Marathon Entertainment, Inc. v. Blasi

2 Cal.4th 974
Supreme Court of California
January 28, 2008

No. S145428. MARATHON ENTERTAINMENT, INC., Plaintiff and Appellant, v. ROSA BLASI et al., Defendants and Respondents. Superior Court of Los Angeles County, No. BC290839, Rolf M. Treu, James C. Chalfant, Judges. The Court of Appeal, Second Dist., Div. One, No. B179819, 140 Cal.App.4th 1001. Opinion by Werdegar, J., expressing the unanimous view of the court. Fox & Spillane, Gerard P. Fox, Alex M. Weingarten; Law Offices of Donald V. Smiley, Donald V. Smiley; and James Ellis Arden for Plaintiff and Appellant. Manatt, Phelps & Phillips, Gerald A. Margolis and Benjamin G. Shatz for National Association of Artists' Managers as Amicus Curiae on behalf of Plaintiff and Appellant. Law Offices of B. Paul Husband and B. Paul Husband for National Conference of Personal Managers, Inc., as Amicus Curiae on behalf of Plaintiff and Appellant. Greines, Martin, Stein & Richland, Kent L. Richland, Barbara W. Ravitz and Tillman J. Breckenridge for Talent Managers Association as Amicus Curiae on behalf of Plaintiff and Appellant. Alschuler Grossman Stein & Kahan, Dreier Stein & Kahan, Michael J. Plonsker and Daniel A. Fiore for Defendants and Respondents. Rintala, Smoot, Jaenicke & Rees, William T. Rintala and Michael B. Garfinkel for Association of Talent Agents as Amicus Curiae on behalf of Defendants and Respondents. Duncan W. Crabtree-Ireland, Laura Beedy Ritchie, Danielle S. Van Lier; Reich, Adell, Crost & Cvitan, Hirsch Adell, Laurence S. Zakson; Robert S. Giolito; Rothner, Segall & Greenstone and Anthony R. Segall for Screen Actors Guild, Inc., American Federation of Television and Radio Artists, AFL-CIO, Directors Guild of America, Inc., and Writers Guild of America, West, Inc., as Amici Curiae on behalf of Defendants and Respondents. Anne P. Stevason for the State Labor Commissioner as Amicus Curiae. Opinion by Werdegar, Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Acting Chief Justice pursuant to article VI, section 6 of the California Constitution.

WERDEGAR, J.

In Hollywood, talent – the actors, directors, and writers, the Jimmy Stewarts, Frank Capras, and Billy Wilders who enrich our daily cultural lives – is represented by two groups of people: agents and managers. Agents procure roles; they put artists on the screen, on the stage, behind the camera; indeed, by law, only they may do so. Managers coordinate everything else; they counsel and advise, take care of business arrangements, and chart the course of an artist's career.

This division largely exists only in theory. The reality is not nearly so neat. The line dividing the functions of agents, who must be licensed, and of managers, who need not be, is often blurred and sometimes crossed. Agents sometimes counsel and advise; managers sometimes procure work. Indeed, the occasional procurement of employment opportunities may be standard operating procedure for many managers and an understood goal when not-yet-established talents, ^ lacking access to the few licensed agents in Hollywood, hire managers to promote their careers.[38]

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[38] ^ Additionally, in connection with the petition for review in this case, this court has received dozens of letters from personal managers working in the entertainment industry who suggest they owe a fiduciary duty to their clients to procure employment.

