

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
2 State of California  
BY: DAVID L. GURLEY (Bar No. 194298)  
3 455 Golden Gate Ave., 9<sup>th</sup> Floor  
San Francisco, CA 94102  
4 Telephone: (415) 703-4863

5 Attorney for the Labor Commissioner

6 BEFORE THE LABOR COMMISSIONER  
7 OF THE STATE OF CALIFORNIA  
8  
9

10 DAVID BON SUKAN, ) Case No. TAC 19-98  
Petitioner, )  
11 vs. ) DETERMINATION OF  
CONTROVERSY  
12 RICHARD POIRIER; )  
RICHARD POIRIER & ASSOCIATES; )  
13 dba RICHARD POIRIER MODELS & TALENT; )  
MODELS SUPPLIES & SERVICES BOUTIQUE )  
14 Respondent. )  
15 )  
16 )

17 INTRODUCTION

18 The above-captioned petition was filed on May 28, 1998 by  
19 DAVID BON SUKAN (hereinafter "Petitioner"), alleging that RICHARD  
20 POIRIER; dba POIRIER & ASSOCIATES; RICHARD POIRIER MODELS & TALENT;  
21 and MODELS SUPPLIES & SERVICES BOUTIQUE, (hereinafter "Respondent"),  
22 was operating as an unlicensed talent agency, and seeking  
23 reimbursement of money that petitioner paid to respondent for  
24 photographs and zed cards. Respondent was personally served with  
25 a copy of the petition on June 9, 1998. Respondent filed his  
26 answer with this agency on August 5, 1998. A hearing was scheduled  
27 before the undersigned attorney, specially designated by the Labor

1 Commissioner to hear this matter, and the hearing commenced as  
2 scheduled on May 21, 1999, in Los Angeles, California. Both  
3 petitioner and respondent appeared in propria persona.

4 Based on the testimony and evidence received at this  
5 hearing, the Labor Commissioner adopts the following determination  
6 of controversy.

7  
8 FINDINGS OF FACT

9 1. The parties stipulated that respondent has never been  
10 licensed by the State Labor Commissioner as a talent agency.

11 2. By this petition, petitioner seeks reimbursement for  
12 the cost of the photographs, and zed cards in the amount \$3,691.33.

13 3. On or around mid-December 1997, petitioner responded  
14 to an ad in the 11<sup>th</sup> Edition of the Modeling Actor's Guide whereby  
15 respondent's agency was listed and described as:

16  
17 **"Richard Poirier Modeling and Talent Agency"**

18 Represents established union and non-union children from  
19 age 0 to young adult models for commercial and print  
20 work. They also handle actors for theatrical roles and  
21 music videos. They do not handle children. They will  
22 consider newcomers, young adults down to age 13. The  
23 agency specializes in glamour and high fashion models and  
24 actors and has a petite division. Headshots and/or 3/4  
bodyshots and resumes and VHS tapes are accepted for  
submissions. Call to schedule and appointment.

25 Petitioner, seeking representation, sent a cover letter and zed  
26 card requesting consideration from respondent for representation.

1 Respondent contacted petitioner and scheduled a meeting between the  
2 parties for December 19, 1997 to discuss petitioner's potential for  
3 modeling. Petitioner testified he met with respondent and his  
4 brother, Don, who handed petitioner a business card. A copy of the  
5 card was introduced into evidence, stating, "RICHARD POIRIER, Model  
6 and Talent Agency, Don Poirier, Director". The brothers indicated  
7 that prior to representation it would be necessary for petitioner  
8 to obtain "professional modeling tools", i.e., photographs and zed  
9 cards.

10 4. Respondent then indicated that he owned a  
11 professional full service photography business which could produce  
12 the required tools necessary for representation. Respondent's  
13 photography business operated under the name, "Models Supplies and  
14 Services Boutique" (hereinafter "Boutique"). Respondent testified  
15 that he instructed petitioner that he could obtain his photographs  
16 anywhere he wanted and respondent's representation was not  
17 conditional upon respondent providing the photographs.

18 5. On December 22, 1997, petitioner decided to have  
19 "Boutique" prepare the photographs. Petitioner testified the  
20 parties entered into and confirmed an oral agreement for  
21 representation, entitling respondent to 25% of petitioner's future  
22 earnings. Respondent's brother conducted the photography shoot on  
23 December 23, 1997. After petitioner examined the photos and chose  
24 several shots to be placed on his zed card, it was stipulated that  
25 petitioner paid \$3,691.33 for airbrushed photos and 1000 Zed cards.  
26 Petitioner, satisfied with the quality of the photos and anxious to  
27 receive them, contacted the respondent on several occasions

1 inquiring about when they would be delivered. Petitioner testified  
2 and introduced into evidence a photocopy of a completed sample zed  
3 card respondent mailed to petitioner, containing the "RICHARD  
4 POIRIER, Model and Talent Agency" logo affixed to the card.  
5 Respondent assured the petitioner the zed cards would be completed  
6 within three weeks.

