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STYNE v. STEVENS: THE CALIFORNIA SUPREME COURT HAS THE FINAL (BUT NOT THE FIRST) WORD ON THE TALENT AGENCIES ACT

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STYNE v. STEVENS[1]: THE CALIFORNIA SUPREME COURT HAS THE FINAL (BUT NOT THE FIRST) WORD ON THE TALENT AGENCIES ACT

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I. INTRODUCTION

The California Supreme Court recently clarified the murky waters of the limitations period mandated by California's Talent Agencies Act.[2] The purpose of the Act is to prevent talent agencies[3] from abusing artists[4] in search of professional employment.[5] To achieve this goal, the Act requires that all those who contract for talent agency services first obtain a license.[6] Additionally, all contracts by unlicensed persons for talent agency services are "illegal and void ab ini-

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1. 26 P.3d 343 (Cal. 2001).

2. CAL. LAB. CODE § 1700 *et seq.* (West 1989) [hereinafter Act].

3. The Act defines a "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." *Id.* § 1700.4(a).

4. The Act defines "artists" as

> 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 professional services in motion picture, theatrical, radio, television, and other entertainment enterprises.

Id. § 1700.4(b).

5. *Styne*, 26 P.3d at 349.

6. CAL. LAB. CODE § 1700.5.

tio."[7] It is well settled that "even the incidental or occasional provision of such services requires licensure."[8]

The primary focus of this Article is on the recently settled debate surrounding the Act's one-year statute of limitations. The Act provides, in part, a one-year limitations period for all cases filed under the Act.[9] Consistent with years of case law interpreting statutes of limitation in general, the court, in *Styne v. Stevens*, established conclusively that any manager who has ever negotiated even one word of an artist's agreement without having been asked by an agent to do so will be haunted by that mistake forever.[10]

The court, in one fell swoop, unequivocally eliminated any remaining questions regarding whether or not the courts in California have the authority to adjudicate claims involving the Act. At least in the first instance they do not, and there is nothing equivocal about the court's ruling in that regard.[11]

Part II of this Commentary provides a background discussion of the facts giving rise to the *Styne* controversy. Part III discusses the California Supreme Court's decision in *Styne v. Stevens*, including a detailed discussion of the court's handling of both the statute of limitations and jurisdictional issues raised by the parties on appeal. Finally, Part IV concludes that the result reached in *Styne* is consistent with years of case law and represents yet another step by the courts and the Labor Commissioner in the liberalization of the Talent Agencies Act.

II. BACKGROUND

The Labor Commissioner has interpreted California Labor Code section 1700.44(c) as a very strict statute of limitations for all cases

7. *Styne*, 26 P.3d at 346.

8. *Id.* at 349.

9. For a detailed discussion of the court of appeal decision in *Styne v. Stevens*, see Edwin F. McPherson, *The Talent Agencies Act: Does One Year Really Mean One Year?*, 22 HASTINGS COMM. & ENT. L.J. 441 (2000) [hereinafter *Does One Year*]. For a detailed discussion of the Act in general and many of the reported and unreported cases that have been decided by the Labor Commissioner and California courts, see Edwin F. McPherson, *The Talent Agencies Act — Time for a Change*, 19 HASTINGS COMM. & ENT. L.J. 899 (1998), *reprinted in* SPORTS & ENT. LAW NEWSL. (Ohio St. B. Ass'n), Sept. 1999; Edwin F. McPherson, *Manager Violates Talent Agencies Act Despite Absence of Fees*, ENT. LAW & FIN., June 1999, at 1; Edwin F. McPherson, *The Talent Agencies Act — A Personal Manager's Nightmare*, L.A. LAW., May 1994, at 17; Edwin F. McPherson, *The Talent Agencies Act Is Alive, But Is It Well?*, L.A. LAW., Dec. 1999, at 60.

10. *Styne*, 26 P.3d at 351.