We must decide what legal consequences befall a manager who steps across the line and solicits or procures employment without a talent agency license. We hold that (1) contrary to the arguments of personal manager Marathon Entertainment, Inc., the strictures of the Talent Agencies Act (Lab. Code, § 1700 et seq.) apply to managers as well as agents; (2) contrary to the arguments of actress Rosa Blasi, while the Labor Commissioner has the authority to void manager-talent contracts *ab initio* for unlawful procurement, she also has discretion to apply the doctrine of severability to partially enforce these contracts; and (3) in this case, a genuine dispute of material fact exists over whether severability might apply to allow partial enforcement of the parties' contract. Accordingly, we affirm the Court of Appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In 1998, Marathon and Blasi entered into an oral contract for Marathon to serve as Blasi's personal manager. Marathon was to counsel Blasi and promote her career; in exchange, Blasi was to pay Marathon 15 percent of her earnings from entertainment employment obtained during the course of the contract. During the ensuing three years, Blasi's professional appearances included a role in a film, Noriega: God's Favorite (Industry Entertainment 2000), and a lead role as Dr. Luisa Delgado on the television series *Strong Medicine*.

According to Marathon, Blasi reneged on her agreement to pay Marathon its 15 percent commission from her *Strong Medicine* employment contract. In the summer of 2001, she unilaterally reduced payments to 10 percent. Later that year, she ceased payment altogether and terminated her Marathon contract, stating that her licensed talent agent, John Kelly, who had served as her agent throughout the term of the management contract with Marathon, was going to become her new personal manager.

Marathon sued Blasi for breach of oral contract, quantum meruit, false promise, and unfair business practices, seeking to recover unpaid *Strong Medicine* commissions. Marathon alleged that it had provided Blasi with lawful personal manager services by providing the downpayment on her home, paying the salary of her business manager, providing her with professional and personal advice, and paying her travel expenses.

After obtaining a stay of the action, Blasi filed a petition with the Labor Commissioner alleging that Marathon had violated the Act by soliciting and procuring employment for Blasi without a talent agency license.[39] The Labor Commissioner agreed, finding that Marathon had violated the Act by providing talent agency services without a license, including "procur[ing] work for [Blasi] as an actress on the . . . television series, *Strong Medicine*." It voided the parties' contract *ab initio* and barred Marathon from recovery.

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[39] The Labor Commissioner has original and exclusive jurisdiction over issues arising under the Act. All further undesignated statutory references are to the Labor Code.

Marathon appealed the Labor Commissioner's ruling to the superior court for a trial de novo.^ It also amended its complaint to include declaratory relief claims challenging the constitutionality of the Act. Marathon alleged that the Act's enforcement mechanisms, including the sanction of invalidating the contracts of personal managers that solicit or procure employment for artists without a talent agency license, violated the managers' rights under the due process, equal protection, and free speech guarantees of the state and federal Constitutions.

Blasi moved for summary judgment on the theory that Marathon's licensing violation had invalidated the entire personal management contract. Blasi submitted excerpts from the Labor Commissioner hearing transcript as evidence that Marathon had violated the Act by soliciting or procuring employment for her without a talent agency license. Blasi did not specifically argue or produce evidence that Marathon had illegally procured the *Strong Medicine* employment contract.

The trial court granted Blasi's motion for summary judgment and invalidated Marathon's personal management contract as an illegal contract for unlicensed talent agency services in violation of the Act, denied Marathon's motion for summary adjudication of the Act's constitutionality, and entered judgment for Blasi.

The Court of Appeal reversed in part. It agreed with the trial court that the Act applied to personal managers. However, it concluded that under the law of severability of contracts^, because the parties' agreement had the lawful purpose of providing personal management services that are unregulated by the Act, and because Blasi had not established that her *Strong*^ *Medicine* employment contract was procured illegally, the possibility existed that Blasi's obligation to pay Marathon a commission on that contract could be severed from any unlawful parts of the parties' management agreement. In reaching this conclusion, the Court of Appeal distinguished prior cases that had voided management contracts in their entirety^ and in some cases expressly refused to sever the contracts^.

We granted review to address the applicability of the Act to personal managers and the availability of severance under the Act.

