



December 20, 2012

BY ELECTRONIC AND FIRST CLASS MAIL

Jonathan Mintz
Commissioner

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Karen Stuart
Executive Director
Association of Talent Agents
9255 Sunset Boulevard, Suite 930
Los Angeles, CA 90069

RE: Compliance Review of the ATA/NATR Revised Contract

Dear Ms. Stuart:

The Association for Talent Agencies (“ATA”) requested that the Department of Consumer Affairs (“Department” or “DCA”) approve the attached agency contract (“the ATA/NATR Revised Contract”) for use by members of the ATA and the National Association of Talent Representatives (“NATR”) in light of amendments to the New York General Business Law (“GBL”) and the Arts and Cultural Affairs Law (“ACA”) redefining definitions and requirements for “theatrical employment agencies,” effective October 3, 2012.

This letter is in response to the ATA’s request. The Department deems the ATA/NATR Revised Contract compliant with the recent amendments as long as talent agencies using the ATA/NATR Revised Contract: a) issue to artists and maintain and produce to the Department upon demand receipts compliant with the GBL, b) provide to artists Sections 185 and 186 of the GBL in every instance when fees are collected, as required by GBL Section 185(1)(b), and c) maintain and produce to artists and the Department upon demand employment contracts executed between employers and artists and copies of payments by employers to artists. Collectively, these documents satisfy the functional requirements of the relevant provisions of the GBL and the ACA.

I. The ATA/NATR Revised Contract is in compliance with the recent amendments.

Assessment of the ATA/NATR Revised Contract under GBL Sections 171(8) and 171(9) and ACA Section 37.01

GBL Sections 171(8) and 171(9) and ACA Section 37.01 were amended to redefine “theatrical employment agency” and “theatrical engagement,” and subsections were added to provide the new definition for “artist.”

Specifically, GBL Section 171(8) and ACA 37.01(3) state, “‘Theatrical employment agency’ means any person...who procures or attempts to procure employment or engagements for an artist.” GBL Section 171(9) and ACA 37.01(4) define “theatrical engagement” as “any engagement or employment of an artist.” GBL Section



171(8)(a) and ACA 37.01(5) provide, “Artist’ shall mean 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.”

The ATA/NATR Revised Contract complies with these amendments through the incorporation of the term “Artist” throughout the contract.

Assessment of the ATA/NATR Revised Contract under GBL Section 185(1)

GBL Section 185(1), the provision governing fees, was amended to permit theatrical employment agencies to collect fees without a written contract *after* the agency has referred the artist for employment and as a result of the referral the artist is employed, or upon the negotiation or renegotiation of an original or pre-existing contract, and to require agencies to issue provisions of GBL Sections 185 and 186 in all circumstances when collecting fees. The relevant portions of GBL Section 185(1) are, as follows:

Circumstances permitting fee...(b) for class “C” employment: (i) after an agency has been responsible for referring an artist to an employer or such employer to an artist and where as a result thereof such artist has been employed by such employer; or (ii) after an agency represents an artist in the negotiation or renegotiation of an original or pre-existing employment contract and where as a result thereof the artist enters into a negotiated or renegotiated employment contract. For class “C” employment pursuant to this paragraph, an employment agency shall provide an artist with a statement setting forth...the provisions of this section and section one hundred eighty-six of this article.

The ATA/NATR Revised Contract complies with these amendments by explicitly stating that fees shall be commensurate with the compensation the artist “earned or received,” thus implicitly incorporating the requirement that fees may not be collected until after the artist is hired by an employer referred by the agency. The ATA/NATR Revised Contract also clarifies the maximum fee percentages that an agency may collect pursuant to GBL Section 185 and includes specific language from the amendments regarding the negotiation and renegotiation of original or pre-existing contracts.

Further, attached to the ATA/NATR Revised Contract are the provisions of GBL Sections 185 and 186 as required by the GBL.

Assessment of the ATA/NATR Revised Contract under GBL Section 185(2)

GBL Section 185(2) was amended to exempt theatrical employment agencies from collecting fees according to a strict fee schedule. The relevant portion states, “Except as otherwise provided herein, and except for class ‘C’ employment, an employment agency shall not require an applicant...to pay any fee at a rate greater than in ten equal weekly installments.”

Due to this exemption, the ATA/NATR Contract does not provide a fee payment schedule, however, it contains terms stating that the entire fee shall be due only when the artist has been compensated.