11. *Id.* at 354-55.

filed under the Act.[12] Section 1700.44(c) states that "[n]o action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding."[13]

However, in *Park v. Deftones*,[14] the court of appeal held that even if a violation occurred more than a year ago, an artist may nevertheless assert the Act affirmatively or defensively.[15] The limitations period is therefore revived when a manager, or other unlicensed individual, sues the artist.[16] In that way, the "Labor Commissioner's interpretation . . . assures that the party who has engaged in illegal activity may not avoid its consequences through the timing of his own collection action."[17]

However, the court of appeal's opinion in *Styne v. Stevens*[18] indicated that although a lawsuit by a manager revives the one-year limitations period, it is only revived for one year.[19] This means that an artist must commence a Labor Commission proceeding within one year of receiving notice that the manager made a claim against the artist *and* that he or she violated the Act, regardless of whether the artist is using the Act offensively or defensively.[20]

In the *Styne* case, Mr. Styne had been the personal manager and close friend of Connie Stevens for over twenty years.[21] At one point, Stevens encountered financial difficulties and needed "to ensure a secure financial future for herself and her children."[22] At that time, Styne was introduced to a representative of the Home Shopping Network ("HSN"), which was the most successful company in the early stages of television direct sales.[23]

At the same time, Stevens was involved in a partnership with another friend to develop a beauty product line that was designed for use with a patented wrinkle-removing device.[24] Styne introduced Ste-

12. *Does One Year*, *supra* note 9, at 442.
13. CAL. LAB. CODE § 1700.44(c) (West 1989).
14. 84 Cal. Rptr. 2d 616 (Ct. App. 1999).
15. *Id.* at 618 (citing Moreno v. Park, Cal. Lab. Comm'n Case No. TAC 9-97 (1998), at 4).
16. *Id.*
17. *Id.*
18. 92 Cal. Rptr. 2d 655 (Ct. App. 2000).
19. *Id.* at 662.
20. *Id.*
21. Appellant's Opening Brief at 8, *Styne* (No. BC142878).
22. *Id.* at 7-8.
23. *Id.* at 8.
24. *Id.* at 9.

vens to his contacts at HSN.[25] She advised HSN that she was not interested in becoming a product spokesperson for the Network, but was interested in selling her own line of beauty products on the Network.[26] Styne participated in numerous meetings and telephone conversations with HSN in order "to protect Stevens' interests *vis-à-vis* HSN," after which Stevens and her partner received their first order from HSN for $1 million in products.[27]

In return, Stevens offered Styne ten percent of the company she planned to form, to which Styne agreed.[28] Shortly after HSN placed its first order, Stevens formed a corporation in which her friend/partner was a profit participant.[29] They both agreed to give Styne five percent from their respective shares of the profits from the venture.[30]

Over the next four years, Styne received regular checks from Stevens for his participation.[31] Although the product was a huge success, and Stevens was earning millions of dollars, Styne only received a fraction of the amount due to him under the agreement.[32] According to Styne, Stevens offered to "set aside the lion's share of Styne's profits from [the product] and hold them in trust for Styne's benefit until he needed them."[33] Ultimately, however, Stevens denied that she had agreed to hold any monies in trust for Styne and refused to pay him the balance of the ten percent.[34]

In 1996, Styne commenced an action against Stevens for breach of contract, breach of fiduciary duty, accounting, breach of express trust, imposition of constructive trust, constructive fraud, and declaratory relief.[35] In her answer, Stevens failed to plead a defense of "illegality" based upon any alleged violation by Styne under the Talent Agencies Act.[36] However, approximately fifteen months after the answer was filed, and eighteen months after the action was initiated, Stevens moved for summary judgment on the ground that the alleged

25. *Id.*
26. *Id.*
27. Appellant's Opening Brief at 10, *Styne* (No. BC142878).
28. *Id.* at 11.
29. *Id.* at 10.
30. *Id.* at 11.
31. *Id.* at 12.
32. *Id.*
33. Appellant's Opening Brief at 12, *Styne* (No. BC142878).
34. *Id.* at 13.
35. *Id.*
36. Styne v. Stevens, 26 P.3d 343, 348 (Cal. 2001).

