

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
4 William A. Reich, Esq. (SBN 51397)
5 1000 S. Hill Road, Suite 112
6 Ventura, California 93003-4455
7 Telephone No. (805) 654-4647
8 Facsimile No. (805) 654-4739

9 Special Hearing Officer for the Labor Commissioner

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

JENNIFER GITTINGS, an individual,

Petitioner,

vs.

SKY TALENT AGENCY, a business entity of
unknown form, JOHN DURZI, ISAM
DURZI, EHAB DURZI, an individual and
Agents of SKY TALENT, DOES 1 to 100,
inclusive.

Respondents.

CASE NO.: TAC-20338

DETERMINATION OF
CONTROVERSY

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on June 8, 2011 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner JENNIFER GITTINGS (hereinafter "Petitioner") appeared personally and was represented by Sina Sayyah, Esq. Respondents JOHN DURZI, ISAM DURZI, and EHAB DURZI (hereinafter "Respondents") were each served with the petition and notice of this hearing but failed to appear. No service was made on SKY TALENT AGENCY which is actually a business name and not a business entity.

1 Based on the evidence presented at the hearing and on the other papers on file in
2 this matter, the Labor Commissioner hereby adopts the following decision.

3
4 **FINDINGS OF FACT**

- 5
- 6 1. Respondents JOHN DURZI, ISAM DURZI, and EHAB DURZI were
7 engaged in a joint venture pursuant to which they operated a licensed talent
8 agency under the name SKY TALENT AGENCY.
 - 9
 - 10 2. Petitioner is an actor. In September, 2004 she engaged Respondents to act
11 as her agent and represent her in obtaining work in television commercials.
12 A written agency contract was signed on March 18, 2005, and provided that
13 Respondents would be entitled to a 10% agency commission on all of
14 petitioner's earnings as an actor.
 - 15
 - 16 3. Respondents succeeded in obtaining employment for petitioner with Talent
17 Partners, who engaged her to perform in advertising commercials for
18 Allstate Insurance Company.
 - 19
 - 20 4. Under the arrangement, the net after-tax payments from Talent Partners for
21 Petitioner's services were to be remitted to Respondents, who would in turn
22 deduct their 10% fee and forward the balance to Petitioner.
 - 23
 - 24 5. In the beginning, Respondents paid all of the monies due Petitioner as the
25 payments from Talent Partners came in.
 - 26
 - 27
 - 28

- 1 6. In September, 2005, however, the checks from Respondents to Petitioner
2 stop coming for a while. Eventually, the delayed checks were caught up
3 and timely payments resumed.
- 4
- 5 7. In August, 2006, the payments stopped coming again and Petitioner was not
6 being paid all the money that was due. Petitioner later learned that she had
7 not been paid the amount due her on 4 checks received by Respondents
8 from Talent Partners in 2006.
- 9
- 10 8. An earnings report received by Petitioner from Talent Partners around
11 October 12, 2007 alerted Petitioner to the fact that she had not been paid on
12 6 checks received by Respondents in 2007.
- 13
- 14 9. Petitioner contacted Respondents but was met with numerous excuses and
15 unsatisfactory explanations for the delay in paying her. While the
16 Respondents' practice of putting Petitioner off was going on in late 2007
17 and early 2008, Respondents continued to receive checks from Talent
18 Partners on which they did not make payments to Petitioner.
- 19
- 20 10. In March, 2008, Petitioner made arrangements with Talent Partners for all
21 future payments to be sent directly to her.
- 22
- 23 11. During the period August 18, 2006 through March 25, 2008, Respondents
24 received from Talent Partners the total sum of \$21,399.28 representing the
25 net after-tax payments due Petitioner for services rendered in connection
26 with the Allstate commercial. No portion of Petitioner's 90% (post
27 commission) share of this amount (i.e., \$19,259.35) was ever remitted or
28

1 paid to Petitioner.

2
3 12. Accordingly, the entire sum of \$19,259.35 remains due, owing, and unpaid.
4

5
6 **LEGAL ANALYSIS**
7

8 1. Respondents operated as a licensed talent agency.

9
10 2. Petitioner was an artist who was represented by Respondents.

11
12 3. This case is within the jurisdiction of the Labor Commissioner under Labor
13 Code section 1700.44, subdivision (a).

14
15 4. Under the terms of the parties' written agency contract, Respondents were
16 entitled to a 10% commission on all of Petitioner's earnings from work
17 obtained for her by Respondents.

18
19 5. Under the arrangement entered into at the time Respondents obtained
20 employment for Petitioner in connection with the Allstate commercials,
21 Respondents agreed to accept the payments from Talent Partners for
22 Petitioner's services and to promptly remit to Petitioner her 90% share of
23 those payments, after deducting Respondent's 10% agency commission.
24 This was also Respondents' statutory obligation under Labor Code section
25 1700.25, subdivision (a).
26
27
28

- 1 6. Between August 18, 2006 and March 25, 2008, Respondents received
2 \$21,399.28 in payment for Petitioner's services. Of this amount,
3 \$19,259.35, representing Petitioner's 90% share, should have been
4 forthwith remitted to Petitioner.

- 5
- 6 7. No part of the \$19,259.35 was ever paid to Petitioner, and the entire sum is
7 due, owing, and unpaid.

- 8
- 9 8. Labor Code section 1700.25, subdivision (e) provides that where there is a
10 willful failure on the part of a talent agent to pay funds to an artist within 30
11 days of receipt, as mandated by subdivision (a) of section 1700.25, the
12 Labor Commissioner may award the artist interest on the wrongfully
13 withheld funds as well as reasonable attorney's fees. Here, there is no
14 question that Respondents wrongfully appropriated and withheld monies
15 belonging to Petitioner. This plainly constituted a willful violation of
16 section 1700.25, subdivision (a). Accordingly, Petitioner is entitled to
17 interest on the withheld funds and to attorney's fees.

- 18
- 19 9. The total accumulated interest now due – computed on the basis of each
20 payment that was never received – is \$8,046.09.

- 21
- 22 10. Based on the showing made by Petitioner's counsel, Petitioner is entitled to
23 an award of reasonable attorney's fees in the amount of \$11,942.50.

- 24
- 25
- 26
- 27
- 28

ORDER

For the reasons set forth above, **IT IS HEREBY ORDERED** that:

Respondents JOHN DURZI, ISAM DURZI, and EHAB DURZI, individually and dba SKY TALENT AGENCY, pay to Petitioner JENNIFER GITTINGS, jointly and severally, the sum of \$19,259.35, plus interest in the amount of \$8,046.00, plus attorney's fees in the amount of \$11,942.50, for a total of **\$39,247.94**.

Dated: *JULY 29, 2011*


William A. Reich
Special Hearing Officer

Adopted:

Dated: *July 29, 2011*


Julie Su
State Labor Commissioner

