entertainment law

by Edwin F. McPherson

double agent

Is the penalty of declaring a contract void ab initio too harsh for managers who procure employment?

In June 2006, the California Court of Appeal in *Marathon Entertainment, Inc.* v. *Blasi*[1] applied the longstanding rule of severability of contracts to a case involving the Talent Agencies Act.[2] The appellate court held that, if it is possible to sever conduct that violates the act from conduct that does not, it is not appropriate to declare the entire agreement between the parties void and unenforceable. Although there is some precedent in Labor Commission decisions for the severance of acts and agreements in cases falling under the act, before *Marathon* no appellate court had specifically adopted the doctrine of severability in the context of the Talent Agencies Act. The court of appeal's decision is best understood through an examination of the facts of the case and the arguments that the parties made in their appellate briefs.

In 1998, actress Rosa Blasi retained Marathon Entertainment as her personal manager. Blasi also was represented by a licensed talent agent during her entire relationship with Marathon. During the relationship, Blasi obtained a starring role in a cable television series titled *Strong Medicine*. This series was successful and ran for six seasons. However, Blasi terminated Marathon after the second production season and hired her agent as her new manager. Blasi refused to pay Marathon commission on the remaining 88 episodes.

Marathon sued her to recover unpaid commissions for the series and asserted claims for breach of oral contract, quantum meruit, false promise, and unfair business practices. Blasi sought and obtained a stay of the action and later commenced a Labor Commission proceeding, claiming that Marathon had violated the act by procuring employment for her without a talent agency license. The labor commissioner ruled that Marathon had violated the act on multiple occasions by send-

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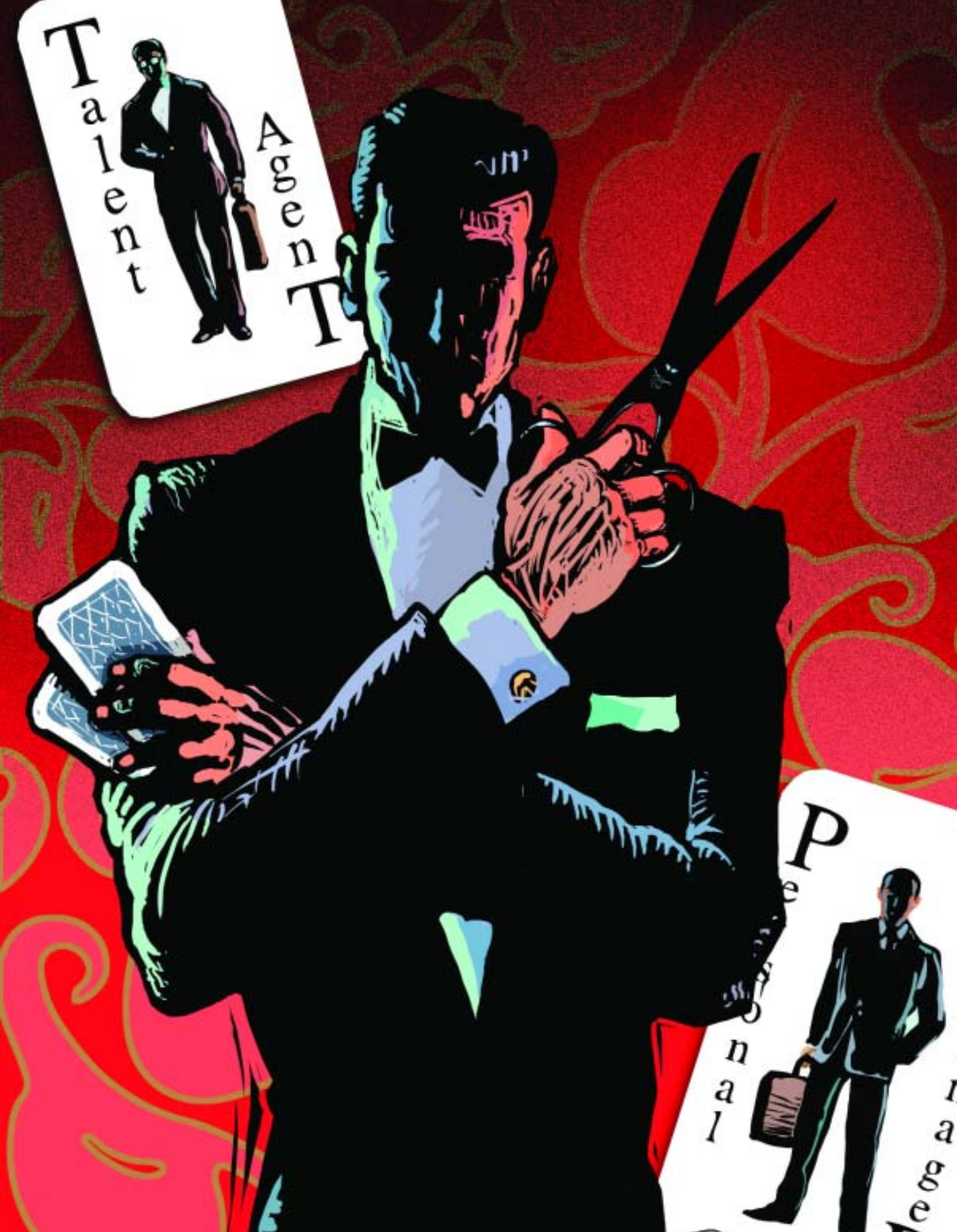
Talent Agent
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ing out demo reels, setting up meetings with casting directors and producers, negotiating employment agreements, and seeking promotional opportunities.[3] Marathon claimed that all those activities were done at the request of, and in conjunction with, Blasi's agent, which would exempt it from the act. However, Blasi's agent refuted that claim.

