

*Digest: Marathon Entertainment, Inc. v. Blasi*

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Opinion by Werdegar, J., expressing the unanimous view of the Court.

Issues

(1) Does the Talent Agencies Act,<sup>1</sup> which prohibits the solicitation or procurement of employment for actors and actresses, apply to personal managers as well as talent agents?

(2) If so, does the doctrine of severability apply to manager talent contracts to allow partial enforcement when a manager has engaged in unlawful solicitation or procurement under the Act?

Facts

In 1998, Marathon Entertainment, Inc. and actress, Rosa Blasi entered into a contract for Marathon to act as her personal manager.<sup>2</sup> Blasi agreed to pay Marathon a fifteen percent commission from her earnings from employment obtained during the course of the contract.<sup>3</sup> Blasi appeared in a film and independently procured an appearance on a popular television show.<sup>4</sup> Blasi allegedly reneged on her agreement to pay the commission she obtained from the show.<sup>5</sup> She terminated her agreement and replaced Marathon with her licensed talent agent as her personal manager.<sup>6</sup>

Marathon sued Blasi for breach of oral contract, quantum meruit, false promise, and unfair business practice, seeking to recover unpaid commissions from the employment it had obtained for her.<sup>7</sup> After obtaining a stay of the action, Blasi filed a petition with the Labor Commissioner alleging that Marathon had violated the Talent Agencies Act (the “Act”) by soliciting and procuring employment for her without a talent agency license.<sup>8</sup> The Labor Commissioner agreed, voiding her agreement with Marathon and barring it from recovery.<sup>9</sup>

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1 CAL. LAB. CODE §§ 1700-1700.47.

2 *Marathon Entm't, Inc. v Blasi*, 174 P.3d 741, 744 (Cal. 2008).

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

Marathon appealed the Labor Commissioner's ruling to the superior court for a trial *de novo* and amended its complaint and challenged the Act as a violation of a manager's state and federal constitutional rights.<sup>10</sup> The trial court granted Blasi's motion for summary judgment.<sup>11</sup>

The Court of Appeal reversed in part.<sup>12</sup> The court found that, while the Act applied to personal managers, the obligation to pay the commission to Marathon for the television show could be severed from any unlawful portion of the parties' agreement because the agreement had the lawful purpose of providing services unregulated by the Act.<sup>13</sup> The California Supreme Court granted review.<sup>14</sup>

## Analysis

### 1. The Applicability of the Talent Agencies Act to Managers

The Court first noted that the line between talent agents, who negotiate contracts for artists, and managers, who provide a broader range of services, is "often blurred and sometimes crossed."<sup>15</sup> The Act, in coordination with guild regulation, strictly applies to talent agents but not necessarily personal managers.<sup>16</sup> The Legislature abandoned the creation of a licensing scheme applicable to personal managers.<sup>17</sup>

The Act requires anyone who solicits or procures employment for artists to have a talent agency license.<sup>18</sup> To solidify this requirement, the Act sets forth requirements for how licensed talent agencies run their business.<sup>19</sup> The Act has a safe harbor provision for managers to solicit or procure employment if they do so in coordination with a licensed agent.<sup>20</sup> The central concern of the Act is to prevent exploitation of artists by their representatives.<sup>21</sup>

The Court began its analysis with the relevant language of Section 1700.5 of the Act: "No *person* shall engage in or carry on the occupation of a *talent agency* without first procuring a license therefore from the Labor Commissioner."<sup>22</sup> The Court noted that the Act defines "person" as "any individual, company, society, firm, partnership, association, corporation, limited liability company, *manager*, or their agents or employees."<sup>23</sup> The

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 745.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 743.

<sup>16</sup> *Id.* at 745-46.

<sup>17</sup> *Id.* at 746.

<sup>18</sup> *Id.* at 747 (citing CAL. LAB. CODE §§ 1700.4, 1700.5 (2008)).

<sup>19</sup> *Id.* (citing CAL. LAB. CODE §§ 1700.23-1700.47 (2008)).

<sup>20</sup> *Id.* at 746 (citing former CAL. LAB. CODE § 1700.44).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 747 (quoting CAL. LAB. CODE § 1700.5 (2008)) (emphasis added).

<sup>23</sup> *Id.* (quoting CAL. LAB. CODE § 1700 (2008)) (emphasis added).

Act defines “talent agency” as “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.”<sup>24</sup>

The Court reasoned that the Act regulates the *conduct* of procuring or soliciting and not the title of the business.<sup>25</sup> Thus, the Court stated, “[a]ny person who procures employment—any individual, any corporation, any manager—is a talent agency subject to regulation.”<sup>26</sup> The Court stated that, under the Labor Commissioner’s decisions, to any extent that a personal manager solicits or procures employment—even on an incidental or occasional basis—the manager must be licensed under the Act.<sup>27</sup>

## 2. The Applicability of Severability to Manager Talent Contracts

The Court first noted that, while the Act is silent on the proper remedy for illegal procurement, the Act was not in conflict with Civil Code section 1599, which sets forth the doctrine of severability.<sup>28</sup> The Court found that the Labor Commissioner and Court of Appeal decisions recognized that the severability doctrine may apply to disputes under the Act.<sup>29</sup> The Court reasoned that courts must consider the main purposes of the agreement; “if they determine in a given instance that the parties intended for the representative to function as an unlicensed talent agency or that the representative engaged in substantial procurement activities that are inseparable from managerial services, they may void the entire contract.”<sup>30</sup> The Court stated that the doctrine was equitable and fact-specific and deferred to the discretion of the Labor Commissioner or the courts to determine whether it was applicable.<sup>31</sup>

### Holding

The Court held that (1) the Act applies to managers as well as agents; (2) the Labor Commissioner has the authority to void manager-talent contracts for unlawful procurement or to apply the doctrine of severability to partially enforce them; and (3) a genuine dispute of material fact existed over whether severability might apply to allow partial enforcement of the parties’ contract.<sup>32</sup>

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<sup>24</sup> *Id.* (citing CAL. LAB. CODE § 1700.4 (a) (2008)) (emphasis added).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* (citing Cal. Lab. Code §§ 1700, 1700.4(a)).

<sup>27</sup> *Id.* at 747–48.

<sup>28</sup> *Id.* at 750–51.

<sup>29</sup> *Id.* at 751–52.

<sup>30</sup> *Id.* at 755.

<sup>31</sup> *Id.* at 744.

<sup>32</sup> *Id.*

### Legal Significance

As a result of this case, unlicensed talent managers in Hollywood must beware that they will not be compensated for their acts of procurement or solicitation of the talent they represent without a talent agency license. They may rest assured, however, that individual and isolated acts of solicitation or procurement will not void the entire agreement, as these acts may be severed from the rest of the agreement. The doctrine is fact specific and thus, the Labor Commissioner may opt not to apply it when it appears as though a manager has assumed the role of an agent.