agreement did, in fact, violate the Act, therefore making the agreement void.[37]

In support of her motion for summary judgment, Stevens asserted that Styne's efforts in introducing her to HSN, promoting her interests to HSN, arranging a key meeting with HSN, and arranging for her to appear on the network to promote her product amounted to "procurement" within the meaning of the Act.[38]

Styne opposed the motion on the grounds that: (1) all matters under the Act are within the exclusive original jurisdiction of the Labor Commissioner; (2) the defense was waived because it was not raised within the Act's one-year statute of limitations; and (3) Styne's conduct did not violate the Act.[39] Styne denied that his efforts violated the Act, claiming that he did nothing more than facilitate the sale of Stevens' own product, and never procured "employment" for Stevens.[40] The trial court denied the motion, ruling that Styne's conduct was not the type of conduct that is governed by the Act.[41]

Thereafter, the case went to trial.[42] Stevens proposed a jury instruction that required the jury to determine whether Styne had violated the Act.[43] The trial court refused the instruction, notwithstanding that, according to the court of appeal, the evidence showed that "Styne was actively engaging in promoting Stevens' employment opportunities," and that, in recent years, when Stevens' services were "less in demand," and she was "facing financial hardship," Styne "took steps toward obtaining employment for Stevens as a spokesperson for products, recording albums, and appearing in concert engagements through HSN."[44]

The jury found in Styne's favor and awarded him in excess of $43 million.[45] Stevens moved for judgment notwithstanding the verdict, or alternatively a new trial.[46] The trial court granted the motion for a new trial on the grounds that it had prejudicially erred in failing to instruct the jury on the requirements of the Act.[47]

37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Styne*, 26 P.3d at 348.
43. *Id.*
44. Styne v. Stevens, 92 Cal. Rptr. 2d 655, 658 (Ct. App. 2000).
45. *Styne*, 26 P.3d at 348.
46. *Id.*
47. *Id.* at 349.

Styne appealed the new trial order, claiming once again that he had not engaged in any conduct that would require a talent agency license.[48] Furthermore, Styne asserted that this defense was barred by Stevens' failure to submit it to the Commissioner within the Act's one-year limitations period.[49] In response, Stevens argued that Styne's conduct did violate the Act, and that she was free to assert the defense "without regard to the Act's statute of limitations or its requirement of first referral to the Commissioner," even though she had not asserted the Act as an affirmative defense.[50]

The court of appeal reversed the new trial order and reinstated the verdict.[51] The court disagreed with Stevens, holding that her defense under the Act was barred because she had failed to invoke the Act and refer the matter to the Commissioner within one year after she was served with Styne's complaint.[52]

III. *STYNE V. STEVENS*: THE CALIFORNIA SUPREME COURT DECISION

In a unanimous decision, the California Supreme Court reversed the decision of the court of appeal, ordering a new trial, and further instructing the trial court to stay the action pending the Labor Commissioner's determination.[53] In so holding the supreme court reached the following conclusions:

(1) the statute of limitations does not bar the *defensive* use of the Act, i.e., the Act may operate as a complete bar to a case at any time during the pendency of the litigation irrespective of how many years prior the violation occurred;[54] and

(2) any claims based upon the Act, whether used as an affirmative claim or simply as a defense to the action, must be resolved by the California Labor Commissioner before judicial review is sought.[55]

A. *Statute of Limitations*

With respect to the statute of limitations issue, Styne correctly noted that recent Labor Commission cases indicate that the filing of a

48. *Id.*
49. *Id.*
50. *Id.*
51. *Styne*, 26 P.3d at 349.
52. *Id.* at 347.
53. *Id.*
54. *Id.*
55. *Id.*

suit by a manager against an artist is a separate violation of the Act.[56] However, Styne argued that, although the filing of the complaint may revive the statute of limitations, the statute is still one year.[57] Therefore the artist, in this case Stevens, only has one year from the filing of the complaint to file a petition to determine the controversy with the Labor Commissioner, "or by asserting a claim in [s]uperior [c]ourt — that could be characterized as bringing an 'action or proceeding . . . pursuant to [the Act].'"[58]