DISCUSSION

I. *Background*

A. *Agents and Managers*

In Hollywood, talent agents act as intermediaries between the buyers and sellers of talent.` While formally artists are agents' clients, in practice a talent agent's livelihood depends on cultivating valuable connections on both sides of the artistic labor market.~ Generally speaking, an agent's focus is on the deal: on negotiating numerous short-term, project-specific engagements between buyers and sellers.^

Agents are effectively subject to regulation by the various guilds that cover most of the talent available in the industry: most notably, the Screen Actors

Guild, American Federation of Television and Radio Artists, Directors Guild of America, Writers Guild of America, and American Federation of Musicians.^ Artists may informally agree to use^ only agents who have been "franchised" by their respective guilds; in turn, as a condition of franchising, the guilds may require agents to agree to a code of conduct and restrictions on terms included in agent-talent contracts.^ Most significantly, those restrictions typically include a cap on the commission charged (generally 10 percent), a cap on contract duration, and a bar on producing one's client's work and obtaining a producer's fee. (Screen Actors Guild, Codified Agency Regs., rule 16(g); American Federation of Television and Radio Artists, Regs. Governing Agents, rule 12-C.) These restrictions create incentives to establish a high volume clientele, offer more limited services, and focus on those lower risk artists with established track records who can more readily be marketed to talent buyers.^

Personal managers, in contrast, are not franchised by the guilds.~ They typically accept a higher risk clientele and offer a much broader range of services, focusing on advising and counseling each artist with an eye to making the artist as marketable and attractive to talent buyers as possible, as well as managing the artist's personal and professional life in a way that allows the artist to focus on creative productivity.~ "Personal managers primarily advise, counsel, direct, and coordinate the development of the artist's career. They advise in both business and personal~ matters, frequently lend money to young artists, and serve as spokespersons for the artists." (*Park v. Deftones* (1999) 71 Cal.App.4th 1465, 1469-1470.) Given this greater degree of involvement and risk, managers typically have a smaller client base and charge higher commissions than agents (as they may, in the absence of guild price caps); managers may also produce their clients' work and thus receive compensation in that fashion.~

B. The Talent Agencies Act

Aside from guild regulation, the representation of artists is principally governed by the Act.~ The Act's roots extend back to 1913, when the Legislature passed the Private Employment Agencies Law and imposed the first licensing requirements for employment agents.~ From an early time, the Legislature was concerned that those representing aspiring artists might take advantage of them, whether by concealing conflicts of interest when agents split fees with the venues where they booked their clients, or by sending clients to houses of ill-repute under the guise of providing "employment opportunities."~ Exploitation of artists by representatives has remained the Act's central concern through subsequent incarnations to the present day.~

In its present incarnation, the Act requires anyone who solicits or procures artistic employment or engagements for artists[40] to obtain a talent agency

[40] " 'Artists' means actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering

license.~ In turn, the Act establishes detailed requirements for how licensed talent agencies conduct their business, including a code of conduct, submission of contracts and fee schedules to the state, maintenance of a client trust account, posting of a bond, and prohibitions against discrimination, kickbacks, and certain conflicts of interest.~ No separate analogous licensing or regulatory scheme extends to personal managers.~

With this background in mind, we turn to two questions not previously addressed by this court: whether the Act in fact applies to personal managers, as the Courts of Appeal and Labor Commissioner have long assumed, and if so, how.

II. The Scope of the Talent Agencies Act: Application to Managers

Marathon contends that personal managers are categorically exempt from regulation under the Act. We disagree; as we shall explain, the text of the Act and persuasive interpretations of it by the Courts of Appeal and the Labor Commissioner demonstrate otherwise.

We begin with the language of the Act.~ Section 1700.5 provides in relevant part: "No *person* shall engage in or carry on the occupation of a *talent agency* without first procuring a~ license therefor from the Labor Commissioner." (Italics added.) In turn, "person" is expressly defined to include "any individual, company, society, firm, partnership, association, corporation, limited liability company, *manager*, or their agents or employees"~, and " '[t]alent 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" other than recording contracts~.

