

## Show Me the Money?: No Liability for Major Talent Agency After Live Music Covid Cancellations

When the pandemic turned the world upside down, no industry was hit as hard as the live music industry. All shows were cancelled, and the industry is only now starting to slowly recover. In consideration of the unprecedented nature of the pandemic, it was unclear who would bear the burden of these cancellations, especially where some of an artist's guarantee had been paid. This led to disputes between promoters on one side and agents and artists on the other. Talent agents negotiate on behalf of artists with promoters who typically first pay a portion of the guarantee directly to the agent as a deposit, which the agent holds for the artist. Then, the promoter will typically pay the remaining portion of the guarantee to the artist's tour manager on the day of the show.

After the pandemic led to the massive number of cancellations, the Virgin Fest sued William Morris Endeavor ("WME") seeking the return of the deposit portions of artist guarantees for the cancelled performances. Most artists returned the deposits after the Covid cancellations, but some artists represented by WME, including Lizzo and Ellie Goulding, did not. A California court held that WME, which is one of the biggest talent agencies, was not responsible for the cancellation as the dispute was between the artist and the promoter. Although WME served as the artists' "agent", in both a colloquial and legal sense, the court held the contract protected WME from such a dispute between the artist and promoter.

The outcome ultimately makes sense in consideration of how these deals take place. Although talent agents solicit and receive offers on behalf of artists, these performance contracts are ultimately agreements between artists and promoters. Moreover, the standard form contracts that WME and other agencies utilize clearly delineate the role of an agent and disclaim liability for issues related to the performance contract. A situation involving a cancellation where one could envision an agency incurring liability would be if they mistakenly agreed to a show on behalf of an artist without getting permission from the artist. However, as evidenced by this dispute, it seems apparent that talent agents will rarely incur any liability in connection with performance contracts of clients.

In the aftermath of the WME litigation, it is no clearer who bears the burden of cancellations in the wake of unprecedented and unforeseen events such as the pandemic. Agencies and promoters often exchange edited contracts back and forth with each party holding onto the edition signed by both parties that their side most recently edited. Thus, even though the form contract often has a force majeure provision, there may not be agreement on the terms. These disputes often center around interpretations of what it means for an artist to be "willing, ready, and able" to perform, and there was obviously no clear custom or precedent for interpreting this phrase in the context of Covid cancellations. What is clear, however, is there is almost no chance of liability for talent agents in connection with artist performances, and most legal disputes are typically between the performer and promoter.

--Harrison Halberg

### Sources Consulted

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Summary of Article: Discussion of the recent California court case that reaffirmed the widely held notion that music talent agents will not be held liable in disputes related to artist engagements. The article gives an overview of how agents fit into the live music industry as well.

Personal Summary: Harrison Halberg is a 2L at Vanderbilt Law School. Harrison believes Memorial Gymnasium is the best venue in college athletics and opposing coaches should stop whining about the benches being on the baselines.