SEPTEMBER 18, 2015 7:54pm PT by Austin Siegemund-Broka

Hollywood Agencies Escape Antitrust Claim Over TV Packaging Fees in Poaching Lawsuit

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A Friday ruling permits a talent boutique to pursue some allegations against UTA and ICM Partners

United Talent Agency and ICM Partners have convinced a court to dismiss several claims filed against them by a smaller talent agency, including the allegation that they violated antitrust law by collecting "packaging fees" on television projects.

Lenhoff & Lenhoff, **Charles Lenhoff**'s boutique agency, filed suit in February after losing two prominent clients, one to UTA and one to ICM. The agency's claims include intentional interference with contractual relations and interference with prospective economic advantage for the alleged poaching. (If the claims sound familiar, it might be because they're two of CAA's in the agency's lawsuit over the defection of CAA agents to UTA in March).

How Lenhoff thinks they lured the clients figures into the larger claim that UTA and ICM violated antitrust law. The plaintiff argues the agencies poached the clients by forgoing the usual 10 percent commission charged to Hollywood clients in favor of packaging fees, an alternative revenue stream that agencies receive from studios for lining up talent for TV projects. Agencies prefer packaging fees because they allows the agencies to participate in the revenue generated by a show throughout its run rather than simply commissioning fees from clients. And clients often like the packaging fees because they mean no commission is owed.

Lenhoff says the big agencies, including ICM and UTA, can demand the packaging fees because of the expiration in 2000 of the Screen Actors Guild's agreement with the Association of Talent Agents stipulating the agencies not "possess any financial interest in a production or distribution company or vice versa." The boutique claims the "uber agencies," CAA and WME in addition to ICM and UTA, conspired to ensure the SAG agreement was not renewed so they could collect packaging fees and thereby control more of the market of attaching clients to TV projects.

The defendant agencies filed court papers to dismiss the complaint in August. They claimed in separate motions that Lenhoff sought to limit the freedom of talent "to exercise their individual rights to choose the talent agencies that will represent them" and had not adequately pled that talent or consumers were injured by the alleged antitrust conduct.

In a ruling Friday, California federal judge **Beverly Reid O'Connell** dismissed the antitrust claim.

Lenhoff alleged the agencies operate like a cartel in sharing packaging fees. But O'Connell found the fact that multiple competitor agencies engage in the practice runs contrary to the claim of monopolization.

"Plaintiff alleges that the Agencies share the monopoly power — an assertion that suggests Defendants' power is better construed as an oligopoly," writes the judge. "Defendants argue that the Ninth Circuit does not recognize a 'shared monopoly' or 'joint monopolization' theory. The Court agrees with Defendants."

However, the judge did permit Lenhoff's claim that the packaging fees violate California's Unfair Competition Law. She found Lenhoff's contention the packaging fees give the top agencies an edge consistent with what state law forbids: "At a minimum, allegations that four mega-agencies acting in concert to control the vast majority of the scripted series market "significantly threatens competition.'"

It's worth noting, though, the kind of motion ICM and UTA filed at this early stage in the proceedings requires the judge to presume the plaintiff's allegations are true. Denying the dismissal simply means she is permitting the parties to argue the claim's factual truth later in the case.

The judge granted the dismissal of two other claims, intentional interference with contract and intentional interference with prospective economic advantage. She gave Lenhoff the opportunity to revise them and the antitrust claim in an amended complaint by Oct. 2.

On the contractual claim, she wants to know whether the clients had the right to terminate their contracts freely. "Plaintiff fails to plead whether the contractual relationships were at will or for a specified term. Plaintiff only alleges that the contracts were valid and exclusive," wrote the judge.

The claim of interference with economic advantage relied upon the antitrust claim the judge dismisses. She offered the plaintiff leave to plead it on different grounds.

ICM and UTA declined to comment. Lenhoff's attorney **Philip Kaplan** said he is "quite pleased with the ruling and we look forward to moving on with the case."

Mike Garfinkel reps ICM. **Bryan Freedman** reps UTA with **Steve Marenberg** at Irell & Manella.