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# CITADELPHIA CINCH NEGOTIATION

## Confidential Information for Composer's Agent, Fran Foley, Esq., of Famous Force, LLP

You are the founder of Famous Force, LLP, a Canadian agency representing performers in all genres of music, theater, and dance. While your family includes successful musical performers, your professional cellist dream was not to be. Poverty-stricken years of gigs and auditions established the need for Plan B.

You gave up cello and went to law school, apprenticing at a large Toronto firm and accepting an offer there after graduation. Due to your music background, you were assigned real estate deals and contract negotiations for arts-related organization clients. While you enjoyed this area, you were uncomfortable negotiating for a symphony to drive down players' wages and working with wealthy donors.

Ten years ago, you decided to stop working on the "wrong side of the fence." You founded Famous Force, LLP, an agency representing the interests of musicians, composers, dancers, and actors. Famous Force promotes clients, handles P.R., and negotiates on their behalf for positions, protecting their intellectual property rights and maximizing copyright and royalty revenues. Being a lawyer helps during those negotiations!

Famous Force became successful, growing to ten professionals – four additional partners and five associates. Half are lawyers and the others take care of P.R. and promotion. After a time, you decided to return to your smaller town roots. So much work is done remotely, it was no problem to establish a satellite office. You have maintained most former clients and quickly connected to the culture and art scene in the region.

Months ago, you were delighted to be approached by the well-known classical music composer, Professor Sandy Alder, to represent him through the next phase of his career. You have known Alder's music since your cello-playing days. His compositions are melodic and usually uplifting, including some pretty jazzy pieces, with big brass sections. The longtime Chair of Composition at Canada's pre-eminent music faculty, Alder has been writing his pieces and commissioned works for many years. Alder also conducts occasionally, particularly for performances of his compositions.

When you met with Alder, you asked whether he had ever been represented by an agent. The answer was no, as suspected. You asked what changed, and what his goals were. Alder explained that, although only 55 years old, he was considering early retirement from the faculty:

*I have 25 years in, and it's enough. I am ready for a change. I'm tired of facing fresh students every fall, taking them through the basics, marking up their moronic efforts at compositions, and coaxing them into minimal competence.*



You asked what Alder wanted to do once he escapes faculty drudgery. Alder replied:

*I want the freedom to compose, compose, compose. I am bursting with musical ideas. Great brass fanfares play through my mind when I wake up, fugues whirl in my ears at lunch, and violin sonatas whisper to me at night. I have a backlog of symphonic sketches and scribbled melodies waiting to be developed. I want the time to do that, to create.*

*I still feel energetic, but I've been around long enough to have produced a large number of pieces. My books on classical music composition are used in university music departments all over the world. My music has been well reviewed, and my name is known. Canadian classical music folks have me on the top of their list.*

*Still, I'm not a big presence on the world stage and I'd like to be. If you ask anyone in classical music: 'Have you ever heard of Sandy Alder?' the answer would be, 'Oh yes, nice music, nice fellow.' But, when a music director is thinking about commissioning a new piece or inviting a guest conductor, my name doesn't jump to mind first. I've been teaching for 25 years, but I haven't been 'out there' at the Salzburg Festival, the Berlin scene, the Aspen Festival, etc. Once in a while, the Montreal Symphony Orchestra calls, but that's it.*

*Frankly, I enjoy conducting and I know that orchestra members enjoy the way I work with them. I don't want a permanent conducting position. I want the freedom of conducting gigs for weekends and festivals; I want to be well paid for them; and I want my name, my music, and my conductor's baton to go beyond Canada. The Montreal Symphony and the Toronto Symphony are world-class, but so are many orchestras and chamber ensembles in Europe and the U.S.*

Then, you asked Alder about his financial circumstances and aspirations. Alder confessed:

*My family has told me for years that I'm undercharging for commissions. I'm an easy mark for exploitation: an old friend music director in Saskatchewan begs me to write a piece for \$2,000, wailing about the orchestra's poverty, and I say yes. I'm done with that. I want to be paid for the value of the music I write.*

*I hate that this sounds like bragging, but my musical works are on par with those of any modern-day composer. I'm pleased to say that I avoided an awful modern minimalist unmelodic phase. Most of my work is melodic and accessible to a wide audience. Some of my compositions are jazzy, some are grand, contemplative, light-hearted, powerful, or triumphant. I want to write more, and I want them to be heard on the world's stage. That will lead to more recording contracts and more recognition for my work.*