II. The ATA/NATR Revised Contract does not fully satisfy ACA Section 37.03 and GBL Section 181(2).



ACA Section 37.03 requires theatrical employment agencies to execute contracts with all artists and, together with GBL Section 181(2), requires all contracts executed between theatrical employment agencies and artists to contain specific information. The ATA/NATR Revised Contract did not contain:

ACA Section 37.03:

- Name and address of the employer of the applicant and the person acting for the employer in employing the applicant
- Time and duration of the engagement
- Amount to be paid to the applicant
- Number of performances per day or per week to be given by the applicant
- If a dramatic engagement, the cost of transportation to the place where services begin, if paid by the applicant

GBL Section 181(2):

- Anticipated rate of wages
- Whether employment is permanent or temporary
- Cost of transportation if services are required outside of the city, town or village where the agency is located

The ATA asserts that these requirements are incompatible with the way the industry operates. These terms are generally decided between the artist and the employer and are not immediately available to the agencies, and, therefore, requiring inclusion in the ATA/NATR Revised Contract would be impractical. The ATA proffered that while this information is missing in the ATA/NATR Revised Contract, it is contained in the employment contracts executed between artists and employers. The ATA represented that the agencies retain copies of all employment contracts, as well as copies of payments made to artists by employers, and these documents, together with the ATA/NATR Revised Contract, would function to satisfy the requirements of the ACA and GBL. Additionally, the ATA represented that the agencies would also issue to artists receipts fully compliant with GBL Section 181(3) for all fees, consideration and other money collected from the artists, and keep copies of these receipts.

III. The Department deems the ATA/NATR Revised Contract with the provisions of GBL Sections 185 and 186 attached, together with the employment contracts, employment payments and receipts for fees, in compliance with the recent amendments. Collectively, these documents satisfy the functional requirements of the relevant provisions of the GBL and the ACA.

The Department has considered the ATA's representations regarding the practice of the industry, their proposed protocols for compliance and the availability of documents that act as supplements to the ATA/NATR Revised Contract. Consequently, the Department approves the ATA/NATR Revised Contract for dissemination and use by members of the ATA and the NATR as long as the talent agencies make available to artists documents that supplement the ATA/NATR Revised Contract, including copies of employment contracts, employment payments, and GBL compliant receipts for fees. The talent agencies must also provide to artists GBL Sections 185 and 186 in every instance when the talent agencies collect a fee. Collectively, these documents satisfy the functional requirements of the relevant provisions of the GBL and the ACA. Talent agencies must maintain these documents and produce them upon demand by the Department.

Nothing in this letter should be construed to limit ATA's obligations under the GBL, ACA, the City Administrative Code or rules or other relevant laws or rules.



**Department of
Consumer Affairs**

Finally, nothing in paragraph 8 of the ATA/NATR Revised Contract shall limit the ability of the artist to file a complaint with the NYC Department of Consumers Affairs and of the Department to address the complaint. Further, to the extent a court of law is identified in paragraph 8, the location of the court shall be in New York City. The Department reserves its right to contest the legality of that provision.

Thank you for your continued cooperation with the Department. Please feel free to contact us if you have any additional questions.

Sincerely,



Eileen J. H. Yap
Staff Attorney

Enclosures

NAME OF TALENT AGENCY
New York Talent Agency Agreement

Talent Agency address
Talent Agency phone number
Talent Agency DCA license number

This agreement is entered into by and between _____ Talent Agency (Agent) and _____ (Artist).

1. Artist hereby engages Agent as sole and exclusive agent for a term of _____ years commencing with the date hereof (the "term").

2. Agents duties hereunder shall be to use reasonable efforts to procure and or negotiate the engagement of Artists services as an _____ in the entertainment, concerts, recording, stage, film, television, literary and related fields throughout the world, including but not limited to merchandising, advertising, interactive media or any other technology now in existence or hereafter utilized. Agent may advice and counsel artist in the development or advancement of artist's professional career.

3. Agent agrees to perform the services specified herein. Artist understands that Agent may render other or similar services to other persons, firms and corporations. Artist represents that he/she is free to enter into this Agreement and does not have and will not have any contract or obligation that will conflict herewith.

