FROM THE

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Making Arrangements with Orchestrators

IN JUNE, the Dramatists Guild hosted a gathering of composers, agents and lawyers to discuss the issue of orchestrator/ arranger deals and their increasing impact on authors and their ability to license their work.

It seems that, once upon a time, producers paid orchestrators a fee for adapting the composer's score into an orchestration, which work was done for the producer on a work-for-hire basis. Authors then reimbursed 50% of the producer's cost for the scores to own them.

The musician's union, AFM Local 802, has some terms in its collectively bargained basic agreement that governs this situation. First, lets look at their definitions. "*Orchestrating*", says their contract, "*is defined as the art of scoring the various voices of an already written composition complete in form. A composition is considered complete in form when it fully represents the melodic, harmonic and rhythmic structures*." The terms of the AFM agreement are based "*solely upon the labor of orchestration*" and so don't apply to "arrangements". The agreement distinguishes "orchestrations" from "arrangement", as follows: "*Although the terms 'Arrange Arranger and Arrangement' have long been used loosely to describe any and all forms of orchestration, for purposes of clarification it is hereby established that the art of Arranging, including, as it does, the creative work of harmonic, melodic, rhythmic, and contrapuntal nature, belongs to the province of creative work...*" and so, unlike the creation of an orchestration, the AFM agreement doesn't cover the creative activity of authoring arrangements. The minimum terms provided for orchestrations, beyond the fee based on lines per page, include "New Use" fees when the orchestrations are used in a new media other than live theatrical performance (cast album, TV, etc.), and a "Rental Publication" buyout, which is a fee for stock/amateur licensing, paid at 80% of the applicable minimum scale (This buyout can be reduced to 25% of scale if the producer elects to pre-pay it within 90 days of the show's opening.). What followed, of course, was inevitable. Over time, arrangers made their own wide-ranging deals; orchestrators were also often required to create arrangements within their orchestrations, as these things are rarely as clear cut as contractual definitions would imply. Then, the top orchestrators and arrangers eventually asked for, and got, terms far in excess of the AFM minimums.

So now a composer is still expected to reimburse the same 50% of the costs of the orchestrations, despite that the orchestrator may have earned far more than the composer actually earned from a show that may have run for a while, but only at breakeven or less. Yet what the composer gets is a score, not free and clear, but one loaded with encumbrances. Because, even though the orchestrator signs a "work-for-hire" agreement with the producer, it is signed only when the author signs a side letter with the orchestrator/arranger that not only offered multiples of the minimum rates, but also allows the orchestrator to reject the stock/amateur discounted buyout, and not only requires "New Use" fees but invents a series of "RE-USE fees", as well, which don't even exist in the AFM contract. These re-use fees may be payable for any subsequent first class productions around the world, despite the difficulty in determining what a "first class" production is in foreign territories. The re-use fee may be payable for Broadway revivals, despite that the orchestrator has already been paid for that specific use. And sometimes these re-use fees are left "to be negotiated in good faith" at the time of such a production, leaving the author's ability to license the show and the score s/he's already paid for subject to the potential of eleventh hour demands. Now, I don't begrudge folks from making the best deal they can. And some of these orchestrators are also composers in their own right, and DG members, too. And if their employers (the producers) are willing to bear the expense, then more

power to them. But these costs are born by authors, too, either as encumbrances on the work, or as demands by producers that the author directly bear such overscale costs. In some situations, I've even heard of authors giving an orchestrator a subsidiary rights share earned from subsequent first class revenues.

In the past, when such overscale deals were limited to a few of the very top professionals in the field, it seemed a manageable situation for composers, who could choose to work with such terms or, instead, work with an orchestrator whose price they deemed more reasonable. But most of the musicians now working in this area are represented by a single attorney, and he has been expanding the list of orchestrators obtaining such overscale terms, asserting such rationales as "fairness" and their entitlement to get "going rate". But it's only the going rate because he's used his near monopoly over the talent to ESTABLISH these overscale terms as "the going rate".

As for "fairness", that tends to be an emotionally loaded discussion. Without intending to insult or provoke, I think it's important to put the relative situations of composers and orchestrators in context. Unlike composers, orchestrators are members of a labor union which can collectively bargain for ever-increasing minimum terms, and which provides health, pension and welfare benefits to them. So I'm not sure how it's "unfair" for them, in exchange for such benefits and security, to have their compensation limited to the work-for-hire deals they sign with the producers. If they wish to share in the upside of a successful score, they can forego union membership and take the same risk as composers... getting paid virtually nothing upfront, with no guarantees of anything, and nobody paying to put braces on their kids' teeth. If they want to join DG members on THAT playing field, then I would take seriously a discussion of "fairness". But it seems to me that some would prefer to have all the benefits of unionization, and have the composers by guarantors for their future compensation as well, despite that the composer has already paid to own the score.

That being said, and recognizing that orchestrators are under no obligation to accept the minimum terms of their union contract, I think there are a few things for composers and their representatives to consider:

Should a composer still be paying 50% to reimburse producers to own a score when there are so many more strings attached to it? If an orchestrator's services do not include "arrangements", as defined by the AFM, why should a composer agree to encumber their score with overscale fees in order to obtain those services?

If a composer obtains "arrangements" along with orchestrations, is this particular arranger asking for an overscale package that could encumber the work and inhibit licensing, or reduce the composer's compensation? If so, is it worth it? Are there alternatives available?

In the meantime, we are trying to collect as many of these orchestrator side letters as you and your representatives can make available to us, so we can better understand the market and better advise our members.

See you in 60.

GIVE YOUR GUILD CREDIT

PLEASE ARRANGE FOR THE FOLLOWING PHRASE TO BE INCLUDED AS PART OF YOUR BIOGRAPHY, WHEREVER IT APPEARS:

"The [playwright/ composer/ lyricist] is a member of The Dramatists Guild of America, Inc."