Stevens argued that according to section 1700.44(c), which states that "[n]o *action* or *proceeding* shall be *brought* pursuant to [this chapter,]" the statute of limitations is inapplicable when the Act is asserted only as a defense.[59] This language, Stevens suggested, only applies "when the litigant files suit, or seeks affirmative relief under the Act."[60]

Stevens further argued that the Labor Commissioner has repeatedly held "that [section] 1700.44(c) does not apply to the use of the Act as a defense."[61] In *Church v. Brown*,[62] the Labor Commissioner stated that statutes of limitation, including subsection (c), were "designed to bar the untimely assertion of affirmative claims for damages, and not to prevent the invocation of legitimate defenses based on a purely defensive matter."[63]

Moreover, Stevens argued that the otherwise barred claims include those questioning the legality of the disputed contract.[64] With respect to Styne's assertion that Stevens should have pled the defense in her answer, Stevens argued that she was not required to do so because an illegal contract is void as against public policy, and therefore "need not be pleaded in the answer."[65] In fact, Stevens argued, "illegality" may be raised for the first time on appeal,[66] "or by the court *sua sponte* if no party ever raises it."[67]

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56. Petitioner's Opening Brief at 23, Styne v. Stevens, 92 Cal. Rptr. 2d 655 (Ct. App. 2000) (No. BC142878) (citing Jenner v. Wallach, Cal. Lab. Comm'n Case No. TAC 44-95 (1996), at 2; Anita Baker Bridgeforth v. BNB Assocs., Cal. Lab. Comm'n Case No. TAC 12-96 (1996), at 7).

57. *Id.* at 24.

58. *Id.* (citing CAL. LAB. CODE § 1700.44(c) (West 1989)).

59. *Styne*, 26 P.3d at 349.

60. Respondent's Brief at 15, *Styne* (No. BC142878).

61. *Id.*

62. Cal. Lab. Comm'n Case No. TAC 66-92 (1994).

63. *Id.* at 7.

64. *Styne*, 26 P.3d at 350.

65. Respondent's Brief at 16, *Styne* (No. BC142878) (citing Kallen v. Delug, 203 Cal. Rptr. 879, 883 (Ct. App. 1984)).

66. *Id.* (citing LaFortune v. Ebie, 102 Cal. Rptr. 588, 589 (Ct. App. 1972)).

67. *Id.* (citing Lewis & Queen v. N.M. Ball Sons, 308 P.2d 713, 717 (Cal. 1957)).

In response, Styne maintained that Stevens was not just asserting the Act as a defense.[68] By claiming that Styne's alleged violations of the Act rendered the agreement void, Stevens was in effect seeking "absolution from her contractual obligation to *continue* to pay [ten percent] of [the product's] future earnings to Styne."[69]

The court of appeal held that the artist must raise the Act and obtain a hearing under the Labor Code within one year from "when the artist was (or reasonably should have been) aware that the Act should be asserted as a defense."[70] As such, the court held that the service date of the lawsuit is "the earliest starting point of the one-year period."[71] Because Stevens was, at all times, aware of Styne's role in her relationship with HSN, the court held that the one-year limitations period commenced upon service of process to Styne.[72] Therefore, her failure to seek a stay of the superior court action and submit the matter to the Labor Commissioner within that year barred "a judicial determination that the agreement [was] void under the Act," notwithstanding the fact Stevens was using the Act solely as a defense.[73]

In reversing the decision of the court of appeal, the supreme court noted that statutes of limitation bar actions or proceedings, in order to keep "stale litigation out of the courts."[74] Such statutes "act as shields, not swords."[75] The court found that the object of such statutes "would be distorted if the statute were applied to bar an otherwise legitimate defense to a timely lawsuit."[76]

The court also noted that because the Labor Commissioner is charged with enforcing the Act, his interpretation deserves substantial weight.[77] The Labor Commissioner has consistently held that the one-year statute of limitations period of section 1700.44(c) does not apply to pure *defenses* arising under the Talent Agencies Act.[78]

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68. *Styne*, 26 P.3d at 351.