4. Artist agrees to pay Agent _____% per-cent of the gross compensation (shall not exceed ten per-cent of the compensation payable to Artist except for employment in concert fields, which shall not exceed twenty per cent) earned or received by Artist for, or in connection with, (i) any contracts for, or engagements of, Artist services (collectively and individually hereinafter sometimes referred to as "employment") now in existence, except to such extent that Artist may be obligated to pay commission on such contracts to another agent, or contracts entered into or negotiated for during the term, including, but not limited to, all gross compensation therefrom, and payments thereon, that are earned or received by Artist or become due or payable to Artist after the expiration of the term, and (ii) for, or in connection with, the negotiation or renegotiation of an original or pre-existing contract, including modifications, renewals, additions, substitutions, supplements, replacements, or extensions of or to such contracts, and as a result thereof the Artist enters into a negotiated or renegotiated contract. Agent shall continue to perform obligations hereunder after the term with respect to all employment with respect to which Agent is entitled to commission, provided artist expressly requests Agent to do so. "Gross compensation" includes all forms of compensation, money, things of value or other emoluments (including, but not limited to, salaries, earnings, fees, residuals, royalties, securities and shares of profits or gross receipts) received by Artist or any person, firm or corporation, partnership, joint venture or other entity now or hereafter owned or controlled by Artist (hereafter "my firm") or in which Artist may have any right, title or interest, from such contracts or engagements and modifications, renewals, additions, substitutions, supplements, replacements, and extensions of or to such contracts or engagements, whether or not procured by Agent or by anyone else as well as from any form of advertising, commercial tie-ups or infomercials using Artist's name, likeness, or voice.

5. Agent's commissions under this Agreement shall be payable as and when gross compensation is received by Artist or any other person or entity on Artist's behalf. From all gross compensation subject to this Agreement which Agent receives, Agent shall have the right to deduct the amount of any and all commissions that are due and payable to Agent hereunder or under any other representation agreement between Artist and Agent. Agent will provide artist with a receipt for all fees, deposits, consideration or payment which agency receives on behalf of Artist. Such receipt will provide the date and amount of fees, deposit or payment and the purpose for which it was paid, and the signature of the person receiving the payment.

6. In the event of failure of Artist to obtain employment or a bona fide offer therefor from a responsible employer, in the fields of endeavor specified in this agreement for a period of time in excess of four consecutive months, such failure shall be deemed cause for the termination of the agreement by either party; provided, however, that the Artist shall at all times during the period of four consecutive months be ready, willing, able and available and to render the services required in connection therewith. Notices of intention of either party to terminate must be given in writing to the last known address of said party. In the event Artist accepts employment prior to any written notice of termination, said right of termination is deemed waived as to all past periods of unemployment but not as to future four consecutive months of employment.

7. If within four months after the end of the term hereof, Artist accepts any offer on terms similar or reasonably comparable to any offer made to Artist during the term hereof, from or through the same offeror or any person, firm or corporation directly or indirectly connected with such offeror, the contract resulting therefrom (oral or written) shall be subject to all of the terms hereof, including the payment provisions of Paragraph 4 and 5 above. As to the proceeds of any motion picture, film, tape, wire, transcription, recording, or other reproduction of Artist services covered by this Agreement, Agent's right to payment under Paragraph 4 and 5 shall continue so long as any of these are used, sold, leased, or otherwise disposed of, whether during or after the term hereof. Additionally if Artist enter into any employment agreement which would have been otherwise covered by this Agreement within four months after the termination hereof, and such employment agreement was procured or substantially negotiated through the efforts or services of the Agent, such employment contract shall be deemed to have been entered into during the term hereof.

Optional: Agent may include an Arbitration Provision (or disputes are governed by Court of Law) AGENT: DO NOT INCLUDE THIS NOTE IN CONTRACT. DO NOT INCLUDE BOTH AAA and JAMS. Agent must have only one venue for Arbitration.

8. All disputes and controversies of every kind and nature whatsoever between the Agency and Artist arising out of, or in connection with, Agent's representation of Artist (the "Agency Relationship"), including but not limited to commission disputes, shall be submitted in a timely manner to final and binding arbitration before a single arbitrator regardless of whether either party has terminated or purported to terminate the Agency Relationship. Said arbitration shall be in accordance with rules of the arbitration provisions of the **American Arbitration Association (AAA)** or **JAMS**. The Agency and Artist will attempt to mutually agree on an arbitrator within 30 days after either party first notifies the other in writing that it intends to invoke the arbitration procedures and they will utilize rules of the _____ procedures for selection of an arbitrator only if the parties fail to mutually agree. Any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. **THE PARTIES WAIVE THE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY SUCH CONTROVERSY OR CLAIM.**

9. This instrument, together with any forms the Agent and Artist execute, sets forth the entire agreement with respect to the fields of endeavor recited in Paragraph 2 of this Agreement. This Agreement shall inure to the benefit of and be binding upon Artist and Agent and respective heirs, distributees, executors, and administrators.