The labor commissioner found that Marathon did not fulfill its burden of proving that the agent had specifically requested Marathon's involvement with each engagement and that Marathon then procured the engagement in conjunction with him.[4] As a result, the commissioner ruled that the agreement was unenforceable and that Marathon had "no entitlement to any payments of any kind."[5]

Marathon filed a request for trial de novo and amended its complaint to add five declaratory relief causes of action challenging the constitutionality of the act, claiming that the complete invalidation of a management agreement violated a manager's right to due process, equal protection, and free speech. In response, Blasi filed a motion for summary judgment, which was granted. Although the motion detailed violations that had nothing to do with the project for which Marathon was seeking commissions, the trial court nevertheless held that the entire agreement was unenforceable.[6] The trial court denied the portion of Blasi's motion that was directed to the constitutional issues.

After extensive briefing, the court of appeal, at oral argument, requested both parties to submit supplemental briefing on the applicability (if any) of the doctrine of severability to agreements regulated by the act. Ultimately, the court of appeal reversed the trial court's decision, ruling that the trial court had erroneously failed to consider the doctrine of severability. Because there was no evidence presented to the trial court that Marathon had violated the act in connection with *Strong Medicine,* the appellate court held that the doctrine of severability may allow Marathon to recover commissions that were not tainted by the illegal procurement activity.

The court of appeal, citing *Waisbren* v. *Peppercorn Productions, Inc.*,[7] began its opinion by noting that personal managers are not covered by the act or any other statutory licensing scheme, but that, if any personal manager (or anyone else) "even incidently performs the occupation of a talent agency," that individual must comply with the act's licensing requirements.[8] However, the court rejected Blasi's argument that the finding of liability in *Waisbren* for even an "incidental" procurement necessarily meant that the entire agreement must be rendered void.

The appellate court cited several instances in which contracts made in violation of a business and licensing statute were not necessarily held to be unenforceable, referencing the California Supreme Court's mandate that courts consider whether "the forfeiture resulting from unenforceability is disproportionally harsh considering the nature of the illegality."[9] Contracts that are made in violation of public policy may also be severed in the appropriate situation.[10] The court of appeal also noted the California Supreme Court's warning that courts should not allow a protective licensing scheme intended for the public safety to be transformed into "an unwarranted shield for the avoidance of a just obligation."[11]

In determining the application of the doctrine of severability, the court of appeal pointed out that the main objective of the agreements must be considered. Only if the "taint of illegality so permeates the entire agreement that it cannot be removed by severance or restriction but only by reformation or augmentation, the courts must invalidate the entire agreement."[12] On the other hand, severance is appropriate when the "illegality is collateral to and severable from the main purpose of the contract."[13] Paramount to all analyses, however, is whether the "interests of justice would be furthered by severing the agreement."[14]

The court of appeal further noted that severance is more likely to be granted if the contractual relationship can be conserved without condoning an illegal scheme. Severance is also more likely if it would prevent the plaintiff from gaining an undeserved benefit or prevent the defendant from suffering an undeserved detriment, particularly in cases in which the contract has been fully or partially performed.[15] Agreements made in violation of business licensing statutes are no different from other contracts in that regard.

