

Not Knowing Where to Sue an Unlicensed Talent Agent Could Cost You \$25 Million

By June Lin

Introduction

Imagine an unlicensed talent agent who provides services to an artist. The artist, who discovers that the talent agent was required to be licensed to provide such services, hires an attorney to sue the talent agent for return of commissions paid to the talent agent. The attorney files the lawsuit in a local state court prior to the lapse of the statute of limitations for such claim. Later the attorney discovers a petition should have been filed with the Labor Commissioner, which has exclusive jurisdiction over unlicensed talent agent cases, and the attorney corrects his error after the statute of limitations has lapsed. The artist is denied recovery and sues his attorney for malpractice. The artist is awarded \$10.5 million in compensatory damages and an additional \$15 million in punitive damages. True story? It may be in California.

How Does California Regulate Talent Agents?

Due to the large number of major film and record companies based in California and the California legislature's historic concern for the welfare of the artists in those industries, California's Talent Agencies Act ("TAA"), found in California Labor Code Sections 1700 through 1700.47, is one of the country's most restrictive talent agency acts. Under the TAA, any person or company engaging in the work of procuring employment or engagements for an "artist" is considered a "talent agency" and is required to be licensed by the California Labor Commissioner and subject to fairly extensive state regulations, including maintaining accurate records, having the records subject to inspection, and submitting commission rates and even forms of contract for approval by the Labor Commissioner. "Artist" is defined very broadly to

include actors, radio and musical artists, directors, writers, cinematographers, composers, models, and other persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises. Unlicensed talent agencies risk having their contracts declared illegal and unenforceable and losing all their commissions.

Recognizing that an emerging recording artist typically cannot secure the services of an agent without a recording agreement in hand, the TAA does permit unlicensed individuals to engage in procuring recording contracts for an artist. In addition, unlicensed persons may negotiate employment contracts for clients so long as they act in conjunction with and at the request of a licensed talent agent.

The TAA also provides that in cases arising under the TAA, the parties shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the case, subject to an appeal to the superior court. Cases arising under the TAA must be brought within one year.

By containing detailed licensing requirements seeking to weed out individuals of questionable moral character from talent agencies, and severely punishing those who act as talent agents without the required license, California's Talent Agencies Act aims to protect artists from unethical business people.

Blanks v. Seyfarth Shaw¹

Billy Blanks v. Seyfarth Shaw is the real-life 2009 case on which our hypothetical in the Introduction is based. In this case, Greenfield, a certified public accountant, was hired by Blanks, celebrity karate champion, as Blanks' accountant. Some years later, Greenfield became Blanks' business manager and began negotiating business deals and media appearances for Blanks in return for 10 percent of Blank's revenues. Greenfield was not licensed under the Talent Agencies Act. Blanks learned that Greenfield was required to be licensed under the TAA

¹ 171 Cal. App. 4th 336 (2009).

and hired the law firm of Seyfarth Shaw (“Seyfarth”) to sue Greenfield for over \$10.5 million in fees paid by Blanks to Greenfield. Seyfarth filed a lawsuit in November 1999. On December 29, 1999 the TAA one-year statute of limitations lapsed on the first check Blanks had paid to Greenfield, and it lapsed on the last of sixteen checks paid by Blanks to Greenfield on August 2, 2000. Seyfarth, apparently discovering its error, filed a petition with the Labor Commissioner on August 28, 2000. The Labor Commissioner found that Greenfield had indeed been in violation of the TAA, but because the TAA mandates that the Labor Commissioner has exclusive original jurisdiction over all TAA claims, and the petition with the Labor Commissioner was not filed within one year of the date the last check was paid, Blanks could not recover.

In the subsequent malpractice case against Seyfarth, because Seyfarth neglected to proceed first with the Labor Commissioner and the statute of limitations for such proceeding had expired, both the trial court and the Court of Appeal found Seyfarth liable for the loss of Blanks’ right to recover moneys paid for unlicensed activities, and the trial court awarded Blanks \$10.5 million in compensatory damages, \$15 million in punitive damages and \$5.6 million in interest, attorney’s fees, and costs. The Court of Appeal, however, ruled that the trial court was in error in finding that, due to the lack of a license, the agreement between Blanks and Greenfield was “*void ab initio*” and Greenfield could recover nothing, because the agreement between Blanks and Greenfield was subject to the doctrine of severability. Since many of the services provided by Greenfield did not require a TAA license, by not instructing the jury on the doctrine of severability, the trial court had “usurped the jury’s responsibility to determine causation and damages” in the malpractice action. The Court of Appeal required further work by the trial court to find out what portion of the unlicensed talent agent’s work was not the kind of work that required a license.

Conclusion

In spite of the actual outcome of the *Blanks* case, in which the Court of Appeal overturned the trial court's massive judgment against the law firm, the *Blanks* case still stands as a warning to attorneys involved in disputes between a professional, such as a talent agent, and the professional's client. If the severability doctrine had not applied, i.e. if all of Greenfield's activities had required a license under the TAA, the Court of Appeal may very well have let the trial court judgment stand. The *Blanks* case demonstrates that when representing clients against talent agents based in California, it is critical to be familiar with the peculiarities of California's Talent Agencies Act, and where such cases should properly be brought.

This article is intended to provide a general summary and should not be construed as a legal opinion nor a complete legal analysis of the subject matter. June Lin is an attorney at Niesar & Vestal LLP in San Francisco, a law firm specializing in business law and corporate finance.