7           6. While petitioner was waiting for delivery of the zed  
8 cards, respondent called petitioner on Friday, February 27, 1998,  
9 and stated that he had submitted petitioner's photograph and that  
10 a client was interested. He later called back to inform petitioner  
11 that he did not have exactly the right look. Petitioner submitted  
12 into evidence a tape-recorded message left by the respondent  
13 attesting to same.

14           7. Four weeks passed and the photos and zed cards had  
15 not arrived. As a result, petitioner began to doubt the legitimacy  
16 of respondent and contacted the Division of Labor Standards  
17 Enforcement to inquire about respondent's licensing status.  
18 Petitioner was informed the respondent had never been issued a  
19 talent agency license and was prohibited from procuring employment.  
20 Petitioner ceased all communications with respondent and  
21 immediately filed this petition to determine controversy.  
22 Petitioner testified, that had he known respondent was not a  
23 licensed talent agent and could not negotiate employment  
24 opportunities he would never have purchased the photographs or  
25 entered into an oral agreement for representation.

26           8. Respondent's testimony sharply contrasted that of  
27 petitioner in a number of important areas. First, respondent

1 testified he only offers management services to potential clients.  
2 According to Respondent, he was instrumental in drafting the  
3 legislation regulating talent agents and therefore is acutely aware  
4 that he may not procure employment for artists. Respondent  
5 testified that his agency only guides, counsels and directs artists  
6 in their careers, and would not under any circumstances attempt to  
7 obtain work for artists. In short, respondent testified that  
8 because he is only a manager, he is not under the jurisdiction of  
9 the Labor Commissioner, should not be regulated, and may therefore,  
10 produce photographs for any artist.

11 9. For a number of reasons, respondent's testimony  
12 cannot be credited. When asked why respondent's business was  
13 listed in The Working Actor's Guide as a talent agency and not a  
14 management agency, respondent testified that this publication  
15 company randomly chose businesses, and places the advertisement  
16 without the business owner's consent. The undersigned hearing  
17 officer called The Working Actor's Guide to verify respondent's  
18 explanation and was told by current General Manager, Victor Duran,  
19 that each business contained within The Guide must fill out a  
20 submission form detailing the name and description of the business.  
21 After the publication received the form they would call back to  
22 confirm all details of the listing prior to publication, and that  
23 under no circumstances would The Guide place a description of a  
24 business without owner authorization.

25 10. Respondent's credibility is further called into  
26 question when asked to explain why respondent's brother's business  
27 card described him as the director of Richard Poirier's Model and

1 **Talent Agency.** Respondent's explained, that the petitioner "must  
2 have found an old card lying around the office and picked it up,  
3 because at one time between 1990-1992, we filed an application for  
4 a talent agency license. Though we never obtained a license, we  
5 still printed business cards but never used them". To say this  
6 explanation sounded highly unlikely is indeed a generous  
7 characterization of respondent's testimony. Further, Respondent  
8 next explained why the sample zed card petitioner received from  
9 respondent contained the identical talent agency logo as the  
10 business card. Respondent speculated that purportedly, petitioner  
11 fraudulently affixed the logo to the zed card in an attempt to cast  
12 doubt on respondent's credibility. It should be noted that  
13 petitioner's credibility was never in issue. It was clear that  
14 portions if not all of respondent's testimony was fabricated and  
15 inferences must be cast in favor of the petitioner.

16 11. Finally, the most damaging evidence displaying  
17 respondent's inability for truth and veracity in this hearing was  
18 the taped message respondent admittedly left upon petitioner's  
19 answering machine. Respondent had earlier testified that under no  
20 circumstances would respondent attempt to procure employment for an  
21 artist. The message on the tape stated, "David, it's Rich Poirier,  
22 I just spoke with a client. They decided to pass on you. I guess  
23 they wanted someone who may look a little more Hungarian looking.  
24 Your size was perfect, but they just want somebody with a little  
25 different look. Thanks for being available, I'll talk to you next  
26 week." This message left no doubt that respondent was  
27 communicating with third party employers on petitioner's behalf and

1 most importantly spoke volumes about respondent's credibility.  
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4 CONCLUSIONS OF LAW

5 1. Labor Code §1700.4(b) includes "models" in the  
6 definition of "artist". Petitioner's is an "artist" within the  
7 meaning of Labor Code §1700.4(b).

