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Law Alert

To: Firm Clients and Contacts

From: Niesar & Vestal LLP

Date: December 19, 2013

Re: **Attorney's Engagement Letter to Negotiate Employment Contract may be Declared to be Illegal, Void and Unenforceable for Attorney's Failure to Register as a Talent Agency under California Law**

Introduction

The Labor Commissioner ruled on September 30, 2013 in *Solis v. Blancarte* (Cal.Lab.Com., September 30, 2013)(Case No.: TAC-27089) that James Blancarte, a Los Angeles attorney, had violated the Talent Agencies Act (TAA) by "procuring employment" for his client, Mario Solis, without having first obtained a talent agency license. As a result Mr. Blancarte's engagement letter with Mr. Solis was declared to be illegal, void and unenforceable and he was barred from seeking to enforce its terms.

Prior to entering into the engagement letter at issue, Mr. Blancarte had performed other legal work for Mr. Solis including providing input for opportunities to work in the television industry. Sometime in 2002 a representative of KNBC communicated to Mr. Solis an interest in hiring him as a sports reporter, news anchor and commentator at the station. Mr. Solis then contacted Mr. Blancarte and engaged him to handle the negotiations of the terms of his employment with KNBC. The parties entered into an engagement letter on July 8, 2002. As quoted in the Commissioner's opinion, the letter provided "We appreciate your asking us to represent you in connection with your broadcasting and entertainment career, including without limitation, contract negotiations with KNBC, Channel 4." The letter further provided that Mr. Blancarte was to be paid a 5% commission on all net sums paid to Mr. Solis under his employment contract. Mr. Blancarte declined to be paid on a one-time fee basis.

At the time Mr. Blancarte was retained there were no deal terms in place. He would have to and did negotiate all issues. Mr. Solis entered in to an employment contract with KNBC effective on August 5, 2002. Subsequently Mr. Blancarte negotiated a renewal of both the employment contract and the engagement letter. Through the end of 2007 he received his 5% commission of Mr. Solis' net monthly income from KNBC, but then Mr. Solis ceased paying the commission. On December 30, 2011 Mr. Blancarte filed a civil action against Mr. Solis under the engagement letter to collect unpaid commissions under the KNBC employment agreement. Mr. Solis then filed a petition with the Labor Commissioner seeking a determination that the engagement letter was in violation of the TAA and therefore unenforceable.

Application of California Law

In his opinion the Labor Commissioner set forth the relevant statutory provisions.

Labor Code section 1700.5 provides: No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner.

Labor Code section 1700.4(a) provides: "Talent Agency" means 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, except that the activities of procuring, offering or promising to procure recording contracts for an artist or artists shall not of itself subject to a person or corporation to regulation and licensing under this chapter.

Labor Code section 1700.4(b) provides: "Artists" means actors and actresses…, radio artists,…writers,…and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

Turning first to the definition of artist, the Labor Commissioner found that Mr. Solis was an artist rendering services in the television medium.

Next the Commissioner turned to the principal issue of whether Mr. Blancarte, an attorney, was engaged in the occupation of being a talent agency. Applying section 1700.4(a) the question centers on procurement, specifically whether he was engaged in procuring or in offering, or attempting to procure employment for Mr. Solis. Then quoting from *Danielewski v. Argon Investment Company* (Cal.Lab.Com., October 28, 2005)(TAC No.41-03, pages 15-16):

> The term "procure," as used in Labor Code §1700.4(a), means to get possession of: obtain, acquire, to cause to happen or to be done: bring about." *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 628. Thus, " procuring

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

The Commissioner went on to find that the principal activities of Mr. Blancarte were to negotiate an employment contract with KNBC on behalf of Mr. Solis in accordance with the parties' engagement agreement. As a consequence the Commissioner found that Mr. Blancarte was engaged in the occupation of a talent agency and was in violation of Labor Code section 1700.5. Accordingly the engagement letter between Mr. Blancarte and Mr. Solis was declared to be illegal, void and unenforceable.

The Commissioner rejected Mr. Blancarte's contention that as a licensed California attorney he should be exempt from the TAA licensing requirements. The Commissioner observed that no such exception exists and that the Act deals with conduct not labels. Regardless of what a person calls himself, if he procures employment for an artist, he is working as a talent agency. In 1986 the California legislature enacted a compromise "safe harbor" provision whereby an unlicensed agent could work with and at the request of a licensed agent.

The Act's prohibition of procuring employment applies to everyone who is not a licensed talent agent. The Act also applies regardless of whether one resides in California or in another state or jurisdiction. *Kyle Bluff et al. v. Paris Djon, an individual d/b/a Rockworx Entertainment* (TAC 17277)(Paris Djon a New York resident); *Leslie Redden v. Candy Ford Group,* (TAC 13-06)(Candy Ford an out of state agency).

It is quite common for an attorney to be engaged to negotiate an employment contract for his or her client. In all probability such undertaking would fall within the definition of "procure" as used in Labor Code section 1700.4(a). So the critical analysis is in determining whether the client falls within the definition of "artist" in Section 1700.4(b). Some of the terms are straightforward but the definition includes "persons rendering professional services in…other entertainment enterprises." This description is very broad and would be subject to interpretation. From the history of the TAA and the

Labor Commissioner's decisions, the results appear to favor the artists petitioning to invalidate contracts.

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. If you would like to speak with a Niesar & Vestal attorney about any matter discussed in this law alert, please contact Stephen Rush (srush@nvlawllp.com), Gerald Niesar (gniesar@nvlawllp.com) or Oscar Escobar (oescobar@nvlawllp.com).