The court of appeal then applied the severability doctrine to the case at hand, finding that, initially, the parties had entered into a lawful contract for legitimate personal management services that are not regulated by the act. Those services included providing the down payment on Blasi's home, paying the salary of her business manager, providing professional and personal advice, and paying her travel expenses. The agreement therefore had at least one lawful purpose.[16]

Next, the court determined that, without specific evidence of a violation in connection with the series, the possibility existed that the legal portions of the contract might be severable from the illegal portions.[17] Both parties acknowledged that *Waisbren* mandated the voiding of the entire management agreement even if the manager committed only a single violation of the act. The court of appeal, however, readily dismissed this concept, ruling that, because *Waisbren* did not expressly discuss the doctrine of severability of contracts, the case could not be construed as a rejection of the doctrine.[18]

Relegated to a footnote was the appellate court's discussion of *Yoo* v. *Robi,*[19] a case that certainly seems to suggest that severability is not available in cases interpreting the act. In fact, the *Yoo* court held that the public policy underlying the act was best served by denying all commissions, even those earned for conduct that did not violate the act.[20] However, the court of appeal held that that statement was dicta because the trial court in *Yoo* had found that the main purpose of the management agreement was illegal, and that the appellate court had concluded, for factual reasons, that it was inappropriate to sever the agreement. The *Marathon* court also ruled that the doctrine of severability requires that each case be evaluated on its own merits (as the court in *Yoo* also acknowledged), and that, just because severance was denied in *Yoo* does not mean that severance would not be allowed in *Marathon*.[21]

With respect to the constitutional issues raised in *Marathon,* the appellate court noted that they were premised on Marathon's assumption that *Waisbren* prohibits severance. Because the court of appeal rejected that interpretation of that case, it also concluded that there was no need to decide the constitutional issues.

Marathon's Position

After the court of appeal's decision largely in Marathon's favor, the company filed a petition for review with the California Supreme Court, which was granted. Marathon challenged the court of appeal's decision to remand the case to the labor commissioner, claiming that personal managers are not regulated by the act.

In its briefs to the supreme court, Marathon argues that the language of the act makes clear that personal managers are not covered by the act. The act defines a talent agent 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." Marathon argues further that, because the name of the act suggests the regulation of *talent agents,* and because the act makes no mention of *personal managers,* the act does not regulate personal managers. Marathon's brief then reviews and discusses the legislative history of Assembly Bill 2535, which became the act. (Blasi, for her part, points out in her responding brief that the legislative history from which Marathon quotes is not the final version, which does make it clear that, although the legislature did not

intend to regulate managers per se, it did intend to preclude everyone but licensed talent agents from procuring employment for artists.)

Next, Marathon refers to the internal analysis by the Assembly Policy Committee (APC), which noted: "The personal manager in California today is running a tremendous risk by being alive."[22] It suggested that the only way a personal manager could avert "attack as an unlicensed artists' manager is to obtain an agent's license," and that such a resolution is "unworkable."[23] The only "workable solution," according to the APC, would be for the personal manager to be separately licensed.

This solution was introduced as proposed Labor Code Section 1700.5(b). This proposed legislation mandates the separate licensing of personal managers and forbids managers from procuring any employment, which the APC determined to be equally unworkable. The APC acknowledged that the legislation did "not reflect the needs of the personal manager, but rather would benefit" the agent.[24]

The APC further concluded that, in licensing personal managers, lawmakers must accept the "reality of managers' procurement responsibilities." In addition, "AB 2535 is not representative of the entertainment industry needs, nor of the personal manager's needs. It is a short-sighted attempt to prohibit the personal manager from procuring employment without substantive value or purpose."[25] The Assembly Committee on Labor offered its analysis, noting that an integral part of a personal manager's function to serve client interests was to "give some employment assistance."[26] As a result, the May 1, 1978, draft offered an entire chapter devoted to the licensing of personal managers. However, nine days later, all references to personal managers were deleted from the bill. The legislative history of the statute certainly suggests that the legislature considered including the regulation of personal managers in the act but ultimately decided against it.