*By the way, conducting more would be fun, and my international conductor friends tell me it pays well. I think I was paid a ridiculously low amount – maybe \$3,000 - \$5,000 by the Canadian symphony organizations years ago. But I know top guest conductors in large US and European cities get paid \$8,000 - \$10,000, maybe as much as \$15,000, for a long concert weekend of rehearsals and performances.*

*I really should be seen as a top conductor. If someone doesn't believe me, they can read the reviews from Montreal and Toronto. Truth be told, I enjoy conducting – it's fun! I would understand quoting somewhat lower fees for conducting work because I am less well-known as*



*a conductor than as a composer. To change that, I just need a foot in the door in the US or Europe and then the orchestra players and critics will vouch for me as a conductor.*

You agreed that Alder's goals made sense and were entirely achievable. You congratulated him on the decision to leave the university to create music and enjoy traveling the world. Alder agreed to make you and Famous Force his exclusive agent and to pay your regular 15% agents' commission on paid work you obtain.

Since that meeting, you researched and confirmed that Alder's reputation was exactly as he described. He's much liked, recognized as a terrific composer and an excellent conductor, appreciated by the orchestras he has worked with. His conducting performances at the university and several Canadian orchestras have received superlative critical reviews. However, he has conducted less often "out there" over the years. That's why his name isn't the first in a music director's mind. Famous Force must change that and negotiate strong fee arrangements for commissioned compositions, guest conducting gigs, and royalties.

Weeks ago, you heard the Citadelphia Symphony Orchestra (CSO) may be looking for guest conductors soon because its music director, Marty Maestro, accepted a position with a European orchestra. You heard this gossip at a party for another client, and it wasn't specific about timing. If true, the CSO will look for a new music director and possibly guest conductors. You thought of Alder.

You weren't surprised to see an email in your inbox from Clyde Coburn, VP and General Counsel of the Citadelphia Arts Consortium. Surprisingly, Coburn's email wasn't about conducting; it was about commissioning an orchestral piece. Here's the email:

From: Clyde Coburn, VP Citadelphia Arts Consortium  
To: Fran Foley, Famous Force  
Subject: Professor Alder - Possible Orchestral Commission

We understand that you represent Professor Sandy Alder in all non-university, professional music work. We wish to discuss Professor Alder composing an orchestral piece in honor of the Citadelphia Symphony Orchestra's bicentennial two years from now. We want the piece to be adaptable for performance later that year at a Pops concert in honor of Citadelphia City's 250<sup>th</sup> anniversary.

Please let me know if Professor Alder is interested, what his commission fees would be when he could produce a piece, and his other interests.

I look forward to your response.

Respectfully,

*Clyde Coburn*

VP & General Counsel

Citadelphia Arts Consortium



## Issues for Negotiation

### 1) Commission fees and costs

#### *Background information*

Based on experience, you know it's hard to find a "standard fee" for composers' commissions. Some composers charge by the finished minute. The commissioner sets the length of time for the finished piece: 5, 10, 15, or even 20 minutes. (A piece over 20 minutes long is unusual.) The composer's rate is multiplied by the number of minutes in the piece. Composers who charge this way differentiate between solo works (with just a melody line), duets, trios, quartets, and so on, with the highest rates for full orchestral works.

Less known composers charge as little as \$100 per minute, but experienced composers charge \$1,000 per minute for solo pieces and as high as \$2,000 per minute for fully orchestrated pieces. Frankly, very famous composers in demand set a flat fee of \$25,000, \$50,000, or even considerably more for a substantial piece.

In short, commission fees are not standardized; they depend on the composer's name, availability, desire, the strength of the commissioner's desire to have that composer and budget. There is no ceiling. The way you negotiate matters.

#### *Professor Alder's Commission Fees and Other Costs*

Your goal is to bring Professor Alder to the highest commission range someday. That's why he hired you, and his reputation and work quality justify it. However, you know that is higher than what he has received. Possibly, people in the music world (including Coburn or the CSO's music director) would be aware that Alder hasn't had many commissions lately. You would argue that his time has always been precious due to university responsibilities, so he should set high fees for his few commissioned pieces. After all, they don't know he is planning to retire from his university post soon.

