

LEGAL CORNER

Not Just for the Fun of it

By Harvey Mars, Esq.

The moral of my article last month was quite simple: always get your agreements in writing. I examined the consequences of an arranger's failure to reduce to writing a license agreement he had entered into with an opera company and the ongoing litigation that consequently resulted from this unfortunate situation.

Sometimes, however, obtaining a written signed contract is just not enough to prevent litigation.

Take for example a suit for which I am presently on trial in the New York Supreme Court, Nassau County. It's *Ronnick Productions v. Vibe Records, Inc.*

Here's the case. An accomplished jazz recording artist and his vocalist wife teamed up with a major recording studio engineer in 1994 to record, produce and master a top-flight album they entitled "Just for the Fun of it." (I listened to it and it's really good).

Once they had a finished product, they entered into a distribution agreement with Vibe Records, a record label owned by a former Sony Records employee known to one of the partners.

The roughly one-page agreement was apparently not drawn up by an attorney and contained very basic terms. For a 5 percent share of the net proceeds of record sales, the record label/distributor agreed to distribute the album as well as to provide "marketing, promotion, selection of a distribution network, and all efforts to promote the sale of the [album]."

CAN YOU HELP?

More than three years ago — on Nov. 2, 2005 — Local 802 won a \$33,015 federal court judgment against Broadway producer Marty Bell and his company Chef's Theatre Holdings for wages and benefits owed to musicians for work performed in Mr. Bell's Off Broadway production of "Supper Club."

Marty Bell is a very well-known producer who was involved in shows such as "Dirty Rotten Scoundrels" and "Kiss of the Spider Woman."

Unfortunately, Mr. Bell defaulted on his settlement agreement with Local 802. To date, he has only paid \$8,000 and has not made any effort for over a year and half to pay back more.

Local 802 is now attempting to track down Mr. Bell and Chef's Theatre's assets. Anyone with information about any of Mr. Bell's current projects — or anything at all that could help us collect — should contact union attorney Harvey Mars at (212) 765-4300, ext. 16, or JurMars566@aol.com.

Also, as we printed previously in Allegro, we are still trying to track down producer Charles West and his company Vanjo Productions for \$29,342.28 in wages and benefits owed to copyists for work performed in 2007 on Mr. West's Off Broadway production "If This Hat Could Talk." If you have any information, contact Harvey Mars at the phone number or e-mail address above.

While the record label did in fact chose a distributor, it did not on its own promote and market the album, but instead presented the partners with a marketing plan — the cost of which they were expected to bear.

Rather than undertaking additional costs, the partners sent roughly 300 compact discs to the distributor, obtained radio play and D.J. promotion...and waited for additional orders to come in.

Ultimately, none did and after several heated exchanges with the owner of the record label, communications ceased.

The label owner, however, did not repudiate the agreement and did not notify the partners that he would stop distributing the record.

In November 1999, the chosen distribution network, MD Distributions, went bankrupt. The record label did not notify the partners of this event and did not take steps to obtain a new distributor. The label didn't even file a claim in the distributor's bankruptcy proceeding. (Such a move would have preserved the partners' product.)

A few years later, one of the musicians discovered much to his surprise that CD's of "Just for the Fun of it" were being sold all over the Internet — without a dime going to him or his wife.

They sued the record label for breach of contract. Simply put, the label has an obligation to protect the product. They had also agreed to distribute it in the first place. They can't

just dump the CD's somewhere and not track the payments.

There's another issue here. The original contract did not specify duration. That is, how long was the original contract good for?.

When an agreement has no specified duration, courts will imply that the parties intended that performance would occur within a "reasonable period of time." *Bernstein v. LaRue*, 120 A.D. 2d 476 (2nd Dept. 1986). This inquiry involves questions of fact that may only be determined through trial. The issue becomes a critical one when the six-year breach-of-contract statute of limitations is implicated, such as in this action.

So I guess the moral of last month's story needs to be revised. It is essential that the parties to a transaction get their agreement reduced to writing. However, that is only half the battle. The writing that ultimately is signed by the parties must be clear, unambiguous and truly reflect the intention of both of them. It must reflect a true meeting of the minds.

The best way of assuring this, of course, is to seek the advice of counsel. ☐

Harvey Mars is one of Local 802's lawyers. Legal questions are welcome from 802 members. E-mail them to JurMars566@aol.com. For those who are interested in reading additional articles that Mars has authored, please check out his new Web site at www.HarveyMarsAttorney.com. Click on "Publications & Articles" from the top menu. All of his past Allegro articles can be found there as well. Nothing in these articles should be construed as formal legal advice given in the context of an attorney/client relationship.

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