Even the court of appeal has used language that suggests that the act only regulates talent agents, not managers. According to the court in *Buchwald* v. *Superior Court*,[27] the purpose of the act (and the licensing requirement in particular) is to "prevent improper persons from becoming [agents] and to regulate such activity for the protection of the public." Clearly, preventing improper persons from becoming talent agents was at least the original intent of the legislature. The labor commissioner, as early as 1981, acknowledged that the procurement activity had to be pervasive. In *Tucker* v. *Far Out Management, Ltd.*, the commissioner noted that "the California Legislature's enactment of the Talent Agencies Act was intended to charge the labor commissioner with responsibility for ensuring that persons whose *usual or principal work* was the procurement of employment for artists, were licensed."[28]

One of the major problems with Marathon's argument that the act simply does not cover managers (or those whose usual and principal activity is not procurement of employment for artists) is that every court of appeal and Labor Commission decision since the act became law has expressly or impliedly rejected that argument. For example, in 1982, Bo Derek's manager made the argument,[29] to which the labor commissioner responded: "That is like saying you can sell one house without a real estate license or one bottle of liquor without an off-sale license."

Although the act does not expressly regulate personal managers (or any other individuals other than talent agents), what the relevant portion of the act does regulate is everyone, by precluding everyone who is not a licensed talent agent from engaging in the activities of a licensed talent agent. In this, the act is in accordance with laws that regulate realtors, lawyers, and other licensed professionals.

Blasi's Position

Plaintiff Blasi's opening brief argues that severance is incompatible with the remedial purpose of the act and that the legislature intended that a management agreement be voided in its entirety "to maximize the deterrent effect."[30] The brief cites the biased conclusions of the 1982 California Entertainment Commission as discussed in *Waisbren*. Blasi's opening brief discusses and analyzes the legislative history of the act but fails to acknowledge that nowhere in the act is any particular penalty mentioned for violative conduct, including severance.

Blasi then discusses *Yoo*,[31] in which the Seventh Division of the Second Appellate District (which decided *Wachs* v. *Curry*[32]) determined that, although Section 1599 of the Civil Code authorizes a court to sever "the illegal object of a contract from the legal it does not require the court to do so," and that "the public policy underlying the Act is best effectuated by denying all recovery, even for activities which did not require a talent agency license."[33] Next, Blasi makes the argument that, if a manager can "retain all commissions associated with employment he did not procure, he has every incentive to 'take a free shot' at procuring employment under the most basic cost-benefit analysis."[34] Blasi fails to indicate why a manager would take this "free shot" if he or she knows that no commission from the income received as a result will be forthcoming. More important, however, neither Blasi nor the labor commissioner nor any court that has interpreted the act has explained how a law that precludes nonagents from finding employment for the 95 percent of Screen Actors Guild members who are out of work (particularly when most of them are not able to secure licensed talent agents) actually benefits artists.

Blasi's entire public policy argument is

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premised on her prediction that, if severance is allowed, managers are going to start violating the act immediately, en masse, and often. However, under the court of appeal decision in *Marathon*, if these procurement activities were so pervasive, contracts would not be severed. Even if contracts were to be severed, a manager would still lose the commission for any employment the manager procures. With such potential results, it is difficult to imagine why a manager would be more likely to violate the act if severance were not allowed.

Blasi further argues that the court of appeal opinion is contrary to the "Commission's unwavering position on the subject of severance."[35] In fact, Blasi argues that in every case but one, the commission voided the management agreement "in its entirety,"[36] and in every case but one, when the agreement was voided, it was voided ab initio.[37] In the opening brief, Blasi refers to a letter dated August 22, 2006, from the labor commissioner indicating that the commissioner has had a longstanding practice, "in keeping with the legislative history and the leading case law in this area," of implementing a "bright line" test in resolving disputes under the act by declaring the agreement void ab initio.[38] However, that is simply not the case.

No Bright Line

One problem with Blasi's argument is that, although, in the majority of cases in which a violation was found the agreement was voided ab initio and in its entirety, that is certainly not true in all cases. In fact, there is precedent for the *Marathon* opinion. For instance, as early as 1980, in *Wilson* v. *Bergman,*[39] the labor commissioner found a "possible violation" but noted that the artist was sophisticated and was represented by an attorney and licensed booking agents. Distinguishing *Buchwald* v. *Katz,* the commissioner refused to void any portion of the agreement. In 1981 in *Nussbaum* v. *The Chicken's Company,*[40] the labor commissioner ordered the return of commissions that were paid after the manager was advised of the violation. The commissioner noted: "Nowhere in either of those cases [*Buchwald* v. *Superior Court* and *Buchwald* v. *Katz*] does the court state that it is mandatory for the labor commissioner to order the return of all commissions."