69. Appellant's Opening Brief at 26, *Styne* (No. BC142878).

70. *Styne*, 92 Cal. Rptr. 2d at 661.

71. *Id.*

72. *Id.*

73. *Id.* at 661-62.

74. Styne v. Stevens, 26 P.3d 343, 350 (Cal. 2001) (citing Beach v. Ocwen Fed. Bank, 523 U.S. 410, 415-16 (1998)).

75. *Id.*

76. *Id.*

77. *Id.* (citing Kelly v. Methodist Hosp. of So. Cal., 997 P.2d 1169, 1175 (Cal. 2000)).

78. *Id.* The court cites several Labor Commission decisions as authority, including the following: Hyperion Animation Co., Inc. v. Toltex Artists, Inc., Cal. Lab. Comm'n Case No. TAC 7-99 (1999) (pure defenses not untimely though invoked more than one year after both challenged contracts and commencement of superior court action); Sevano v. Artistic Prods., Inc.,

The court rejected Styne's argument that Stevens actually sought affirmative relief.[79] The court held that to the extent a defendant simply seeks a declaration that she owes no obligations under an agreement, "the matter must be deemed a defense to which the statute of limitations does not apply."[80] The court also rejected Styne's claim that the Act limits "actions and proceedings," and contains no exception for the defensive use of the Act.[81] The court reasoned that such language merely "parallels the universal statute of limitations reference to 'actions,'" thus it must be construed in the same fashion.[82]

B. *Jurisdiction of Courts*

Contesting the issue of jurisdiction, Stevens, in turn, argued that the exhaustion of remedies (original jurisdiction rule of submitting the matter to the Labor Commissioner) only applies when an artist is seeking affirmative relief from the manager, such as a disgorgement of fees, and not when an artist is simply using the Act defensively.[83] As argued by Stevens in her brief to the court of appeal:

> Styne's jurisdictional attack depends on the premise that Stevens sought relief under the Act. Stevens did not seek relief under the Act. She did not seek relief at all. Styne was the one who filed a complaint, and he sued on ordinary common law and equitable theories such as breach of oral contract, constructive fraud, and an accounting, not on the Act. Stevens' answer merely denies liability, and she did not cross-complain. Stevens asserted the Act only as a *defense*. In that situation, the courts *do* have jurisdiction.[84]

Stevens cited *Waisbren v. Peppercorn Productions, Inc.*[85] in support of her argument that the Labor Commissioner does not have exclusive original jurisdiction when the Act is being asserted defensively.[86] In *Waisbren*, a manager sued an artist for breach of

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Cal. Lab. Comm'n Case No. TAC 8-93 (1997) (defense not untimely because not raised within one year after plaintiffs demand for arbitration); Rooney v. Levy, Cal. Lab. Comm'n Case No. TAC 66-92 (1995) (the Act's statute of limitations does not bar the Commission petition seeking declaration that contract is void based on violation of the Act that occurred more than one year earlier; limitations period does not apply to defenses).

79. *Styne*, 26 P.3d at 351.

80. *Id.*

81. *Id.*

82. *Id.*

83. Respondent's Brief at 2-3, Styne v. Stevens, 92 Cal. Rptr. 2d 655 (Ct. App. 2000) (No. BC142878).

84. *Id.* at 11.

85. 48 Cal. Rptr. 2d 437 (Ct. App. 1995).

