

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

11	ALAN CHERRIGAN,)	No. TAC 17-97
12)	
13	Petitioner,)	
14)	
15	vs.)	
16)	
17	QUEUE, THE AGENCY, a partnership;)	DETERMINATION OF CONTROVERSY
18	KELLIE MARIE CASTILLO;)	
19	EVA I. BLASCZYK,)	
20)	
21	Respondents.)	
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INTRODUCTION

On April 16, 1997, Alan Cherrigan filed a petition to determine controversy pursuant to Labor Code section 1700.44, alleging that in June 1996, the above-named Respondents charged Petitioner a registration fee as a prerequisite to providing him with their services as a talent agency, and that Respondents have failed to transmit certain monies that they received on Petitioner's behalf as a result of his performance of two modeling jobs in August and September 1996. The Petition seeks recovery of the \$20 registration fee, \$196 in earnings for the two modeling jobs, interest on the amounts owed for the modeling jobs, and

1 attorney's fees and process server's fees.

2 Respondents were personally served with a copy of the
3 petition on April 18, 1997, but failed to file an answer thereto.
4 On May 9, 1997, the parties were duly served with notice of
5 hearing.

6 Said hearing commenced on the scheduled date, June 12, 1997,
7 in San Francisco, California, before the undersigned attorney for
8 the Labor Commissioner, specially designated to hear this matter.
9 Petitioner appeared in propria persona. Respondents failed to
10 appear.

11 Based upon the testimony and evidence received at this
12 hearing, the Labor Commissioner adopts the following determination
13 of controversy.

14 FINDINGS OF FACT

15 1. In June 1996, Petitioner meet with Respondents to secure
16 their services as his talent agents. Respondents advised him that
17 in order to obtain their representation, he would have to pay a
18 \$20 registration fee. Petitioner paid this amount to Respondents.

19 2. On August 17, 1996, Petitioner was contacted by Integrity
20 Casting Agency, and advised of two modeling jobs that were
21 available. Petitioner expressed an interest in these jobs, and
22 Integrity Casting informed Petitioner that his earnings for these
23 jobs would be sent to Respondents, who would then transmit these
24 earnings to him. Petitioner was told that he would earn \$200 for
25 the first job, a one-day industrial video shoot scheduled for
26 August 22, 1996, and \$125 for the second job, a two-day modeling
27 appearance at a trade show scheduled for September 19 and 20,
28 1996, and that Respondents' commissions would not be deducted from

1 these earnings. Petitioner provided modeling services on both of
2 these jobs on the scheduled dates.

3 3. On September 19, 1996, Integrity Casting Agency sent a
4 \$200 check to Respondents in full payment for Petitioner's
5 services on the first job. On October 24, 1996, Respondents
6 provided Petitioner with a check for this job in the amount of
7 \$129, without any explanation for the missing \$71. In a
8 subsequent telephone conversation with Petitioner, Respondent
9 Blasczyk admitted that he was owed an additional \$71 for this job,
10 and promised to have a check sent to Petitioner. Despite this
11 promise, no further payments were made.

12 4. On October 25, 1996, Integrity Casting Agency sent a \$220
13 check to Respondents to cover, among other things, the \$125 that
14 Petitioner earned for his modeling work on the second job.
15 Respondents failed to remit any of these funds to Petitioner, and
16 he is still owed \$125 for his work on this modeling job. In
17 December 1996, in a telephone conversation with Petitioner,
18 Respondent Blasczyk acknowledged that he was owed for this work,
19 citing Respondents' "money troubles" as the reason for non-
20 payment.

21 5. The records maintained by the Labor Commissioner's
22 Licensing Unit, show that Respondent Queue, The Agency, was
23 licensed as a talent agency at all relevant times herein, and
24 covered by Talent Agency Bond No. CB 0407, issued by the
25 Contractors Bonding and Insurance Company. These records also
26 show that Queue was licensed as a partnership, owned by Eva I.
27 Blasczyk and Kellie Marie Castillo, the partners.

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1 and the \$125 owed for the second modeling job, despite having
2 received these funds from Integrity Casting Agency, constitute
3 willful violations of Labor Code section 1700.25.

4 5. Labor Code section 1700.25(e) provides that if, in a
5 proceeding held under Labor Code section 1700.44, the Labor
6 Commissioner determines that a talent agency willfully failed to
7 disburse funds to an artist within the time permitted under that
8 statute, the Labor Commissioner may award interest to the
9 prevailing artist on the funds wrongfully withheld at the rate of
10 10 percent per year, commencing from the date that such funds
11 became due. Pursuant to section 1700.25(e), interest is awarded
12 in the amount of \$13.66.

13 6. Labor Code section 1700.25(e) also authorizes the Labor
14 Commissioner to award attorney's fees to the prevailing artist.
15 Here, because Petitioner represented himself at all stages in this
16 proceeding, an award of attorney's fees is not appropriate,
17 notwithstanding the fact that Petitioner is himself an attorney.

18 7. Although Labor Code section 1700.25 is silent on whether
19 the Labor Commissioner may award process server's fees as a cost
20 in a proceeding under Labor Code section 1700.44, it would be
21 patently inequitable to Petitioner to fail to make such an award.
22 In order to pursue his right to payment of the unlawfully withheld
23 funds, it was necessary for Petitioner to file this petition to
24 determine controversy and to have someone, other than himself,
25 serve it upon Respondents. It has long been the position of the
26 Labor Commissioner in cases arising under Labor Code section
27 1700.44 that reasonable process server fees are recoverable, if
28 nothing else as an element of damages stemming from a respondent's

1 unlawful conduct. Here, the \$40 that Petitioner incurred in
2 process server fees were necessary and reasonable, and are
3 therefore awarded to him.

4 ORDER

5 For the above-stated reasons, IT IS HEREBY ORDERED that
6 Respondents QUEUE, THE AGENCY; KELLIE MARIE CASTILLO; and EVA I.
7 BLASCZYK pay petitioner ALAN CHERRIGAN \$20 for the unlawfully
8 collected registration fees, \$196 for unlawfully withheld
9 earnings, \$13.66 for interest on these withheld earnings, and \$40
10 for reimbursement of process server fees, for a total of \$269.66.

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13 Dated: 7/21/97

Miles E. Locker
MILES E. LOCKER
Attorney for the Labor Commissioner

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16 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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18 Dated: 7/23/97

John C. Duncan
JOHN C. DUNCAN
Chief Deputy Director
DEPARTMENT OF INDUSTRIAL RELATIONS

