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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

10 RANDY and CHERYL LANE,) No. TAC 8-95
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Petitioner,)
vs.) DETERMINATION OF PETITION
AVALON MODELS,) TO DETERMINE CONTROVERSY
Respondent.)

16 On May 7, 1995, RANDY and CHERYL LANE (hereinafter
17 "Petitioners") filed a petition to determine controversy pursuant
18 to Labor Code §1700.44, alleging that on or about March 27, 1994,
19 petitioners entered into a written agreement with AVALON MODELS
20 (hereinafter "Respondent") under which Respondent agreed to
21 provide petitioner's daughter, Melanie, with modeling classes, a
22 photo shoot, negatives and slides, and portfolio, for which
23 petitioners were to pay AVALON MODELS \$750; that Respondent acted
24 in the capacity of a talent agency by promising to attempt to
25 procure modeling employment for Melanie; and that Respondent
26 breached its contract with petitioners by providing defective ZED
27 cards and by failing to provide petitioners with a portfolio. The
28 relief sought by the petition includes reimbursement of the \$750

1 paid to Respondent for tuition, plus reimbursement of additional
2 amounts for mileage, parking and bridge tolls, ZED card printing
3 costs, photo costs and acting fees. Respondent filed an answer
4 denying that it breached its contract with petitioners while
5 admitting that it charged \$750 in tuition for modeling classes.

6 Notices of hearing were duly served on all parties. The
7 hearing was held as scheduled on March 5, 1995 in San Francisco,
8 California, before Miles E. Locker, attorney for the Labor
9 Commissioner. Petitioners' earlier request to appear
10 telephonically due to inability to travel to the hearing by reason
11 of medical disability had been granted prior to the hearing, and
12 petitioners appeared by telephone by Randy Lane. Respondent
13 appeared in person through Avalon Model's owner, Kristine Hannan.

14 Based on the evidence presented during this hearing, it is
15 found that no other amounts except for the \$750 tuition fee (which
16 purportedly "included" a "free" photo shoot and negatives and
17 slides) were paid by petitioners to respondent. The other amounts
18 for which petitioners now seek reimbursement were not paid to
19 respondent (for example, petitioners paid a printing company for
20 the costs of producing the ZED cards from the negatives provided
21 by Respondent).

22 Turning to the \$750 paid for tuition (and arguably, the photo
23 shoot, negatives and slides), the evidence establishes that
24 petitioners made an initial installment payment on March 27, 1994
25 (the same day the 'Student Enrollment Agreement' was executed) and
26 a final payment on April 28, 1994 (one day after Melanie completed
27 her modeling classes). Thus, no payments were made within the
28 one-year period preceding the filing of this petition on

1 May 7, 1995.

2 Labor Code §1700.44(c) sets forth the limitations period for
3 filing a petition to determine controversy under the Talent
4 Agencies Act. The statute provides that "no action or proceeding
5 shall be brought pursuant to this chapter with respect to any
6 violation which is alleged to have occurred more than one year
7 prior to commencement of the action or proceeding". Here, this
8 one-year limitation period precludes petitioners from bringing a
9 proceeding for recovery of monies paid to respondent more than one
10 year prior to the filing of the petition. Regardless of the
11 underlying merits of this controversy, the one-year statute of
12 limitations contained at Labor Code section 1700.44(c) compels
13 dismissal of the petition. Consequently, IT IS HEREBY ORDERED
14 that the petition to determine controversy is DISMISSED with
15 prejudice.

16 DATED: 3/7/96

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

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20 The above Determination of Petition to Determine Controversy
21 is adopted by the Labor Commissioner in its entirety.

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23 DATED: 3/12/96

Roberta E. Mendonca
ROBERTA MENDONCA
STATE LABOR COMMISSIONER

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