86. *Styne*, 26 P.3d at 354.

contract and other causes of action.[87] The artist never commenced a Labor Commission proceeding, but instead moved for summary judgment on the ground that the manager had violated the Act.[88] The trial court granted the motion, and the Second District Court of Appeal affirmed, without any mention of the Labor Commissioner having exclusive (or any) jurisdiction.[89]

Styne argued in response that, generally, "the doctrine of exhausting of [administrative] remedies applies equally to defenses and to actions for affirmative relief."[90] Styne further argued that the *Waisbren* court did not address the exhaustion issue, and there were not enough facts to determine whether or not the artist in that case actually commenced an action with the Labor Commissioner.[91]

The court of appeal ruled that the Labor Commissioner had exclusive jurisdiction over any claim or *defense* arising under the Act.[92] However, there was no claim left for the Commissioner to adjudicate, because no action was filed with the Labor Commissioner within the one-year limitations period.[93] Having determined that the one-year statute did not apply to a *defense*,[94] the supreme court held that, once an artist states a "colorable" claim under the Act, whether as an affirmative claim or as a defense, the Labor Commissioner has exclusive jurisdiction to hear that claim.[95] The court began by quoting the Act, which provides, "[I]n cases of *controversy* arising under this chapter, the parties involved *shall refer* the *matters in dispute* to the Labor Commissioner, who shall hear and determine the same, subject to an appeal . . . to the superior court where the same shall be heard de novo."[96]

The court went on to state that the "[t]he Commissioner has the authority to hear and determine various disputes, *including the validity of artists' manager-artist contracts and the liability of the parties*

87. *Id.*

88. *Id.*

89. *Waisbren*, 48 Cal. Rptr. 2d at 448.

90. Appellant's Brief at 28, *Styne* (No. S086787) (citing S. Coast Reg'l Comm'n v. Gordon, 558 P.2d 867 (Cal. 1977); People v. W. Publ'g Co., 216 P.2d 441 (Cal. 1950); People v. Coit Ranch, Inc., 21 Cal. Rptr. 875 (Ct. App. 1962)).

91. *Id.* at 27.

92. *Styne*, 26 P.3d at 349.

93. *Id.*

94. *Id.* at 350.

95. *Id.* at 355.

96. *Id.* at 351 (citing CAL. LAB. CODE § 1700.44(a) (West 1989)).

hereunder."[97] Thus, as the statute mandates, parties must bring all their disputes before the Commissioner prior to filing a claim with the superior court.[98]

Additionally, the court stated that when parties to a contract dispute invoke the Act, "the Commissioner has exclusive jurisdiction to determine his jurisdiction over the matter, including whether the contract involved the services of talent agency."[99] If the Commissioner concludes that the contract involves the "services of an unlicensed person," then the Commissioner may "declare the contract void and unenforceable."[100] Therefore, before the superior court may consider the matter, the parties must first bring their claims and exhaust all their remedies before the Commissioner.[101]

Since the Commissioner determines whether he has "jurisdiction over issues colorably arising under the [Act,]" it follows that the Commissioner alone determines, in the first instance, if the facts presented establish a claim under the Act.[102] As a general mater, when a statute requires that parties exhaust their remedies before filing for judicial review, it becomes the agency's sole power to decide whether a certain claim falls within the statute.[103] In other words, the agency alone determines "'*in the first instance*, and *before judicial relief may be obtained*, whether [the] controversy falls within the [agency's] statutory grant of jurisdiction.'"[104]

A contrary conclusion allowing the superior court prior exclusive jurisdiction would "undermine" the purpose of the Act itself, as well as the "principle of exhaustion of administrative remedies generally."[105] By allowing the superior court to resolve, in the first instance, the factual issues of "whether Styne had acted as a talent agency under the contract," the court would, in essence, be completely depriving the Commissioner of his statutorily mandated role.[106]

However, finding that a claim *colorably* falls within the Act does not mean that the claim is *meritorious*; that is for the Labor Commis-

97. *Id.* at 351-52 (quoting Buchwald v. Superior Court, 62 Cal. Rptr. 364, 371 (Ct. App. 1967)).
98. *Styne*, 26 P.3d at 352 (citations omitted).
99. *Id.* (citing Buchwald v. Katz, 503 P.2d 1376, 1378 (Cal. 1972)).
100. *Id.* (citations omitted).
101. *Id.*
102. *Id.* at 352 n.6.
103. *Id.*
104. *Styne*, 26 P.3d at 353 n.6 (quoting United States v. Superior Court, 120 P.2d 26, 29 (Cal. 1941)).
105. *Id.*
106. *Id.*

sioner to decide.[107] The term "colorably," as it is used by the *Styne* court, is construed in its "broadest sense," and means essentially, remotely, or rationally.[108] That is, the claim has to have some *rational* relationship to the Act.[109] For instance, as the court noted in *Styne,*

