

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
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8 Attorney for the Labor Commissioner

9  
10 BEFORE THE LABOR COMMISSIONER  
11 OF THE STATE OF CALIFORNIA  
12  
13

14 GINA NOWAKOWSKI, ) Case No. TAC 16-98  
15 )  
16 ) Petitioner, )  
17 vs. ) DETERMINATION OF  
18 ) ) CONTROVERSY  
19 ANDY ANDERSON dba THE ANDERSON AGENCY )  
20 )  
21 ) Respondent. )  
22 )  
23 )  
24 )

25 INTRODUCTION

26 The above-captioned petition was filed on May 23, 1998 by  
27 GINA NOWAKOWSKI (hereinafter "Petitioner") alleging that ANDY  
ANDERSON dba THE ANDERSON AGENCY (hereinafter "Respondent")  
violated the Talent Agencies Act (Labor Code §1700, et seq.) by  
attempting to procure employment for her daughter, notwithstanding  
the fact the Respondent's talent agency license had been revoked.  
By this petition, Petitioner seeks the return of all photographs in  
the possession of Respondent and reimbursement for the photographs  
in the amount of \$371.74 paid to the photographer who took the  
photographs.

Respondent filed an answer on July 20, 1998 objecting to  
the jurisdiction of the Labor Commissioner. Respondent opines that

1 because he lost his talent agency license through revocation  
2 proceedings, he is no longer subject to the jurisdiction of the  
3 Labor Commissioner. Respondent denies allegations that he acted as  
4 a talent agent after his license was revoked, and claims Petitioner  
5 has failed to plead a cause of action upon which relief may be  
6 granted.

7 A hearing was held in San Diego on August 28, 1998 before  
8 the undersigned attorney for the Labor Commissioner. Both parties  
9 appeared in propria persona. Based upon the testimony and evidence  
10 presented at this hearing, and taking administrative notice of  
11 prior licensing decisions involving Respondent discussed below, the  
12 Labor Commissioner adopts the following Determination of  
13 Controversy.

14 FINDINGS OF FACT

15 1. In August of 1997, Petitioner was interested in  
16 entering her daughter into the field of modeling. Petitioner  
17 contacted Respondent, who was then a licensed talent agent, seeking  
18 representation for her daughter.

19 2. Respondent stated to Petitioner that he, "was  
20 willing to represent her daughter, but required a certain type of  
21 picture to send out to production companies, casting directors and  
22 producers." Respondent further stated this is the only way he  
23 would be able to obtain employment for petitioner's daughter.

24 3. Respondent stated, "I recommend a licensed  
25 photography studio that is down the hall from me, that have given  
26 my clients in the past very good work." Respondent told Petitioner  
27 that she could get pictures from any photographer she chose, but

1 Karen Martin's photography business "does very good work."

2 4. Petitioner's daughter had photographs taken by Karen  
3 Martin Photography Studios shot in front of Respondent's building.  
4 Petitioner paid a \$100.00 check directly to Karen Martin as a  
5 deposit for photographs. On August 15, 1997, Petitioner paid an  
6 additional check in the amount of \$271.75 directly to Karen Martin  
7 for the balance of the fee owed for the photographs.

8 5. On August 15 1997, Petitioner and Respondent entered  
9 into a written agreement, prepared by Respondent stating in  
10 pertinent part:

11  
12 On this date you supplied this Agency with the  
13 pictures that are needed for us to represent  
14 you. You may have gone to your preferred  
15 photographer or you may have gone to one that  
16 we recommended. In either case we are happy  
17 to use your headshots. Let it be known that  
18 this agency did not sell you pictures or  
19 accept any money for fees. We agree to  
20 represent you in the field of T.V. commercials  
21 and or modeling...because we are a talent  
22 agency and operate on a 10% commission basis,  
23 we will do our best to get you interviews.  
24 But because we do not hire anyone we cannot  
25 guarantee you employment.

