, heard de novo. (§ 1700.44, subd. (a).)
- **Distinguish affirmative claims from defenses.** The one-year bar applies to the former, not the latter.

VI. Authorities Cited

- Lab. Code, § 1700
- Lab. Code, § 1700.4
- Lab. Code, § 1700.5
- Lab. Code, § 1700.44
- Lab. Code, § 1700.45
- Civ. Code, § 1599
- *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974
- *Styne v. Stevens* (2001) 26 Cal.4th 42

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