> an automobile collision suit between persons unconnected to the entertainment industry is manifestly not a controversy arising under the Act . . . . On the other hand, if a dispute in which the Act is invoked plausibly pertains to the subject matter of the Act, the dispute should be submitted to the Commissioner for first resolution of both the jurisdictional and merits issues, as appropriate.[110]

Stevens further asserted that the superior court and the Labor Commissioner have concurrent original jurisdiction,[111] as would be the case in other "exhaustion of administrative remedies" cases.[112] The supreme court unequivocally rejected this assertion, ruling that "the plain meaning of section 1700.44, subdivision (a), and the relevant case law, negate any inference that courts share original jurisdiction with the Commissioner in controversies arising under the Act."[113] On the contrary, the Commissioner's original jurisdiction of such matters is exclusive.[114] Thus, where superior court proceedings have already begun, those proceedings should be stayed until the Commissioner has been given the opportunity to hear the case and determine whether there is a controversy.[115]

In response to Stevens' argument that the *Waisbren* decision allowed the court to adjudicate issues relating to the Act without referring the matter to the Labor Commissioner, the supreme court concluded that the *Waisbren* court had not discussed whether or not the controversy had been previously referred to the Labor Commissioner, because the issues were not raised by the litigants.[116] The supreme court thus held that the case is not authority for the proposition that such a procedure is *not* required, because the issue of the artist's

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107. *Id.* at 355 n.10.
108. *Id.*
109. *Id.*
110. *Styne*, 26 P.3d at 355 n.10.
111. *Id.* at 354.
112. *Id.* at 352 n.6.
113. *Id.* at 354.
114. *Id.*
115. *Id.* (citing CAL. CODE REGS. tit. 8, § 12022 (1989)).
116. *Styne*, 26 P.3d at 354. In fact, there was no such Labor Commission proceeding filed in *Waisbren*; nevertheless, neither the superior court nor the court of appeal in the *Waisbren* case had any trouble adjudicating the Talent Agencies Act issues without referring the case to the Labor Commissioner.

failure to commence a Labor Commission proceeding was never raised by the *Waisbren* court.[117]

C. *The Defense of "Illegality"*

Styne argued that Stevens waived her illegality defense under the Act because she failed to refer the matter to the Commissioner, thus forcing the controversy to continue to trial.[118] Regardless of whether Stevens' illegality defense was waiveable, the court held that such a defense, under the circumstances of the present case, was not.[119] The court found that Stevens' defense was rejected because of the erroneous view taken by both parties at trial regarding the Act.[120] Thus, referring the matter to the Commissioner would be futile.[121]

Although the *Styne* court did not address whether the defense of illegality can be waived unless pled as an affirmative defense in the answer, there is considerable authority for the proposition that an illegality defense cannot be waived.[122] Case law uniformly recognizes that an illegal contract is void as against public policy, and therefore, need not be pled in the answer.[123] The court in *Kallen v. Delug*[124] stated, in pertinent part, that "[s]ince an illegal contract is void and public policy considerations are involved, *illegality need not be pleaded in the answer* or even argued to preserve the issue on appeal."[125]

Indeed, because public policy considerations against illegal contracts are so strong, the issue of illegality may be raised for the first time on appeal.[126] The issue may also be raised by the court *sua sponte* if no party ever raises it.[127]

In *Fewel & Dawes, Inc. v. Pratt*,[128] a case concerning a dispute over insurance contracts, the defendants introduced evidence at trial showing that Fewel was not licensed to sell insurance.[129] After a judgment was rendered against him, he appealed, and argued that the de-

