BuchalterNemer
A Professional Law Corporation

The Danger of Commingling Fees under the Talent Agencies Act

David Mark, Esq.

During its eight years on the air, *Dog the Bounty Hunter* brought audiences a weekly dose of Duane "Dog" Chapman's successful bounty-hunting. This past November, Dog and his wife, Alice Barmore-Smith, succeeded in convincing the Labor Commissioner to side with them in a dispute against their former manager/producer on their hit reality show.[1] This decision teaches a valuable lesson to both artists and their managers who have side agreements with others in connection with their clients' projects.

In 2007, Chapman and his wife filed a petition with the California Labor Commissioner claiming that their former manager, and producer on their series, Boris Krutonog (and his loan out company)[2], violated the state's Talent Agency Act ("TAA") in connection with his activities on behalf of the Chapmans in connection with their cable show.

According to the Chapmans, before their hit show, they and Krutonog entered into several written rights agreements, the purpose of which was to solicit and negotiate entertainment industry opportunities for the Chapmans. The Chapmans claimed that in those rights agreements, Krutonog agreed to act as their *de facto* talent agent. In return, Krutonog was to receive fees either from third parties or from the Chapmans' entertainment industry earnings. Krutonog, however, characterized those agreements as development or production agreements conferring the rights to Dog's life story.

The Chapmans asserted that Krutonog tried to procure and negotiate employment for the Chapmans by setting up meetings and negotiating with studio executives and producers in connection with the series, another television show and other personal appearances for Dog. The Chapmans claimed that the rights agreements were intended to allow Krutonog to procure employment for them, as well as solicit and negotiate entertainment industry opportunities.

In connection with the series, Krutonog entered into a separate, confidential agreement with the producers under which the producers directly paid Krutonog a "producer fee" out of the amount the Chapmans were to receive for their services on the show. The Chapmans claimed the "producer fee" was simply a disguised commission because the rights agreements between the Chapmans and Krutonog provided that Krutonog would be named as a producer and would receive a producer fee on films and television series involving the Chapmans as opposed to the commission he would receive under the rights agreements for projects like books, merchandising rights, and video games.

The Chapmans further argued that in engaging in procurement activities, Krutonog acted unlawfully because he was neither a licensed talent agent nor were his actions performed in conjunction with or at the request of a licensed talent agent. Indeed, the Chapmans presented evidence that they believed Krutonog was their manager, one who solicited and negotiated many opportunities in the entertainment industry for them, and that others understood and treated him as such. Krutonog never denied that he was their manager but under the producer agreement, Krutonog received specific payments per episode with *pro rata* increases commensurate with those provided to the Chapmans.

For his part, Krutonog claimed that he performed production-related activities on the series that included attendance at the shooting of the series, supplying logistical support on bounty hunting expeditions, helping to produce network promotional material and interacting with crew members and other producers (attending meetings, providing production advice/ideas.

However, the testimony of a co-owner of one of the series' production companies, the Chapmans' entertainment attorney and network in-house counsel combined to show that Krutonog negotiated the deals

related to the series for the Chapmans and did not render producer services.

Under the TAA, one cannot work as a talent agent without being licensed to do so.[3] Except with regard to recording contracts, a talent agency is "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.[4] Notably, it is conduct—not titles—that subjects one to the TAA's licensing requirement.[5]

Krutonog negotiated the artist agreement (which included the Chapmans and other cast members) and independently negotiated his producer agreement without the Chapmans' knowledge. Krutonog's compensation, including his services as a manager who procured the employment, was tied to and was to be paid through the artists' compensation. That arrangement caused a commingling of compensation for Krutonog's producer services and his services on behalf of the Chapmans and the rest of the cast. The Labor Commissioner determined that the only way to effectively address that commingling was to require Krutonog to disgorge all amounts that he unlawfully has received or will receive from the production company under the artist agreement because those amounts cannot be reasonably established and allocated by source of compensation. Furthermore, because Krutonog created multiple sources of compensation in an effort to ensure that he would get paid through allotment under the Chapmans' contract, he was not allowed to claim that all of the compensation he received was *only* for lawful activity (e.g., producer services). The Labor Commissioner found this to be the proper result because Krutonog would not have received any money were it not for the fact that he procured the series for the Chapmans.

This case provides a valuable lesson for managers: even if one has a development or producer agreement, such an agreement may not shield the disgorgement of fees obtained from it if the facts show those fees were inseparable from the gains of any unlicensed procurement activities. Similarly, artists should be aware that California law can help protect them from managers who are not licensed agents, but attempt to hide their unlawful commission in the cloak of a producer or development agreement or the like.

1 *Chapman, et al. vs. Krutonog, etc.*; Cal. Lab. Comm. Case No. TAC 3351 (2012).
2 For ease of reference, Krutonog and his loan out company will be referred to simply as "Krutonog."
3 CAL. LABOR CODE §1700.5.
4 *Id.* at §1700.4(a).
5 *See, Marathon Entertainment Inc. v. Blasi* (2008) 42 Cal.4th 974, 986.

David Mark is an Associate in the firm's Litigation Practice Group. He can be reached at 213.891.5034 or dmark@buchalter.com.