No matter what the commission fee is, you must negotiate other incidental financial terms related to delivering the commissioned piece:

- Cost of a "music copyist" for the separate orchestral parts. An orchestral score is not the project's end. To perform the piece, each instrumentalist needs sheet music for their instruments' parts. The composer can do this (or hire someone to do it), or the commissioning entity can. While copyist rates vary substantially, a fair estimate is \$2,000 for a substantial orchestral piece.
- Cost of Professor Alder's visit to Citadelphia for an initial consultation. This is necessary and should be covered by Citadelphia. You anticipate their pushing for the initial consultation to be via Skype, but Alder told you he would resist. For



Alder, there's nothing like an in-person presence to establish a relationship and feel the essence of the CSO and its city.

- Cost of Professor Alder's travel to the pre-concert rehearsal and premier performance, including airfare and hotel. It is customary and only right that Citadelphia cover this expense.

These travel costs are a "small change." If Citadelphia tries to put these on the Professor, that would signal a lack of respect for his stature.

## 2) Naming rights

When a piece is commissioned, the composer usually has the right to name it. Professor Alder explained that he enjoys autonomy and wants his composition's name to reflect its spirit. Because this piece celebrates the CSO and the city, he will agree to cooperate with the CSO to name the piece if the chosen name fits.

## 3) Ownership of the piece and royalty rights

The general rule is that the composer or the composer's publisher owns the copyright for a commissioned piece. The commissioner typically has the right of first performance and to then perform it subsequently without charge for a specified duration, generally not more than 5 years. Outside that, the composer may decide only to let selected entities perform it, generally for a price, or publish it for broader use, subject to royalty fees. When a composer just writes a new piece, one not commissioned, the composer receives royalties each time it is played – in live public performances or recordings.

You are willing to be creative here. Dollars aside, if Alder's initial commission amount seems steep to the CSO, you might be willing to share future royalties when other entities perform it.

No matter who receives royalties, Professor Alder should always be credited as the composer, in any performance and on any print copy of the music.

## 4) Agreed upon process and termination option

Alder told you a commissioner sometimes asks for a "sketch," reflecting the musician's early ideas. The commissioner wants to review the sketch and give input on its development. An orchestral commissioner's music director might suggest a particular orchestra section or soloist to carry part of the piece or ask the composer to strengthen a particular theme. The sketch is generally submitted early in the creative process, leaving plenty of time for a piece to be reworked.

Alder explained many composers resist this, insisting on complete autonomy. But Alder isn't



worried about it here. He respects the CSO's Music Director enough to be comfortable with the early submission of a sketch and collaboration.

You know that, despite such optimism, commissions don't always work out. Sometimes a composer doesn't get along with an orchestra or music director from the beginning. Sometimes a music director insists on changes to a commissioned piece and a composer resists. You must protect Alder's interests in case things don't go well. Financially, if the CSO wants to terminate a contract before completion, you would insist they pay a cancellation fee for the time Alder spent. Alder would then retain all rights to the piece.

You would prefer the contract does NOT give the CSO the right to reject the final commissioned piece, provided it meets specifications as to the type of piece (orchestral) and number of minutes. If the CSO does not agree to that, you would insist the composer be paid a minimum flat fee and retain the rights to publish the piece on his own or use it for a different purpose.

If the CSO accepts the piece, you want a guarantee that it will be performed and published for others to perform (upon payment of royalties). It does Alder no good if the CSO never performs it or plays it once and sends it to the waste bin.

In addition, you want any termination provision to include "non-disparagement and confidentiality" language.

#### 5) Other interests and terms?

The CSO representative—Clyde Coburn at the Citadelphia Arts Consortium— approached you only about commissioning an orchestral piece by Alder. However, you hope to find other ways to meet his broader, long-term interests, particularly in future conducting gigs.

#### Next steps

Speaking of conducting, your next step is to negotiate with Clyde Coburn, VP and General Counsel of Citadelphia Arts Consortium, acting on behalf of the CSO.

If you can't reach a deal, you and Alder will both be disappointed in the short term. However, most commission agreements involve work to be performed far off in the future. You are confident that another will come along once Famous Force starts promoting Alder. After all, Alder's interests are long-term. Right now, he's still fully employed as a music professor and department chair. He can always write music and publish anything he wants. You both agree it's not in his long-term interest to accept low commission fees from major orchestras. That would only make him seem desperate and damage his image.

Prepare to negotiate with the Citadelphia Arts Consortium on your client's behalf.