10. Should any provision of this Agreement be void or unenforceable for any reason, such provision shall be deemed omitted and this Agreement with such provision omitted shall remain in full force and effect. This Agreement does not modify any provision in any union or guild agency agreement governing services herein, provided that the agent is signatory to the union/guild and the artist is a member of such union/guild.

(Artist Signature)

(Print Name) (Date)

Artist address

AGREED TO AND ACCEPTED:

(Agent Signature) address phone

(Print Name) (Date)

This Talent Agency is licensed by the City of New York Department of Consumer Affairs. The form of this contract has been submitted to the Department of Consumer Affairs on _____, 2012. Pursuant to Section 181 of Article 11 of the New York State General Business Law, attached are sections 185 and 186. Applicable sections pertaining to Class C (theatrical agents) are highlighted.

New York: Attach to contracts governed by General Business Law, Article 11, Employment Agencies

§ 185. Fees

(1) Circumstances permitting fee. An employment agency shall not charge or accept a fee or other consideration unless in accordance with the terms of a written contract with a job applicant, except:

(a) for class "A" and "A-1" employment, and except after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer; and (b) for class "C" employment; (i) after an agency has been responsible for referring an artist to an employer or such employer to an artist and where as a result thereof such artist has been employed by such employer; or (ii) after an agency represents an artist in the negotiation or renegotiation of an original or pre-existing employment contract and where as a result thereof the artist enters into a negotiated or renegotiated employment contract. For class "C" employment pursuant to this paragraph, an employment agency shall provide an artist with a statement setting forth in a clear and concise manner the provisions of this section and section one-hundred eighty-six of this article.

The maximum fees provided for herein for all types of placements or employment may be charged to the job applicant and a similar fee may be charged to the employer provided, however, that with regard to placements in class "B" employment, a fee of up to one and one-half times the fee charged to the job applicant may be charged to the employer. By agreement with an employment agency, the employer may voluntarily assume payment of the job applicant's fee. The fees charged to employers by any licensed person conducting an employment agency for rendering services in connection with, or for providing employment in classes "A", "A-1" and "B", as hereinafter defined in subdivision four of this section where the applicant is not charged a fee shall be determined by agreement between the employer and the employment agency. No fee shall be charged or accepted or the registration of applicants for employees or employment.

(2) Size of fee; payment schedule. The gross fee charged to the job applicant and the gross fee charged to the employer each shall not exceed the amounts enumerated in the schedules set forth in this section, for any single employment or engagement, except as hereinabove provided; and such fees shall be subject to the provisions of section one hundred eighty-six of this article. Except as otherwise provided herein, and except for class "C" employment, an employment agency shall not require an applicant while employed in the continental United States, and paid weekly to pay any fee at a rate greater than in ten equal weekly installments each of which shall be payable at the end of each of the first ten weeks of employment, or if paid less frequently, in five equal installments, each of which shall be payable at the end of the first five pay periods following his employment, or within a period of ten weeks, whichever period is longer. An employer's fee shall be due and payable at the time the applicant begins employment, unless otherwise determined by agreement between the employer and the agency.

(3) Deposits, advance fees. Notwithstanding any other provisions of this section, an employment agency may not require a deposit or advance fee from any applicant except an applicant for class "A" or class "A1" employment, and only to the extent of the maximum fees hereinafter provided. Such deposit or advance fee shall be offset against any fee charged or accepted when such employment is obtained. Any excess above the lawful fee shall be returned without demand therefor, immediately after the employment agency has been notified that such employment has been obtained; and all of such deposit or advance fee shall be returned immediately upon demand therefor, if at the time of the demand such employment has not been obtained.

(4) Types of employment. For the purpose of placing a ceiling over the fees charged by persons conducting employment agencies, types of employment shall be classified as follows:

Class "A"--domestics, household employees, unskilled or untrained manual workers and laborers, including agricultural workers; Class "A1"--non-professional trained or skilled industrial workers or mechanics; Class "B"--commercial, clerical, executive, administrative and professional employment, all employment outside the continental United States, and all other employment not included in classes "A", "A1", "C" and "D"; Class "C"--theatrical engagements; Class "D"--nursing engagements as defined in article one hundred thirty-nine of the education law.

