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BOOKS

The Talent Agencies Act: protecting artists from abuse

By Michael J. Flonizer

“Entertainment Litigation” is an in-depth legal and practice guide regarding issues that most frequently arise in entertainment litigation. A helpful tool for plaintiffs and defendants, as well as studios, distributors and independent producers, this book also features content written by the top lawyers in the field and contains sample complaints, motions, briefs and other practice materials.

THE TALENT AGENCIES ACT

8.1 Overview of the Talent Agencies Act (TAA)

For more than a century, California has been the hub of the entertainment industry, where studios have settled and aspiring artists have flocked. Among the industry players, artist's representatives have historically occupied a crucial role, as they often provide opportunities an artist would not otherwise be able to obtain. However, because of the potential for abuse embedded in the dynamic between artist and representative, the California Legislature has long regulated the profession of procuring employment for artists through what is now known as the Talent Agencies Act, California Labor Code § 1700 et seq., and the California Administrative Code Regulations promulgated thereunder, California Administrative Code, title 8 § 12000 et seq. hereinafter, “the TAA.”

8.1.1 WHO DOES THE TAA REGULATE?

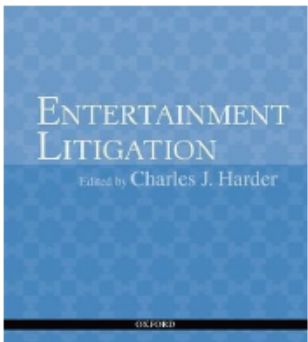
The TAA regulates actions, rather than specifically named professions, by requiring any person who acts as a “talent agency” to be licensed by the California Labor Commissioner. Pursuant to the TAA, a “talent agency” means a person or corporation who engages in the occupation of procuring, offering, 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 a person or corporation to regulation and licensing under this chapter.” A “person” for purposes of the TAA is “any individual, company, society, firm, partnership, association, corporation, limited liability company, manager or their agents or employees.”

Whether a person holds himself or herself out as a talent agency is immaterial for purposes of the TAA — any person that procures employment for an artist is a “talent agency” and thus subject to the TAA's regulatory regime. While the TAA is ordinarily thought to apply to traditional talent agents and personal managers, any person who procures employment for an artist without a license must comply with the TAA regardless of what that person calls him or herself or how he or she defines his or her relationship with the “artist.”

A. TALENT AGENCIES

Talent agencies are the oldest form of artist representation, dating back to the turn of the twentieth century in New York City. Throughout the twentieth century, talent agencies have garnered a massive presence in the entertainment industry, with a handful of powerful firms representing a large majority of established talent. As they increase in prominence, agencies like Creative Artists Agency (CAA), International Creative Management (ICM), United Talent Agency (UTA), and William Morris Endeavor Entertainment (WME) have expanded into areas outside of talent representation.

A traditional talent agent acts as an intermediary broker



between the buyers and sellers of talent, be he or she is the broker of an artist's skills and talents, with the primary objective of securing employment in the entertainment industry for their clients. Talent agents solicit industry contacts to find their artist-client employment, negotiate agreements, and generally exploit opportunities for artists, including licensing rights to creative work. “Generally speaking, an agent's focus is on the deal: on negotiating numerous short term, project-specific engagements between buyers and sellers.” Talent agents generally earn their money on a percentage commission fee basis (with the exception of “packaging fees”).

In California, talent agents (i.e., people procuring or attempting to procure employment in the entertainment industry for artists), whether or not they have a state license to be a “talent agent,” are subject to the TAA's requirements and prohibitions. Talent agents are also subject to the regulation by the various entertainment industry guilds that cover most of the talent in the industry (e.g. the Screen Actors Guild (SAG), American Federation of Television and Radio Artists (AFTRA), Directors Guild of America (DGA), Writers Guild of America (WGA), and American Federation of Musicians (AFM)).

B. PERSONAL MANAGERS

Personal managers perform a comprehensive advisory function and essentially coordinate all aspects of an artist's professional and personal lives. Personal managers guide an artist's career, often from the very beginning, and counsel artists in selecting appropriate projects. Further, personal managers help develop and maintain an artist's image, and aid in hiring additional professionals as needed, for instance, acting coaches or financial specialists. In one of the early cases to explain the distinction between the roles of talent agents and personal managers, the California Supreme Court in *Raden v. Laurie* held that the plaintiff's personal manager who confirmed his work to developing the artist-client's poise and skills and who accompanied his client to auditions, without seeking employment, was a personal manager, as opposed to a talent agent.

Personal managers, like all other people, are subject to the TAA if they seek to procure employment for artists in the

entertainment industry without first obtaining a talent agency license. Currently, there is no separate regulatory scheme for personal managers, although some argue that such legislation should exist. Further, unlike talent agents, personal managers are not required to be certified (“franchised”) by the various entertainment industry guilds that cover most of the talent in the industry and, thus, are not subject to the same regulations.

D. TALENT AGENTS VS. PERSONAL MANAGERS

Talent agents and personal managers often work together as part of an artist's team of representatives, although they serve different roles. As discussed above, a talent agent's primary role is to procure employment for his or her artist clients, whereas, without a TAA license and unless a recognized exception applies, a personal manager cannot seek to obtain employment for his or her artist clients. Unlike personal managers who may not act as unlicensed talent agents, however, licensed talent agents may perform what has historically been personal management type tasks for artists. The TAA explicitly states that “[t]alent agencies may...counsel or direct artists in the development of their professional careers.”

As a practical matter, despite the TAA's prohibitions, the professional activities of personal managers and talent agents often overlap, as they share the common goal of advancing an artist's career. However, “[g]iven [their] greater degree of involvement and risk, personal managers typically have a smaller client base and charge higher commissions than agents (as they may, in the absence of guild limitations).” As a result of different compensation models, the incentives of talent agencies and personal managers also differ. Talent agencies seek to maximize their own fees by representing as many established artists as possible, whereas personal managers typically invest their time, money, and effort into developing the careers of a few promising artists, and thus seek to charge higher commissions. They also often take greater risks by representing relatively unknown artists or by seeking to discover new or “raw” talent.

Many personal managers knowingly cross the line into talent agency work and procure employment for their clients because talent agents ordinarily will not consider representing unknown artists, and thus personal managers often serve as a burgeoning artist's sole representative. In fact, some personal managers make a conscious choice not to get a TAA license so that they are not subject to the TAA's other restrictions or the guild regulations discussed below (most notably, the regulations capping commission and prohibiting poaching).

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