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STATE OF CALIFORNIA  
2 DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
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7  
8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA  
10

11 VICTOR SHAW, an individual,  
12 Petitioner,  
13 vs.

**CASE NO. TAC 52705**  
**DETERMINATION OF**  
**CONTROVERSY**

14 JORDAN McKIRAHAN, an individual dba  
JORDAN McKIRAHAN TALENT  
15 AGENCY,  
16 Respondent.

17  
18 **I. INTRODUCTION**

19 This Petition to Determine Controversy pursuant to Labor Code section 1700.44, was filed  
20 on May 17, 2019, by VICTOR SHAW, an individual (hereinafter "Petitioner"), alleging that  
21 JORDAN McKIRAHAN, an individual dba JORDAN McKIRAHAN TALENT AGENCY  
22 (hereinafter "Respondent"), failed to pay Petitioner his earnings less commissions on various  
23 commercial shoots Respondent booked for Petitioner.

24 On November 21, 2019, a hearing was held by the undersigned attorney specially  
25 designated by the Labor Commissioner to hear this matter. Petitioner appeared in *pro per* and  
26 gave sworn testimony. Respondent both failed to appear and to file an Answer to the Petition.  
27 Due consideration having been given to the testimony, documentary evidence and oral argument  
28 presented, the Labor Commissioner adopts the following determination of controversy.

1 **II. STATEMENT OF FACTS**

2 1. Petitioner is an actor in commercials.

3 2. Respondent was a licensed talent agency registered with the State Labor  
4 Commissioner and remained a licensed talent agent throughout the relevant period.

5 3. Petitioner started working with Respondent on August 15, 2013 when Petitioner  
6 and Respondent entered into an “Exclusive General Service Agreement Between Artist and  
7 McKirahan Talent Agency” a talent agency agreement allegedly approved by the Labor  
8 Commissioner calling for ten percent commission for Respondent.

9 4. The working relationship between Petitioner and Respondent was amicable until  
10 the summer of 2018, when Respondent began paying Petitioner late. Petitioner dealt with this less  
11 than professional behavior, as Respondent assured him that the delays were due to Respondent’s  
12 personal issues and that Petitioner would be paid shortly.

13 5. By November 2018, Petitioner was getting fed up with having to chase down late  
14 checks from Respondent, and gave him an ultimatum to get his act together or Petitioner would  
15 need to seek new representation.

16 6. On March 22, 2019, Respondent tallied up all of the money he believed he owed  
17 Plaintiff, and promised to pay him in two checks, one for \$7,233.57 that would be mailed out on  
18 Monday, March 25, 2019, and a subsequent check for \$17,498.62 that would be sent out to arrive  
19 to Petitioner on Friday, March 29, 2019. Thus, Respondent admitted that Petitioner is owed  
20 \$24,731.57 in earnings less Respondent’s commission.

21 7. Petitioner never received the two checks Respondent had promised would arrive at  
22 the end of March 2019. In early April 2019 Respondent stopped replying to Petitioner’s emails.

23 8. As Respondent had disappeared, Petitioner made a claim with Respondent’s  
24 Surety Company, Tokiomarine, HCC. Tokiomarine paid Petitioner \$5,217.98.

25 9. At the hearing, Petitioner submitted evidence he obtained from the payroll  
26 department of the production companies who he shot the various commercials for which  
27 Respondent had failed to pay him, and this evidence tends to corroborate the amount Respondent  
28 admitted he owed Petitioner, \$24,731.57 in earnings less Respondent’s commission.

1 III. LEGAL ANALYSIS

2 1. Labor Code section 1700.4, subsection (b), includes “actor” in the definition of  
3 “artist” and Petitioner is therefore an “artist” thereunder.

4 2. At all times relevant, Respondent was a licensed talent agent.

5 3. Labor Code section 1700.23 provides that the Labor Commissioner is vested with  
6 jurisdiction over “**any controversy between the artist and the talent agency relating to the**  
7 **terms of the contract,**” and the Labor Commissioner’s jurisdiction has been held to include the  
8 resolution of contract claims brought by artists or agents seeking damages for breach of a talent  
9 agency contract. *Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861; Robinson v.*  
10 *Superior Court (1950) 35 Cal.2d 379.* Therefore, the Labor Commissioner has jurisdiction to  
11 determine this matter, which stems from a violation of the express terms of the Contract.

12 4. Labor Code section 1700.25 provides in pertinent part:

13 (a) A licensee who receives any payment of funds on behalf of an artist **shall**  
14 **immediately deposit that amount in a trust fund account** maintained by him or  
15 her in a bank or other recognized depository. The funds, less the licensee's  
16 commission, **shall be disbursed to the artist within 30 days after receipt.**  
However, notwithstanding the preceding sentence, the licensee may retain the  
funds beyond 30 days of receipt in either of the following circumstances:

17 (1) To the extent necessary to offset an obligation of the artist to the talent  
agency that is then due and owing.

18 (2) When the funds are the subject of a controversy pending before the  
19 Labor Commissioner under Section 1700.44 concerning a fee alleged to be  
owed by the artist to the licensee.

20 (b) A separate record shall be maintained of all funds received on behalf of an  
21 artist and the record shall further indicate the disposition of the funds.

22 ...

23 (e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that  
24 the **licensee's failure to disburse funds to an artist within the time required by**  
**subdivision (a) was a willful violation, the Labor Commissioner may, in**  
**addition to other relief under Section 1700.44 , order the following:**

25 (1) Award reasonable attorney's fees to the prevailing artist.

26 (2) Award interest to the prevailing artist on the funds wrongfully withheld  
27 at the rate of 10 percent per annum during the period of the violation.

28 ...

Labor Code §1700.25.