26 6. On August 15, 1997, Respondent gave Petitioner an  
27 introductory packet of information for the artist. This packet  
included material setting forth the responsibilities of the artist,  
as well as postcards that were to be stamped, self-addressed and  
returned to the Respondent. In the event the agency ran low on  
photographs, the postcard would then be sent back to the client  
requesting more composites. Respondent stated this was his  
standard procedure and that every artist packet that was handed out

1 included such postcards.

2           7.       On December 1, 1997 Respondent's talent agency  
3 license was revoked pursuant to a Decision by the Labor  
4 Commissioner adopting a proposed decision of Administrative Law  
5 Judge Alan S. Meth (OAH No. L-1997090312). Revocation proceedings  
6 stemmed from Respondent's persistent violation of Labor Code  
7 §1700.40, whereby Respondent collected fees for photographs in  
8 violation of the Talent Agencies Act. It is undisputed that the  
9 Anderson Agency could no longer act as a talent agent and could no  
10 longer procure, offer, promise or attempt to procure employment for  
11 any artist as of December 1, 1997.

12           8.       On January 28, 1998, Petitioner received in the  
13 mail one of the pre-addressed postcards that she had previously  
14 given to Respondent. The postcard read "out of pictures, please  
15 send 25." Petitioner then sent Respondent an additional 25  
16 pictures to Respondent's place of business, assuming Respondent was  
17 actively seeking employment for her daughter. Petitioner was not  
18 and is not currently represented by any other agency.

19           9.       In early May 1998, Petitioner contacted the Labor  
20 Commissioner and inquired as to the status of Respondent's license.  
21 Upon discovering that Respondent's license had been revoked by the  
22 Labor Commissioner for collecting fees for photographs shot by  
23 Karen Martin's photography business, she contacted the Respondent  
24 and requested the return and reimbursement for the photographs.

25           10.       Respondent refused to reimburse Petitioner for the  
26 photographs. Respondent voluntarily returned all four remaining  
27 pictures of artist under his control to Petitioner at the hearing.

1           11.       Respondent denies he sent the postcards to the  
2           Petitioner and categorically denies that he acted as a talent agent  
3           subsequent to the revocation of his license.

4           12.       Respondent alleges that he is in the process of  
5           selling his agency to Fred Ralston contingent upon Mr. Ralston  
6           receiving his talent agency license from the Labor Commissioner.  
7           Respondent also stated that Fred Ralston has access to Respondent's  
8           office and "is preparing to act as a talent agent, but has no idea  
9           what he [Fred Ralston] does in his office."

10          13.       Respondent denies he acted as a talent agent  
11          stating, "how that postcard got sent to her, I have no idea."  
12          Respondent argues that if the postcards were sent from his office  
13          to Petitioner it was not by him. Respondent insists that even if  
14          the postcards were sent from his office, he did not collect fees,  
15          or financially benefit directly or indirectly by referring  
16          Petitioner to Karen Martin Photography.

17          14.       Respondent's testimony and conclusions were not  
18          credible. The fact that Respondent admitted his standard business  
19          practice is to send postcards to clients requesting additional  
20          composites, coupled with the fact that Petitioner has never filled  
21          out a self-addressed stamped postcard to any other agency, proves  
22          by a preponderance of the evidence that the postcards originated  
23          from Respondent's place of business. If Mr. Ralston has been  
24          conducting business affairs unknown to Respondent, that fact would  
25          be irrelevant. Respondent has not sold his agency to Ralston, thus  
26          any activities conducted in Respondent's office by Respondent's  
27          agent (Ralston) in the ordinary course of business are the



1 meaning of Labor Code §1700.4(b).

2           2. Respondent is a "talent agency" within the meaning  
3 of Labor Code §1700.4(a), which defines "talent agency" as a person  
4 who "engages in the occupation of procuring, offering, promising,  
5 or attempting to procure employment or engagements for an artist."

