

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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9
10 BEFORE THE LABOR COMMISSIONER
11 OF THE STATE OF CALIFORNIA
12
13

14 DAVID BON SUKAN,) Case No. TAC 18-98
15)
16 vs.) Petitioner,)
17)
18) DETERMINATION OF
19) CONTROVERSY
20)
21 CHRISTIAN ALEXANDER MODELS;)
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1 INTRODUCTION

2 The above-captioned petition was filed on June 3, 1998 by
3 DAVID BON SUKAN (hereinafter "Petitioner") alleging that RONNEL
4 RAGANAS dba CHRISTIAN ALEXANDER MODELS (hereinafter "Respondent")
5 violated the Talent Agencies Act (Labor Code §1700, et seq.) by
6 acting as a licensed talent agent, notwithstanding the fact the
7 Respondent's talent agency license had expired. By this petition,
8 Petitioner seeks reimbursement of all photographs taken at the
9 request of respondent in the amount of \$325.00.

10 Respondent failed to file an answer. A hearing was held
11 on October 23, 1998 before the undersigned attorney for the Labor
12 Commissioner. Petitioner appeared in propria persona. Respondent
13 failed to appear. Based upon the testimony and evidence presented

1 at this hearing, the Labor Commissioner adopts the following
2 Determination of Controversy.

3 FINDINGS OF FACT

4 1. On December 11, 1997, Petitioner sent Respondent
5 "Zed Cards" in an attempt to obtain representation in the modeling
6 industry.

7 2. On February 28, 1998, Respondent contacted
8 Petitioner and scheduled an interview for March 2, 1998. During
9 the interview, Respondent told Petitioner that there would be an
10 initial six month trial representation period. The model would be
11 booked and photographed for clients, prior to signing a long term
12 contract. Respondent stated that he was interested in representing
13 the Petitioner, but a stronger portfolio would be necessary.

14 3. A follow-up interview was scheduled on March 16,
15 1998. Respondent recommended photographer Angus Ross. Petitioner
16 scheduled the photo shoot with Mr. Ross for March 22, 1998.

17 4. Petitioner completed the photo shoot at Mr. Ross's
18 photography studio and paid Ross \$325.00 in cash. On April 3,
19 1998, Petitioner met with the Respondent who kept the photographs
20 so he could choose the most favorable shots for Petitioner's
21 portfolio.

22 5. On April 13, 1998, Respondent contacted Petitioner
23 and stated that he was considering sending Petitioner to a client,
24 but required Petitioner to be in "peak physical condition".
25 Petitioner told Respondent that this would take approximately two
26 weeks.

27 6. On April 15, 1998, Petitioner contacted the Division

1 of Labor Standards Enforcement (DLSE) and inquired as to the status
2 of Respondent's talent agency license. On May 20, 1997,
3 Respondent's talent agency license expired. To date, Respondent
4 has not submitted a renewal application. It is undisputed that the
5 Respondent could no longer act as a talent agent, thus could no
6 longer procure, offer, promise or attempt to procure employment for
7 any artist as of May 20, 1997. Upon discovering that Respondent's
8 talent agency license had lapsed, Petitioner requested the return
9 of the photographs. On April 17, 1998 Respondent returned the
10 photographs.

11 7. Petitioner alleges that Respondents promise of
12 representation induced Petitioner into purchasing the photographs.
13 Had Petitioner known that Respondent was not a licensed talent
14 agent, and therefore could not procure employment, the Petitioner
15 would not have purchased the photographs. Petitioner seeks
16 reimbursement for the cost of the photographs in the amount of
17 \$325.00.

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20 CONCLUSIONS OF LAW

21 1. Petitioner's is an "artist" within the meaning of
22 Labor Code §1700.4(b).

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

27 3. Respondent stated that he would represent and obtain

1 work for Petitioner. Respondent continues to engage in the
2 occupation of promising and attempting to procure employment for
3 artists. For these reasons, Respondent continues to act as a
4 talent agent.

5 4. Labor Code §1700.5 provides that "no person shall
6 engage in or carry on the occupation of a talent agency without
7 first procuring a license therefor from the Labor Commissioner."
8 Respondent's talent agency license expired on May 20, 1997. By
9 continuing to operate as a talent agent after May 20, 1997,
10 Respondent has violated Labor Code §1700.5.

11 5. Labor Code § 1700.40(a) provides that "no talent
12 agency shall collect a registration fee." The term "registration
13 fee" is defined at Labor Code § 1700.2(b) as "any charge made, or
14 attempted to be made, to an artist for...**photographs**, film strips,
15 video tapes, or other reproductions of the applicant or... any
16 activity of a like nature."

17 6. The key issue is whether it can be established that
18 Respondent either **collected** such fees from an artist within the
19 meaning of §1700.40(a) or had a direct or indirect financial
20 interest in Angus Ross Photography in violation of Labor Code
21 §1700.40(b).

22 7. It is well established, quoting from the Labor
23 Commissioner's Determination No. TAC 14-97, issued on August 22,
24 1997 "that the statute is violated anytime an agent collects such
25 fees from an artist, even if the agent transmits the entire fee to
26 another person without retaining any portion as a profit,... the
27 purpose of the statute was to create a firewall between agents and

1 photographers, and to prevent agents from running 'photo mill'
2 operations using independent photographers, who are in reality,
3 dependent on the agent for their economic livelihood."

4 8. The evidence produced at the hearing demonstrated
5 that Respondent never handled at any time payments made by the
6 petitioner for photographs, but rather these payments were made by
7 the petitioner directly to Angus Ross. Therefore, Petitioner has
8 not shown that Respondent "collected" a registration fee within the
9 meaning of Labor Code §1700.40(a).

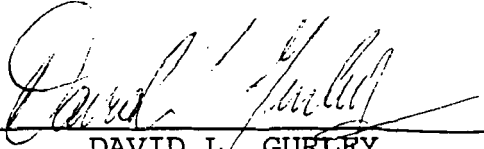
10 9. To establish a violation of Labor Code §1700.40(b),
11 Petitioner must show Respondent, "referred an artist to a person,
12 firm or corporation in which the talent agency has a direct or
13 indirect financial interest." Petitioner failed in this hearing to
14 produce any evidence that Respondent has such a direct or indirect
15 financial interest in Angus Ross Photography Studios. Suspicions
16 in this area are no substitute for evidence.

17 10. We therefor conclude that Petitioner is not
18 entitled to reimbursement of the \$325.00 that he gave to Angus Ross
19 for photographs.

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21 ORDER

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

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25 Dated: 12-7-98

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DAVID L. GURLEY
Attorney for the Labor Commissioner

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ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: Dec. 7, 1998



JOSE MILLAN
State Labor Commissioner

