

STATE OF THE ART

Can a booking agent still help you get gigs – and how do you find one?

LEGAL CORNER

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MUSICIANS OFTEN COME to me when they have problems with their promoter or booking agent. Either the agent hasn't provided the quantity or quality of jobs the musician believed the agent was obligated to provide or has not provided a proper accounting of the musician's receipts from the jobs they performed. Sometimes the percentage retained by the agent is not commensurate with the services rendered. Further compounding this problem is the fact that the contracts these musicians have entered into have loopholes that cannot be remedied. The best advice I can offer to musicians who have a bad relationship with their agent is to find a way to terminate the contract. Sometimes the only recourse is that the musician must live with the contract until its terms expire and then unambiguously terminate it. Such circumstances can be frustrating and occasionally tragic. However, this doesn't have to be the case.

First, prior to entering into an agreement with a booking agent, a musician should explore the utility of doing so. What can a booking agent provide to musicians that they can't do themselves? While it is true that some booking agents may supply services that can advance a musician's career, those services appear limited and are dependent upon the genre of music being performed. While retaining a booking agent may be a wise choice for a musician who performs rock or pop, the same may not be true for a classical musician or a freelancer who hasn't achieved star status.

However, even when a booking agent can provide valuable services, musicians must still be cautious.

Booking agents are regulated under Article II of the New York Business Corporation Law. The law requires all agents to obtain licenses from the state and adhere to specific business practices. For example, the law prohibits a licensed agent from sending an artist to a gig without first obtaining the specifics of the gig first. (The law also says that booking agents *must* send an artist to every job interview requested.) An agent's failure to adhere to regulations can result in stiff monetary penalties and ultimately loss of the agent's license. Ironically, these regulations do not pertain to booking agents who do not have licenses. There are absolutely no regulations that apply to booking agents who operate illegally. Thus, prior to signing a contract with a booking agent, a client must ensure that the booking agent is licensed. One way to check is by searching the New York State Department of Consumer Affairs database at www1.nyc.gov/site/dca/consumers/check-license.page.

I recently met with the executive director of the Association of Talent Agents. Booking agents in New York are

attempting to change the law to bring it into conformity with the actual practices performed by agents. For instance, is it fair that agents need to know *all* details of a gig before they send an artist to it? This obligation is often impossible to satisfy and it hampers agents from doing their job. The legislative reforms being proposed will rectify this and other problems.

There are also some options for musicians through the union. These services attempt to make sure that musicians are protected under a union contract:

1. The AFM has a list of agents who are signatories to the AFM's Booking Agents Agreement. Start at members.afm.org/resources/booking-agent-search.

2. Separately, **AFM Entertainment** is an "online engagement booking and re-

ferral service" for AFM members. Go to www.AFMentertainment.org and click on "Musicians' Area" from the top right.

3. Local 802 has a new site called www.NewYorkMusicians.com, which is a referral service, not a booking agency. The union does not guarantee any work, but offers this web site as a tool for self-promotion and as a gateway to the union's referral service. To learn more, see www.Local802afm.org/referral.

As usual, the very best way to make sure that you're paid what you deserve is to make sure your gig is covered under a union contract. No matter what method you use to get a gig, once you have it, you should try to make it union. For help in this process, call the Local 802 Organizing Department at (212) 245-4802.

UNFAIR LIST

● Joseph (Joe) McGinty has been placed on the AFM International Unfair List due to his failure to file a Single Engagement Agreement to cover Local 802 musicians performing for the Lincoln Center Out of Doors / NPR Music's Turn the Tables Live concert held in Damrosch Park on July 25, 2017. McGinty engaged 15 musicians as independent contractors to accompany singer-songwriters at wages far below area standards and did not respond to communications from Local 802. Musicians should not work in any capacity for Joseph McGinty and notify us if they are called by him or his agents. Contact Recording Vice President Andy Schwartz directly at (212) 245-4802, ext. 110.

● New York University and Vice Dean Ted Magder have been placed on the AFM International Unfair List due to their unwillingness to cover Local 802 musicians under any agreement. NYU employs Local 802 members as independent contractors in its film scoring workshops as well as in theatrical engagements and other work. Local 802 members should not work at New York University, including recording engagements, theatrical work, or any other kind of performance or recording work. (NOTE: This does not include the duties that Local 802 members may have as NYU faculty.) Musicians should notify us if they are called for any work at NYU. Contact Recording Vice President Andy Schwartz directly at (212) 245-4802, ext. 111.