The Act establishes its scope through a functional, not a titular, definition. It regulates *conduct*, not labels; it is the act of procuring (or soliciting), not the title of one's business, that qualifies one as a talent agency and subjects one to the Act's licensure and related requirements.~ Any person who procures employment – any individual, any corporation, any manager – is a talent agency subject to regulation.~ Consequently, as the Courts of Appeal have unanimously held, a personal manager who solicits or procures employment for his artist-client is subject to and must abide by the Act.~~ The Labor~ Commissioner, whose interpretations of the Act we may look to for guidance~, has similarly uniformly applied the Act to personal managers.~[41]

As to the further question whether even a single act of procurement suffices to bring a manager under the Act, we note that the Act references the "occupation" of procuring employment and serving as a talent agency.~ Considering this in

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professional services in motion picture, theatrical, radio, television and other entertainment enterprises." (§ 1700.4, subd. (b).)

[41] While we do not place great weight on legislative inaction, we note as well that the Legislature in 1982 considered but ultimately rejected an amendment to the Act that would have expressly exempted a particular class of personal managers - an amendment that would have been wholly superfluous if, as Marathon argues, they were already exempt.^

isolation, one might interpret the statute as applying only to those who regularly, and not merely occasionally, procure employment.~ However, as we have previously acknowledged in dicta, "[t]he weight of authority is that even the incidental or occasional provision~ of such services requires licensure."~[42] In agreement with these decisions, the Labor Commissioner has uniformly interpreted the Act as extending to incidental procurement.~ The Labor Commissioner's views are entitled to substantial weight if not clearly erroneous~; accordingly, we likewise conclude the Act extends to individual incidents of procurement.

~ Marathon correctly notes that in 1978, after much deliberation, the Legislature decided not to add separate licensing and regulation of personal^ managers to the legislation.^ The consequence of this conscious omission is not, as Marathon contends, that personal managers are therefore exempt from regulation. Rather, they remain exempt from regulation insofar as they do those things that personal managers do, but they are regulated under the Act to the extent they stray into doing the things that make one a talent agency under the Act.~

III. Sanctions for Solicitation and Procurement Under the Act

A. Marathon's Procurement

We note we are not called on to decide, and do not decide, what precisely constitutes "procurement" under the Act. The Act contains no definition, and the Labor Commissioner has struggled over time to better delineate which actions involve mere general assistance to an artist's career and which stray across the line to illicit procurement. Here, however, the Labor Commissioner concluded Marathon had engaged in various instances of procurement, the trial court concluded there was no material dispute that Marathon had done so, and Marathon has not further challenged that conclusion. We thus take it as a given that Marathon has engaged in one or more acts of procurement and that (as the parties also agree) Marathon has no talent agency license to do so.~

We also take as a given, at least at this stage, that Marathon's unlicensed procurement did not include the procurement specifically of Blasi's *Strong Medicine* role. Blasi takes issue with this point, correctly pointing out that the Labor Commissioner found to the contrary, but (1) under the Act's statutorily guaranteed trial de novo procedure, the Labor Commissioner's findings carry no

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[42] Post-*Styne*, the Courts of Appeal have arrived at unanimity on this question. In *Yoo v. Robi*,^ 126 Cal.App.4th 1089, the same court that had issued *Wachs v. Curry*^ , 13 Cal.App.4th 616, effectively repudiated its prior interpretation, noting with approval that courts have "unanimously denied . . . recovery to personal managers even when the majority of the managers' activities did not require a talent agency license and the activities which did require a license were minimal and incidental." (*Yoo*, at p. 1104, fn. omitted.)

weight~, and (2) neither Blasi's separate statement of undisputed material facts nor the evidence supporting it establish that Marathon procured the *Strong Medicine* role. Thus, for present purposes we presume Marathon did not procure that role for Blasi.

Finally, although Marathon argued below that it fell within section 1700.44, subdivision (d)'s "safe harbor" for procurement done in conjunction with a licensed talent agency, it has not preserved that argument here. Accordingly, we assume for present purposes that the safe harbor provision does not apply.