8 2. The primary issue is whether based on the evidence  
9 presented at this hearing did the respondent operate as a "talent  
10 agency" within the meaning of Labor Code §1700.40(a). Labor Code  
11 §1700.40(a) defines "talent agency" as, "a person or corporation who  
12 engages in the occupation of procuring, offering, promising, or  
13 attempting to procure employment or engagements for an artist or  
14 artists." The statute also provides that "talent agencies may in  
15 addition, counsel or direct artists in the development of their  
16 professional careers." Throughout the hearing there was  
17 overwhelming evidence the respondent held himself out to be a  
18 talent agency. A member of the public seeking representation in  
19 the form of a talent agent would undoubtedly be persuaded that the  
20 respondent had the ability to act in this capacity. Respondent's  
21 business cards reflected the talent agency title, as well as,  
22 respondent's listing in a well known actor's guide. Respondent  
23 didn't stop at appearing to be a talent agent, he contacted  
24 petitioner to inform petitioner that he was contacting potential  
25 clients on petitioner's behalf. The tape recorded message offered  
26 into evidence gave the Labor Commissioner undisputed testimonial  
27 evidence of this, directly from respondent's lips. Conversely,

1 respondent did not provide a plausible explanation to refute  
2 petitioner's allegations. It is clear respondent acted in the  
3 capacity of a talent agency within the meaning of Labor Code  
4 §1700.4(a).

5           3. Labor Code §1700.40(a) provides that "no talent  
6 agency shall collect a registration fee." The term "registration  
7 fee" is defined at Labor Code §1700.2(b) as, "any charge made, or  
8 attempted to be made, to an artist for ... photographs,... or other  
9 reproductions of the applicant [or]...any activity of a like  
10 nature." It is well established that a talent agency cannot charge  
11 artists for photos or the production of zed cards.

12           4. Labor Code §1700.40(b) provides that, "[n]o talent  
13 agency may refer an artist to any person, firm, or corporation in  
14 which the talent agency has a direct or indirect financial interest  
15 for other services to be rendered to the artist, including, but not  
16 limited to, photography... or other printing." Respondent  
17 stipulated that he owns both the company representing artist, i.e.,  
18 Richard Poirier Models and Talent, as well as, the photography  
19 business. Respondent has therefore violated both Labor Code  
20 §§1700.40(a) and (b) by referring petitioner to his photography  
21 business and collecting for those photographs.

22           5. Having determined that the amounts for photographs  
23 and zed cards were unlawfully collected by respondent, and as such  
24 clear violations of Labor Code §§1700.40(a) and (b), petitioner is  
25 entitled to reimbursement for the amounts paid to respondent.  
26 Additionally, petitioner is entitled to interest at 10 percent per  
27 annum from the date these amounts were unlawfully collected from

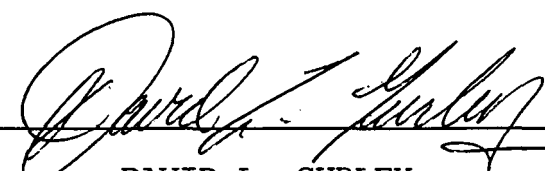


1 respondent, in accordance with the provisions of Civil Code  
2 sections 3287 and 3289.

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5 ORDER

6 For the above-stated reasons, IT IS HEREBY ORDERED that  
7 the respondent Richard Poirier, dba Richard Poirier Models & Talent  
8 and Models Supplies & Services Boutique pay petitioner DAVID  
9 BONSUKAN \$3,691.33 for unlawfully collected fees, and \$553.69 for  
10 interest on these fees, for a total of \$4,245.02.

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12  
13 Dated: 7/15/99

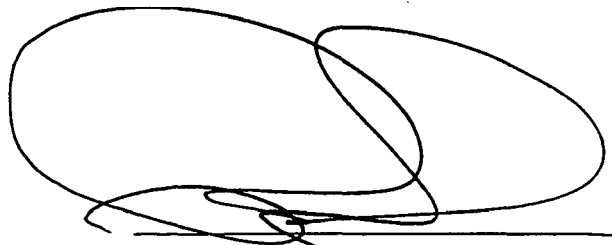
  
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DAVID L. GURLEY

Attorney for the Labor Commissioner

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18 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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23 Dated: 7/19/99

  
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RICHARD CLARK

Chief Deputy Labor Commissioner