6           3. Respondent argues that because he was not licensed by  
7 the Labor Commissioner, and he never conducted business as an agent  
8 after his license was revoked, the Labor Commissioner does not have  
9 jurisdiction over this matter. But, after Respondent's license was  
10 revoked, Respondent continued to engage in the occupation of  
11 attempting to procure employment for an artist by sending out  
12 postcards requesting more pictures. Respondent's only possible  
13 purpose for sending out this request for more photos was to use the  
14 photos as a means of procuring employment for the petitioner. We  
15 therefore find that Respondent acted as a talent agent at all times  
16 relevant herein, thus evoking the Labor Commissioner's jurisdiction  
17 over this matter pursuant to Labor Code §1700.44.

18           4. Labor Code §1700.5 provides that "no person shall  
19 engage in or carry on the occupation of a talent agency without  
20 first procuring a license therefor from the Labor Commissioner."  
21 Respondent's talent agency license was revoked on December 1, 1997.  
22 By continuing to operate as a talent agent after December 1, 1997,  
23 Respondent violated Labor Code §1700.5.

24           5. Labor Code § 1700.40(a) provides that "no talent  
25 agency shall collect a registration fee." The term "registration  
26 fee" is defined at Labor Code § 1700.2(b) as "any charge made, or  
27 attempted to be made, to an artist for...**photographs**, film strips,

1 video tapes, or other reproductions of the applicant or... any  
2 activity of a like nature."

3           6. The key issue is whether it can be established that  
4 Respondent either **collected** such fees from an artist within the  
5 meaning of §1700.40(a) or had a direct or indirect financial  
6 interest in Karen Martin's photography business in violation of  
7 Labor Code §1700.40(b).

8           --7. It is well established, quoting from the Labor  
9 Commissioner's Determination No. TAC 14-97, issued on August 22,  
10 1997 "that the statute is violated anytime an agent collects such  
11 fees from an artist, even if the agent transmits the entire fee to  
12 another person without retaining any portion as a profit,... the  
13 purpose of the statute was to create a firewall between agents and  
14 photographers, and to prevent agents from running 'photo mill'  
15 operations using independent photographers, who are in reality,  
16 dependent on the agent for their economic livelihood."

17           8. The evidence produced at the hearing demonstrated  
18 that Respondent never handled at any time any payment made by the  
19 petitioner for photographs, but rather that these payments were  
20 made by the petitioner directly to Karen Martin. The check was  
21 neither made out to Respondent nor, did respondent physically  
22 handle any of the fees submitted to Martin. Therefore, Petitioner  
23 has not shown that Respondent "collected" a registration fee within  
24 the meaning of Labor Code §1700.40(a).

25           9. To establish a violation of Labor Code §1700.40(b),  
26 Petitioner must show Respondent, "referred an artist to a person,  
27 firm or corporation in which the talent agency has a direct or



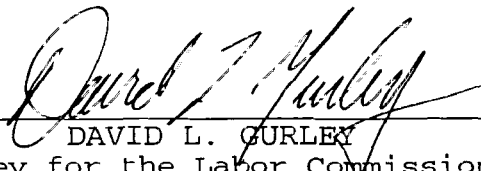
1 indirect financial interest." Petitioner failed in this hearing to  
2 produce any evidence that Respondent has such a direct or indirect  
3 financial interest in Karen Martin's Photography Studios.  
4 Suspicions in this area are no substitute for evidence.

5 10. We therefor conclude that Petitioner is not  
6 entitled to reimbursement of the \$371.75 that she gave to Karen  
7 Martin for photographs.

8  
9 ORDER

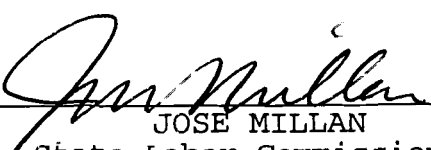
10 For the above-state reasons, IT IS HEREBY ORDERED that  
11 this petition is dismissed.

12  
13  
14 Dated: 10/29/98

  
\_\_\_\_\_  
DAVID L. GURLEY  
Attorney for the Labor Commissioner

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16  
17 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

18  
19  
20 Dated: 10/29/98

  
\_\_\_\_\_  
JOSE MILLAN  
State Labor Commissioner