B. The Applicability of the Doctrine of Severability to Manager-talent Contracts

We turn to the key question in Blasi's appeal: What is the artist's remedy for a violation of the Act? In particular, when a manager has engaged in unlawful procurement, is the manager always barred from any recovery of outstanding fees from the artist or may the court or Labor Commissioner apply the doctrine of severability~ to allow partial recovery of fees owed for legally provided services?

Again, we begin with the language of the Act. On this question, it offers no assistance. The Act is silent – completely silent – on the subject of the proper remedy for illegal procurement.

On the other hand, the text of Civil Code section 1599 is clear. Adopted in 1872, it codifies the common law doctrine of severability of contracts: "Where a contract has several distinct objects, of which one at least is lawful, and one at~ least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest."~ By its terms, it applies even – indeed, only – when the parties have contracted, in part, for something illegal. Notwithstanding any such illegality, it preserves and enforces any lawful portion of a parties' contract that feasibly may be severed.~

Under ordinary rules of interpretation, we must read Civil Code section 1599 and the Act so as to, to the extent possible, give effect to both.~ The two are not in conflict. The Act defines conduct, and hence contractual arrangements, that are illegal: An unlicensed talent agency may not contract with talent to provide procurement services.~ The Act provides no remedy for its violation, but neither does it repudiate the generally applicable and long-standing rule of severability. Hence, that rule applies absent other persuasive evidence that the Legislature intended to reject the rule in disputes under the Act.

The conclusion that the rule applies is consistent with those of the Labor Commissioner's decisions that recognize severability principles may apply to disputes under the Act. In *Almendarez v. Unico Talent Management, Inc.* (Cal.Lab.Com., Aug. 26, 1999) TAC No. 55-97, a radio personality sought a determination that his personal manager had acted as an unlicensed talent agency. The Labor Commissioner concluded the manager had engaged in unlawful procurement – indeed, that procuring employment was the manager's primary~ role~ – but stopped short of voiding all agreements between the parties in their entirety. Citing and applying Civil Code section 1599, the Labor Commissioner concluded that a 1997 agreement between the parties had both a lawful purpose (repayment of personal expenses the manager had fronted for Almendarez) and an unlawful purpose (payment of commissions for unlawful procurement

services) and should be partially enforced.~ On numerous other occasions, the Labor Commissioner has severed contracts and allowed managers to retain or seek commissions based on severability principles without expressly citing Civil Code section 1599.~

In *Chiba v. Greenwald* (2007) 156 Cal.App.4th 71, the Court of Appeal also considered whether severance was available for an unlicensed manager/agent who in that case alleged she had had a *Marvin* agreement~ with her deceased musician client/partner. Acknowledging she had acted without a license, the manager relinquished any claim to commissions, and the Court of Appeal thus was not presented with the question whether severance might apply to any management services that required no license. In light of the facts as pleaded, the Court of Appeal concluded equity did not require severance of any lawful portions^ of the *Marvin* agreement from the unlawful agreement to provide unlicensed talent agency services. (*Chiba*, at pp. 81-82.)

{*Chiba* does not stand} for the proposition that severance is never available under the Act. In contrast, the Court of Appeal here expressly concluded, as we do, that it is available.~

Blasi contends that even if severability may generally apply to disputes under the Act, we should announce a rule categorically precluding its use to recover for artist advice and counseling services. She relies on three sources in support of this rule: the legislative history, case law interpreting the Act, and decisions of the Labor Commissioner. None persuades us that the Legislature intended to foreclose the application of severability, as codified in Civil Code sections 1598 and 1599, to manager-talent contracts that involve illegal procurement, either generally or with regard to recovery specifically for personal manager services.