Similarly, in 1982, in *Bank of America (Groucho Marx)* v. *Fleming,*[41] the labor commissioner, noting his "broad discretion in formulating a remedy that is appropriate under the facts of this case," awarded the artist 20 percent of the commissions over a six-year period because 20 percent of the activity was unlawful. That same year, in *O'Bannon* v. *Nelson,*[42] the labor commissioner ruled that no commissions were to be disgorged because no commissions were earned for violative acts.

In *Damon* v. *Emler,*[43] the labor commissioner ruled in 1982 that the manager clearly violated the act but maintained that a disgorgement of commissions would be "disproportionately harsh in proportion to the extent of illegality." The commissioner further found that the artist was "represented by others and was not the type of person that could have been taken advantage of," and that there was no testimony that the manager would have been refused a license. Later, in the 1994 case of *Flame Music* v. *Smith,*[44] the labor commissioner, after finding a violation of the act, allowed the manager to recover all commissions for the time he did not violate the act and precluded recovery of commissions only for the period in which the manager violated the act. In the 1995 case of *Anderson* v. *D'Avola,*[45] the labor commissioner, after finding a violation of the act, allowed the manager to recover commissions for employment that was legally obtained after the violation.

In *Snipes* v. *Dolores Robinson Entertainment*[46] in 1998, the labor commissioner denied relief completely to the artist, citing the "working with" agent exemption, notwithstanding that the agent did not request the manager to work with him in connection with most of the transactions. The labor commissioner ruled that, because of the close and continuing relationship between the manager and the agent, no "mother may I" was necessary for every transaction.

In 2001 in *Kilcher* v. *Vainstein,*[49] the labor commissioner, after finding a violation of the act, denied the artist's request for disgorgement of commissions because there was "minimal" illegal activity and a lack of bad intent. The commissioner also noted that there had been a clear benefit conferred on the artist, and that there would be an inequitable windfall for her if disgorgement were ordered. In the 2004 case of *Gittelman* v. *Karolat,*[50] the labor commissioner ruled that only the one agreement in a series that was in effect at the time of the violation was void and all subsequent agreements were valid.

As Blasi mentions in her brief, in *Almendarez* v. *UNICO Talent Management, Inc.,*[47] the labor commissioner extensively discusses the applicability of the doctrine of severability to cases adjudicated under the act. The commissioner rules specifically that, in the context of the act, the illegal portion of a management contract is severable from the legal portion. Similarly, in *Cuomo* v. *Atlas/Third Rail Management, Inc.,*[48] the labor commissioner voided the management agreement but only from the date of the first violation, which was seven years into the parties' rela-

tionship, and allowed the manager to recover commissions for prior years.

Conflicting Cases

It is not just the Labor Commission cases that are at odds with one another. No real consistency can be found in appellate court cases either. *Marathon* rules, essentially, that not every violation should be dispositive of the outcome of the case. It was decided by the Second District, Division One, which decided *Waisbren*. That case holds, essentially, that every act of procurement, no matter how incidental to a manager's day-to-day activities, is dispositive. In turn, the *Yoo* case, which says (albeit, according to the *Marathon* court, in dicta) that just one act of procurement is enough to void an entire management agreement, was decided by the Second District, Division Seven—the same that decided *Wachs*, which holds that incidental procurement is not a violation of the act.[51]

This mass of contradictory cases, coupled with the fact that nowhere in the act is there any indication that an entire contract should be voided for one violation of the act, certainly leaves open the possibility that the doctrine of severability does or should apply to cases interpreting the Talent Agencies Act. However, *Marathon* is probably not the best case to decide the severability issue. If Marathon committed 100 violations of the act, then it does appear that the "taint of illegality so permeate[d] the entire agreement that it cannot be removed by severance or restriction but only by reformation or augmentation." The California Supreme Court could make that determination as a matter of law and perhaps avoid the difficult question of whether or not the act allows severability.