(5) Fee ceiling: For a placement in class "A" employment the gross fee, including the deposit if any, shall not exceed, in percentage of the first full month's salary or wages, the following:

where no meals or lodging are provided	10 %
where one meal per working day is provided	12 %
where two meals per working day are provided	14 %
where three meals and lodging per working day are provided	18 %

Where all parties to the employment agreement understand or agree at the time the employment is entered into that it shall be for a period shorter than one month, the gross fee shall not exceed ten per cent, twelve per cent, fourteen per cent or eighteen per cent respectively of the salary or wages actually paid.

(6) Fee ceiling: For a placement in Class "A1" employment the gross fee shall not exceed one week's wages where all parties to the employment agreement understand or agree at the time the employment is entered into that it shall be for a period for ten weeks or more. Where all parties to the employment contract agree and understand at the time the employment contract is entered into that it shall be for a period shorter than ten weeks, the gross fee shall not exceed ten per cent of the wages or salary actually received.

(7) Fee ceiling: For a placement in Class "B" employment the gross fee shall not exceed, in percentage of the first full month's salary or wages, the following: where such first full month's salary or wages is

less than \$750	25 %
at least \$ 750 but less than \$ 950	35 %
at least \$ 950 but less than \$1150	40 %
at least \$1150 but less than \$1350	45 %
at least \$1350 but less than \$1500	50 %
at least \$1500 but less than \$1650	55 %
at least \$1650 or more	60 %

Provided however, that where the placement is for employment in which the applicant will be paid on a straight commission basis or on the basis of a drawing account plus commissions, the gross fee shall be based on percentages in the above schedule applied to an amount equivalent to one-twelfth of the estimated first year's earnings, as estimated by the employer. Where all parties to the employment contract agree and understand at the time the employment contract is entered into that it shall be for a period shorter than four months the gross fee shall not exceed fifty percent of the fee prescribed in the schedule in this subdivision or ten percent of the wages or salary actually received, whichever is less.

(8) Fee ceiling: For a placement in class "C" employment the gross fee shall not exceed, for a single engagement, ten per cent of the compensation payable to the applicant, except that for employment or engagements for orchestras and for employment or engagements in the opera and concert fields such fees shall not exceed twenty per cent of the compensation.

(9) Fee ceiling: For a placement in class "D" employment the gross fee shall not exceed, for a single engagement, the following: 1) for private nursing duty, five per cent of the salary or wages received each week through the first ten weeks of that engagement only, and such fee shall be due and payable at the end of each such week; (2) for any other nursing duty, the amount of the first week's salary or wages unless the first year's computed salary or wages to be derived for at least one year's employment is twenty-five hundred dollars or more, in which event the gross fee shall not exceed, in percentage of such salary or wages, the following: where such first year's salary or wages is

at least \$2500 but less than \$3000	2 1/2 %
at least \$3000 but less than \$3500	3 %
at least \$3500 but less than \$4000	3 1/2 %
at least \$4000 but less than \$4500	4 %
at least \$4500 but less than \$5000	4 1/2 %
\$5000 or more	5 %

S 186. Return of fees.

(1) Excessive fee: Any employment agency which collects, receives or retains a fee or other payment contrary to or in excess of the provisions of this article, shall return the fee or the excess portion thereof within seven days after receiving a demand therefor.

(2) Failure to report: If a job applicant accepts employment and thereafter fails to report for work, the gross fee charged to such applicant shall not exceed twenty-five per cent of the maximum fee allowed by section one hundred eighty-five of this article, provided however, if the applicant remains with his same employer, the fee shall not exceed fifty per cent. If a job applicant accepts employment and fails to report for work, no fee shall be charged to the employer.

(3) Termination without employee's fault. If a job applicant accepts employment and reports for work, and thereafter such employment is terminated without fault of the employee, the gross fee charged to such employee and to the employer each shall not exceed ten percent of the salary or wages received by such employee, and in no event shall such fee exceed the maximum fee allowed by section one hundred eighty-five of this article. However, if such employee is a domestic or household employee recruited from a state outside of this state the fee of the employer shall not exceed thirty-three and one-third percent of the wages or salary actually earned.

(4) Termination under all other circumstances: If a job applicant accepts employment and reports for work, and thereafter such employment is terminated under any other circumstances, the gross fee charged to such employee and the employer each shall not exceed fifty per cent of the salary or wages received by such employee, and in no event shall such fee exceed the maximum fee allowed by section one hundred eighty-five of this article.

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