For legislative history, Blasi relies on a portion of the Entertainment Commission's 1985 report to the Legislature. Addressing whether criminal sanctions for violations of the Act, temporarily suspended in 1982, should be reinstated, the Entertainment Commission said: "The majority of the Commission believes that existing civil remedies, which are available by legal action in the civil courts, to anyone who has been injured by breach of the Act, are sufficient to serve the purposes of deterring violations of the Act and punishing breaches.^ These remedies include actions for breach of contract, fraud and misrepresentation, breach of fiduciary duty, interference with business opportunity, defamation, infliction of emotional distress, and the like. *Perhaps the most effective weapon for assuring compliance with the Act is the power of the Labor Commissioner, at a hearing on a Petition to Determine Controversy, to find that a personal manager or anyone has acted as an unlicensed talent agent and, having so found, declare any contract entered into between the parties void from the inception and order the restitution to the artist, for the period of the statute of limitations, of all fees paid by the artist and the forfeiture of all expenses advanced to the artist. If no fees have been paid, the Labor Commissioner is empowered to declare that no fees are due and owing, regardless of the services which the unlicensed talent agent may have performed on behalf of the artist.* [¶] These civil and administrative remedies for violation of the Act continue to be available and should serve adequately to assure compliance with the Act." (Entertainment Com. Rep., *supra*, at pp. 17-18.)

According to Blasi, this passage demonstrates the Entertainment Commission endorsed voiding of contracts in all instances, and the Legislature necessarily embraced this view because it adopted all of the commission's proposals when it amended the Act in 1986.

We are not persuaded. The passage acknowledges what all parties recognize – that the Labor Commissioner has the "power" to void contracts, that she is "empowered" to deny all recovery for services where the Act has been violated, and that these remedies are "available." But the *power* to so rule does not suggest a *duty* to do so in all instances. The Labor Commissioner is empowered to void contracts in their entirety, but nothing in the Entertainment Commission's description of the available remedies suggests she is obligated to do so, or that the Labor Commissioner's power is untempered by the ability to apply equitable doctrines such as severance to achieve a more measured and appropriate remedy where the facts so warrant. Thus, we need not consider at length Blasi's further contention that these two paragraphs in the Entertainment Commission Report accurately reflect the views of the Legislature as a whole. Even if so, they do not connote an intent that managers in proceedings under the Act be deprived of the opportunity even to raise severability.

Finally, Blasi relies on a long line of Labor Commissioner decisions that have denied personal managers any right to recover commissions where they engaged in unlicensed solicitation or procurement. But the fact this remedy is often, or even *almost* always, appropriate, does not support the position that it is *always* proper. The Labor Commissioner decisions cited above suggest the Labor Commissioner historically has recognized she has the authority to allow partial recovery in appropriate circumstances.

We recognize, however, that in more recent decisions, the Labor Commissioner has expressly adopted the position Blasi advocates: severance is never available to permit partial recovery of commissions for managerial services that required no talent agency license. The weight accorded agency adjudicatory rulings such as these varies according to the validity of their reasoning and their overall persuasive force. Here, the Labor Commissioner's views rest in part on a reading of the legislative history as suggesting such a rule, in part on a reading of past Court of Appeal decisions as announcing such a rule, and perhaps in part on a policy judgment that voiding contracts in their entirety is necessary to enforce the Act effectively. With due respect, the Labor Commissioner's assessment of the legislative history and case law is mistaken; as we have explained, neither requires the rule she proposes. And any view that it would be better policy if the Act stripped the Labor Commissioner (and the superior courts in subsequent trials de novo) of the power to apply equitable doctrines such as severance would be squarely at odds with the Act's text, which contains no such limitation. Neither we nor the Labor Commissioner are authorized to engraft onto the Act such a limitation neither express nor implicit in its terms. We are thus unpersuaded and decline to follow the Labor Commissioner's interpretation.

In sum, the Legislature has not seen fit to specify the remedy for violations of the Act. Ordinary rules of interpretation suggest Civil Code section 1599 applies fully to disputes under the Act; nothing in the Act's text, its history, or the {Slip Opn. Page 25} decisions interpreting it justifies the opposite conclusion. We

conclude the full voiding of the parties' contract is available, but not mandatory; likewise, severance is available, but not mandatory.

