

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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BEFORE THE LABOR COMMISSIONER
FOR THE STATE OF CALIFORNIA

MARY KOHLER,
Petitioner,
vs.
AMERICAN TALENT NETWORK,
Defendant.

Case No. 26-96,
DETERMINATION OF
CONTROVERSY...

Introduction

The above-captioned matter was initiated by a petition filed on July 29, 1996, by MARY KOHLER (hereinafter "petitioner") against AMERICAN TALENT NETWORK (hereinafter "respondent," or "AMERICAN"), charging that respondent violated the Talent Agencies Act, Labor Code §§1700 et seq., by charging a registration fee. By the petition, petitioner seeks reimbursement of the amount paid.

Respondent, although having been served with the petition, failed to file an answer. A notice setting the hearing of this matter for June 17, 1997, at 9:00 a.m., was sent on May 16, 1997, but this notice gave an incorrect address for the location of the hearing. A corrected hearing notice, which set forth the correct address, was mailed on May 19, 1997. The copies of both notices which were sent to respondent (which were mailed to American Talent

1 Network, 7095 Hollywood Blvd., Hollywood, CA 90028, were returned by the Post Office as
2 undeliverable at that address.

3 Petitioner appeared by telephone from Brooklyn, New York. No appearance was
4 made by respondent.

5 Based on the testimony and evidence presented at the hearing, the labor commissioner
6 adopts the following Determination of Controversy.

7 Findings of Fact

8 1. In late 1995, petitioner saw a newspaper advertisement seeking children to appear
9 in a television commercial. Petitioner mailed photographs of her son to the address given in
10 the ad.

11 2. Petitioner then received a telephone call from an individual who identified herself as
12 Keri Fisher. Ms. Fisher stated that she worked for respondent, that respondent had interested
13 two ad agencies in using petitioner's son in television commercials, and that respondent
14 required that petitioner pay the sum of \$375 for preparation of a "portfolio."

15 3. Petitioner inquired how this portfolio could be prepared. Ms. Fisher told petitioner
16 that copies would be made from the photographs which petitioner had sent. On one occasion,
17 Ms. Fisher stated that 190 copies had been (or would be) made. On another occasion, Ms.
18 Fisher stated that 210 copies had been (or would be) made. Ms. Fisher told petitioner that she
19 would be contacted by the ad agencies which intended to use her son in the commercials in
20 about 90 days.

21 4. On December 12, 1995, petitioner obtained a money order, and sent \$375 to
22 respondent. When nothing happened after 90 days, petitioner telephoned respondent's office,
23 and spoke with Ms. Fisher. A series of telephone calls ensued, with Ms. Fisher promising each
24 time to take some action to spur the advertising agencies to contact petitioner directly. Six
25 months went by in this manner. In her final telephone conversation with Ms. Fisher, petitioner
26 was assured that she would hear something within two days. When the two days had elapsed,
27 petitioner called back, and found that respondent's telephone had been disconnected.
28 Petitioner's son was never used in any commercial as a result of respondent's efforts.

1 Petitioner subsequently filed this proceeding.

2 **Conclusions of Law**

3 1. Petitioner's minor child is an "artist" within the meaning of Labor Code §1700.4(b).
4 Labor Code §1700.4(a), defines "talent agency" as a person who "engages in the occupation of
5 procuring, offering, promising, or attempting to procure employment or engagements for an
6 artist." Respondent is a "talent agency" within the meaning of this section. The Labor
7 Commissioner has jurisdiction over this matter pursuant to Labor Code §1700.44.

8 2. Labor Code §1700.40 provides that "no talent agency shall collect a registration
9 fee." Labor Code §1700.2(b) defines the term "registration fee" to include, "any charge made
10 . . . to an artist for . . . registering or listing an applicant for employment in the entertainment
11 industry . . . photographs, film strips, video tapes, or other reproductions of the applicant . . ."
12 By collecting \$375 from petitioner for "portfolios," respondent violated Labor Code §1700.40

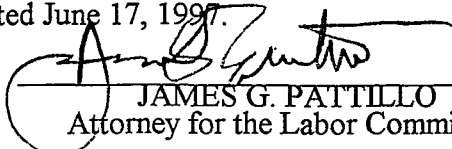
13 3. Labor Code §1700.40 further provides that if a talent agency collects any fee or
14 expenses from an artist in connection with the agency's efforts to obtain employment for the
15 artist, and the artist fails to procure the employment, or fails to be paid for the employment, the
16 agency must, upon demand, repay to the artist the fees and expenses that were paid. If
17 repayment of such fee is not made within 48 hours of the demand, §1700.40 requires the talent
18 agency to "pay to the artist an additional sum equal to the amount of the fee," as a penalty for
19 the agency's failure to make prompt repayment.

20 4. Pursuant to Civil Code §§3287(a) and 3289(b), petitioner is entitled to interest on
21 any amounts paid by petitioner to respondent, at the rate of 10% per year, from December 12,
22 1995.

23 **Order**

24 It is hereby ordered that respondent AMERICAN TALENT NETWORK pay to
25 petitioner the sum of Three Hundred and Seventy-five and no/100 Dollars (\$375) for
26 reimbursement of unlawfully collected fees, Fifty-six and 71/100 Dollars (\$56.71) for interest,
27 and Three Hundred and Seventy-five and no/100 Dollars (\$375) as a penalty pursuant to Labor
28 Code §1700.40, for a total sum of Eight Hundred and Six and 71/100 Dollars (\$806.71).

Dated June 17, 1997.



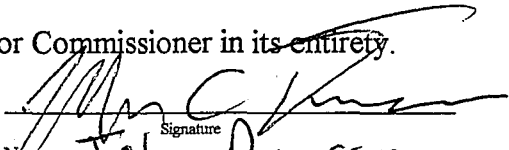
JAMES G. PATTILLO
Attorney for the Labor Commissioner

Adoption By The Labor Commissioner

The above determination is adopted by the Labor Commissioner in its entirety.

Dated: 7/17, 1997.

Print Name



John Duncan
For the Labor Commissioner

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