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117. *Id.*
118. *Id.*
119. *Id.* at 355-56 n.11.
120. *Id.*
121. *Id.*
122. *See supra* notes 93-100 and accompanying text.
123. *See supra* notes 93-100 and accompanying text.
124. 203 Cal. Rptr. 879 (Ct. App. 1984).
125. *Id.* at 883 n.2 (emphasis added).
126. LaFortune v. Ebie, 102 Cal. Rptr. 588, 589 (Ct. App. 1972).
127. Lewis & Queen v. N.M. Ball Sons, 308 P.2d 713, 717 (Cal. 1957) (unlicensed contractor could not enforce construction contract entered into in violation of state licensing law).
128. 109 P.2d 650 (Cal. 1941).
129. *Id.* at 652.

cision should be reversed on the ground that the contract was illegal.[130] Finding no basis to preclude the question of illegality on appeal, the court stated that "[i]f the contract is illegal as a matter of law, a court may refuse to enforce it regardless of the pleadings of the parties."[131] Finally, the Labor Commissioner has consistently refused to recognize the defenses of estoppel or waiver in proceedings under the Act.[132]

IV. CONCLUSION

Without a doubt, *Styne v. Stevens* is consistent with years of cases interpreting statutes of limitation.[133] Claims that would otherwise have been barred by an applicable statute of limitations may always be asserted as a defense and offset.[134] Indeed, as the *Styne* court noted, allowing a statutorily barred claim as an affirmative defense "applies in particular to contract actions."[135] By following well settled law, the court's ruling, in this regard, should come as no surprise.[136]

Additionally, the *Styne* court also resolved all remaining issues regarding whether or not the superior court has authority to adjudicate claims involving the Act. In a well written decision, the court clearly held that in the first instance, the authority to adjudicate claims involving the Act belongs solely to the Labor Commissioner.[137] Therefore, the superior court has no authority to adjudicate claims under the Act prior to the parties exhausting their remedies before the Labor Commissioner.[138]

Furthermore, *Styne v. Stevens* is also consistent with the courts' and the Labor Commissioner's continued liberalization of the Talent Agencies Act. Under current law, if a personal manager negotiates one term of one contract that can be construed as an *employment* contract, without a licensed agent having requested him to do so, he may

130. *Id.* at 652, 654.

131. *Id.* at 654 (citing Endicott v. Rosenthal, 16 P.2d 673 (Cal. 1932); Morey v. Paladini, 203 P. 760 (Cal. 1922); Pac. Wharf Co. v. Standard Am. Dredging Co., 192 P. 847 (Cal. 1920); Kreamer v. Earl, 27 P. 735 (Cal. 1891); Dean v. McNerney, 266 P. 1975 (Cal. Ct. App. 1928)).

132. *See* Hall v. X Mgmt., Inc., Cal. Lab. Comm'n Case No. TAC 19-90, at 44 (1992).

133. *See* Bank of Am. v. Vannini, 295 P.2d 102 (Cal. 1956); Estate of Cover, 204 P. 583 (Cal. 1922); French v. Constr. Laborers Pension Trust, 118 Cal. Rptr. 731 (Ct. App. 1975).

134. Styne v. Stevens, 26 P.3d 343, 350 (Cal. 2001).

135. *Id.*

136. *See Does One Year*, *supra* note 9, at 451 ("It would therefore not be a great surprise if [the court of appeal's decision in *Styne v. Stevens*] is overruled or otherwise limited on its facts.").

137. *Styne*, 26 P.3d at 354-55.

138. *Id.*

have to forfeit all commissions that are owed to him — forever — irrespective of how many years he has worked for the artist, irrespective of how much money he has made for the artist, and irrespective of whether or not the artist knew about the negotiation or even requested the negotiation.

It is difficult to imagine that any personal manager could possibly do his job, and in particular, what the artist expects him to do, without violating the Act. However, the courts and the Labor Commissioner have made it clear that the only entity that is going to solve this *problem* — and it is, without a doubt, a tremendous problem in the entertainment industry — is the California Legislature. Until such action is taken by the Legislature, *Styne v. Stevens* is the last word on the Talent Agencies Act.