On the other hand, the court could decide the severability issue and then remand the case to the labor commissioner for the determination of pervasiveness. In any event, the disposition of the case will necessarily have much more to do with whether the supreme court decides that the Talent Agencies Act needs to be clarified or changed than with the facts of the case. One could argue that *Wachs* and *Waisbren* are diametrically opposed decisions (albeit not technically on the issue of severability), a discrepancy that should have been resolved long ago. One could also argue that the Labor Commission and appellate decisions have imposed penalties that are not provided for in the act itself, and that these penalties are much harsher than the criminal fines that were imposed when the act provided for criminal penalties.

If the supreme court applies the same analysis that it has in other cases involving licensing statutes,[52] there is little doubt that it will embrace severability. Decisions interpreting the act have clearly transformed a "protective licensing scheme intended for the public safety into 'an unwarranted shield for the avoidance of a just obligation.'"[53]

If the supreme court rejects the concept of severability of contracts in connection with the act, it will necessarily have to confront the obvious constitutional implications, particularly the due process concerns, of taking property of a personal manager—sometimes millions of dollars—because that person did not spend $1,000 to obtain a talent agency license and negotiated one term of one employment agreement for one commercial, particularly in cases in which the artist asked the manager to do so. ■

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[1] Marathon Entm't, Inc. v. Blasi, 140 Cal. App. 4th 1001, 45 Cal. Rptr. 3d 158 (June 23, 2006).

[2] *See* LAB. CODE §§1700 *et seq*. For a discussion of Talent Agencies Act cases, *see* Edwin F. McPherson, Styne *v.* Stevens: *California Supreme Court Has the Final (but Not the First) Word on the Talent Agencies Act,* 31 SW. U. L. REV. 4 (2002); Edwin F. McPherson, *The Talent Agencies Act—Does One Year Really Mean One Year?*, 22 HASTINGS COMM. & ENT. L. J. 3 (Spring/Summer 2000).

[3] Blasi v. Marathon Entm't, Inc., Labor Comm'n Case No. TAC 15-03, Determination of Controversy, at 3 (2006).

[4] *But see* Snipes v. Dolores Robinson Entm't, Labor Comm'n Case No. TAC 36-96 (1998).

[5] *Id*. at 8.

[6] Although the court of appeal indicated that no violation was alleged in connection with the *Strong Medicine* project, Blasi claims that a violation was alleged and proved at the Labor Commission proceeding, but that, because there were so many other violations, she did not pursue that claim on summary judgment.

[7] Waisbren v. Peppercorn Prods., Inc., 41 Cal. App. 4th 246, 48 Cal. Rptr. 2d 437 (1995).

[8] Marathon, 140 Cal. App. 4th at 1008 (citing Waisbren, 41 Cal. App. 4th at 250).

[9] *Id*. at 1009 (citing Lewis & Quinn v. N.M. Bolsons, 48 Cal. 2d 141, 151, 308 P. 2d 713 (1957)).

[10] *See* Whorton v. Dillingham, 202 Cal. App. 4th 447, 248 Cal. Rptr. 405 (1998).

[11] Marathon at 1009 (citing Gotti v. Highland Park Builders, Inc., 27 Cal. 2d 687, 690, 166 P. 2d 265 (1946)).

[12] Abramson v. Juniper Networks, Inc., 115 Cal. App. 4th 638, 660, 9 Cal. Rptr. 4th 422 (2004).

[13] *Id*. at 659.

[14] Little v. Auto Stiegler, Inc., 29 Cal. 4th 1064, 1074, 130 Cal. Rptr. 2d 892 (2003).

[15] Marathon at 1011 (citing Armendarez v. Foundation Health Psychcare Servs., Inc., 24 Cal. 4th 83, 123-24, 6 P. 3d 669, 99 Cal. Rptr. 2d 45 (2000)).

[16] *Id*. at 1012.

[17] *Id*.

[18] *Id*. at 1012-13 (citing People v. Alvarez, 27 Cal. 4th 1161, 1176, 46 P. 3d 372, 119 Cal. Rptr. 2d 903 (2002)).

[19] Yoo v. Robi, 126 Cal. App. 4th 1089 (2005).

[20] Marathon at 1012-13 (citing Yoo, 126 Cal. App. 4th at 1105). The *Yoo* court also acknowledged that every such case should be decided on its own facts. It is difficult to reconcile how "the public policy underlying the Act is best effectuated by denying all recovery, even for activities which did not require a talent agency license," but each case brought under the act should be decided

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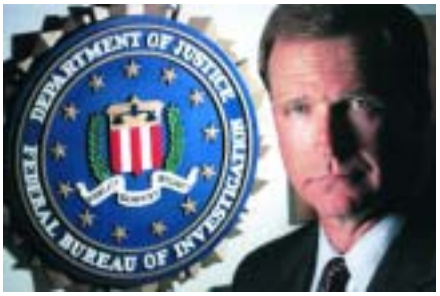

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on its own facts. This inconsistency is presumably the reason that the *Marathon* court gave *Yoo* such short shrift.

