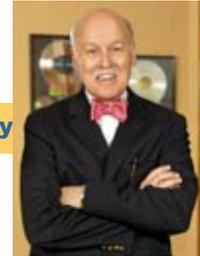


Career Beatby **Bob Donnelly****How to Secure the Future of Your Ensemble**

This year marks my 30th year as a music attorney. My job is to negotiate and draft agreements between presenters, orchestras, record companies and others who wish to employ the services of artists. I also draft agreements between artists who are members of the same group.

You might be tempted to believe that written contracts are not as necessary in the genteel field of classical music as they are in a more cutthroat genre like pop music.

You would be wrong.

The Audubon Quartet debacle is a perfect example of what can go wrong when the rights and responsibilities of the members of a group are not contractually defined and rigorously followed.

In 2000 cellist Tom Shaw, violist Doris Lederer, and second violinist Akemi Takayama served first violinist David Erhlich with a “Notice of Termination,” their version of voting him off the island. Rather than go gently into the good night, Erhlich sued the remaining members of the **Audubon Quartet**, stating that they didn’t have the right to dismiss him or to prevent him from continuing to use the name of this esteemed chamber group. The Audubon had been organized as a 501(c)(3) charitable corporation, but the documents lacked specificity in relation to certain critical issues. A court found in favor of Erhlich in the amount of \$600,000. The group’s members lost their faculty positions at Virginia Tech. Shaw and Lederer were forced to declare bankruptcy.

With all of the notoriety this case received, you would expect performance groups to be motivated to take steps to protect themselves and their assets.

Again, you would be wrong.

Every day I meet artists who have obtained little or no protection in these areas. The solution is simple from a legal perspective, but difficult from the perspective of group solidarity. The document every group needs is often referred to by entertainment attorneys as a “bandmember agreement” (or, in the context of classical chamber music, an “ensemble member agreement”). Its purpose is to delineate the “dos” and “don’ts” for its group members. The negotiation of this document is usually the first time that a group is forced to face the unpleasant fact that, even in the egalitarian world of music, some members are more equal than others.

An "ensemble member agreement" can't prevent creative differences or personal animosity, but it will give you a contractual way to deal with problems if and when they occur.

One of the principal reasons a group forms a corporate entity is to create insulation from personal liability. In order to avail oneself of the protections created by such an entity, it is crucial that all of the business of the group be conducted through the aegis of that entity. Solicitations should be done on corporate letterhead. Contracts should always be signed by someone who makes it clear that he or she is executing this document as an officer or agent of

this entity.

One important issue addressed in an ensemble member agreement is who owns the trademark to the name of the ensemble. It could be all of the group members, or one of the members, or the corporate entity. The judge in the Audubon case was clearly displeased that cellist Tom Shaw had unilaterally sought to make himself the owner of the Audubon Quartet trademark a year before the ouster of Erhlich.

Another important question that should be addressed by this agreement is who owns the group. This is usually determined by giving each member a share of ownership in the ensemble as a whole. And this leads directly to the question which was at the heart of the Audubon controversy: What does it take to fire another group member? I have drafted agreements that answer this question in various ways, such as: one member alone makes the decision, or a majority vote (e.g. three out of five group members), or a unanimous vote of all of the remaining members. The Audubon Quartet had 10 different violinists during its first 25 years of its existence. All agreed to leave without objection except one, and that led to problems that could have been

avoided. Ensemble agreements may even specify if the departing member is allowed to use the group name in future concert billing (e.g. “Formerly a member of the Audubon Quartet”). It may also prohibit any public discussion of the ouster with a so-called “non-disparagement clause.”

An ensemble agreement should also indicate which members are entitled to enter into agreements that bind the group. It should indicate which members are entitled to commit the group as a whole to any professional obligations (such as concerts or teaching gigs). The agreement should indicate which members are to sign checks; frequently one member will be allowed up to a certain dollar limit, but two signatures will be required for checks over that limit.

Finally, the agreement should dictate how the group’s income will be divided. Often this is in equal shares to each player, but not always. For example, it is common for group members to equally split performance fees, but there may be a composer in the group who retains all royalties from her original compositions played by the ensemble.

The Audubon case was a personal and professional disaster. Learn from its mistakes and obtain an ensemble member agreement for your group. It can’t prevent creative differences or personal animosity, but it will give you a contractual way to deal with these problems if and when they occur.

Bob Donnelly is a member of the Lommen Abdo law firm (bobdonnelly@lommen.com). He is best known for bringing the case with then New York Attorney General Eliot Spitzer that, when it was settled in 2004, resulted in the major record labels having to pay their artists \$55 million in past due royalties.

[Return to Contents](#)

The Juilliard School, 60 Lincoln Center Plaza, N.Y.C., NY 10023 (212) 799-5000

©The Juilliard School. All Rights Reserved.

No material on this site may be reproduced in part or in whole, including electronically, without the written permission of The Juilliard School **Publications Office**.