C. Application of the Severability Doctrine

Finally, we turn to application of the severability doctrine to the facts of this case, insofar as those facts are established by the summary judgment record. Given the procedural posture, our inquiry is narrow: On this record, has Blasi established as a matter of law that there is no basis for severance?

In deciding whether severance is available, we have explained "[t]he overarching inquiry is whether ' "the interests of justice . . . would be furthered" ' by severance." "Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate."

Blasi does not contend that particular evidence in the record unique to this contract establishes severance cannot apply. Instead, she offers two arguments applicable to this contract and to manager-talent contracts in general.

First, Blasi points to the nature of the compensation. In the Marathon-Blasi contract, as with most such contracts, there is no match between services and compensation. That is, a personal manager provides an undifferentiated range of services; in exchange, he receives an undifferentiated right to a certain percentage of the client's income stream.

Second, Blasi argues that once a personal manager solicits or procures employment, all his services – advice, counseling, and the like – become those of an unlicensed talent agency and are thus uncompensable. We are not persuaded. In this regard, the conduct-driven definitions of the Act cut both ways. A personal manager who spends 99 percent of his time engaged in counseling a client and organizing the client's affairs is not insulated from the Act's strictures if he spends 1 percent of his time procuring or soliciting; conversely, however, the 1 percent of the time he spends soliciting and procuring does not thereby render illegal the 99 percent of the time spent in conduct that requires no license and that may involve a level of personal service and attention far beyond what a talent agency might have time to provide. Courts are empowered under the severability doctrine to consider the central purposes of a contract; 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. For the personal manager who truly acts as a personal manager, however, an isolated instance of procurement does not automatically bar recovery for services that could lawfully be provided without a license.

Inevitably, no verbal formulation can precisely capture the full contours of the range of cases in which severability properly should be applied, or rejected. The doctrine is equitable and fact specific, and its application is appropriately directed to the sound discretion of the Labor Commissioner and trial courts in the first

instance. As the Legislature has not seen fit to preclude categorically this case-by-case consideration of the doctrine in disputes under the Act, we may not do so either.

In closing, we note one final point apparent from the briefing and oral argument. Letters and briefs submitted by personal managers indicate a uniform dissatisfaction with the Act's application. At oral argument, counsel for Blasi likewise agreed that the Legislature might profitably consider revisiting the Act. The Legislature has in the past expressed dissatisfaction with the Act's enforcement scheme. (Assem. Com. on Labor and Employment, Analysis of Assem. Bill No. 1197 (1989–1990 Reg. Sess.) as amended May 1, 1989, p. 2 [decrying absence of effective regulatory and enforcement mechanisms in the wake of the Entertainment Commission's inability to devise an "equitable civil or criminal penalty system"].) Adopted with the best of intentions, the Act and guild regulations aimed at protecting artists evidently have resulted in a limited pool of licensed talent agencies and, in combination with high demand for talent agency services, created the right conditions for a black market for unlicensed talent agency services. In the event of any abuses by unlicensed talent agencies, the principal recourse for talent is to raise unlawful procurement as a defense against collection of commissions, but this is a blunt and unwieldy instrument. It is of little use to unestablished artists, who it appears may legitimately fear blacklisting, and may well punish most severely those managers who work hardest and advocate most successfully for their clients, allowing the clients to establish themselves, make themselves marketable to licensed talent agencies, and be in a position to turn and renege on commissions.

We, of course, have no authority to rewrite the regulatory scheme. In the end, whether the present state of affairs is satisfactory is for the Legislature to decide, and we leave that question to the Legislature's considered judgment.

DISPOSITION

For the foregoing reasons, we affirm the Court of Appeal's judgment and remand this case for further proceedings consistent with this opinion.

Kennard, Acting C. J., with Baxter, J., Chin, J., Moreno, J., Corrigan, J., and McAdams, J.