[21] *Id.* at 1013.

[22] Marathon Opening Brief at 14 (citing Analysis of the Problem, quoting Howard Thaler, Conference of Personal Managers West spokesperson).

[23] *Id.*

[24] *Id.* at 15-16 (citing Analysis of the Proposal).

[25] *Id.* at 16 (citing Analysis of the Proposal).

[26] *Id.* at 17.

[27] Buchwald v. Superior Court, 254 Cal. App. 2d 347, 351, 62 Cal. Rptr. 364, 367 (1967).

[28] Tucker v. Far Out Mgmt., Ltd., Labor Comm'n Case No. TAC 14-79, at 10 (1981) (emphasis added).

[29] Derek v. Callan, Labor Commission Case No. TAC 18-80 SF MP 82-80, at 6 (1982).

[30] Blasi Opening Brief at 16 (citing Waisbren v. Peppercorn Prods., Inc., 41 Cal. App. 4th 246, 253 (1995)).

[31] Yoo v. Robi, 126 Cal. App. 4th 1089 (2005).

[32] Wachs v. Curry, 13 Cal. App. 4th 616 (1993).

[33] Blasi Opening Brief at 22 (citing Yoo, 126 Cal. App. 4th at 1105).

[34] *Id.*

[35] Blasi Opening Brief at 34-35.

[36] *Id.* at 35 (referring to the exception of Almendarez v. Unico Talent Mgmt., Inc., Labor Commission Case No. TAC 55-97 (1999)).

[37] *Id.* (referring to the exception of Cuomo v. Atlas/Third Rail Mgmt., Inc., Labor Commission Case No. TAC 21-01 (2001)).

[38] *Id.* at 37. This letter from the labor commissioner was sent as an amicus curiae brief in connection with the original petition for review to the California Supreme Court. The fact that such a letter was sent by the commission that is charged with enforcing the act, and the commission that decided the *Marathon* case initially, is unusual at best, and is no different from a trial judge's sending such a letter.

[39] Wilson v. Bergman, MP-456, AMC 13-78 (1980).

[40] Nussbaum v. The Chicken's Company, Labor Commission Case No. TAC 17-80 (1981).

[41] Bank of Am. (Groucho Marx) v. Fleming, Labor Commission Case No. 1908 ASC, MP-432 (1982).

[42] O'Bannon v. Nelson, Labor Commission Case No. TAC 1-81 (1982).

[43] Damon v. Emler, Labor Commission Case No. TAC 36-79 (1982).

[44] Flame Music v. Smith, Labor Commission Case No. TAC 23-92 (1998).

[45] Anderson v. D'Avola, Labor Commission Case No. TAC 63-93 (1995).

[46] Snipes v. Dolores Robinson Entm't, Labor Commission Case No. TAC 36-96 (1998).

[47] Almendarez v. UNICO Talent Mgmt., Inc., Labor Commission Case No. TAC 55-97 (1999).

[48] Cuomo v. Atlas/Third Rail Mgmt., Inc., Labor Commission Case No. TAC 21-01 (2001).

[49] Kilcher v. Vainstein, Labor Commission Case No. TAC 02-99 (2001).

[50] Gittelman v. Karolat, Labor Commission Case No. TAC 24-02 (2004).

[51] *Wachs* was prevailing law in California for more than two years and was overruled by *Waisbren*, even though *Waisbren* was decided by the same district.

[52] *See, e.g.,* Marathon Entm't, Inc. v. Blasi, 140 Cal. App. 4th 1001, 1009 (June 23, 2006) (citing Lewis & Quinn v. N.M. Bolsons, 48 Cal. 2d 141, 151, 308 P. 2d 713 (1957)).

[53] Marathon at 1009 (citing Gotti v. Highland Park Builders, Inc., 27 Cal. 2d 687, 690, 166 P. 2d 265 (1946)). Artists have been excused from paying as much as $40 million in commissions in cases brought under the act, making it very clear that the act, under the guise of regulating a profession, has been used to avoid "just obligations."