

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

11

OF THE STATE OF CALIFORNIA

12

13 HELEN CARO,

No. TAC 48-95

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Petitioner,

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vs.

DETERMINATION OF
CONTROVERSY

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IVAN ADKISON dba ADKISON MODEL
MANAGEMENT,

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Respondent.

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INTRODUCTION

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The above-captioned petition to determine controversy, filed on December 27, 1995, alleges that respondent failed to pay petitioner the proper amount owed to her in connection with modeling work for which respondent had received full payment from the customer. The petition was served on respondent on April 25, 1996. Respondent failed to file an answer to the petition. Notice of a hearing was duly served on all parties on June 3, 1996. This hearing was held, as scheduled on July 1, 1996 in San Francisco, California, before the undersigned attorney for the Labor Commissioner, specially designated as hearing officer. Petitioner appeared in propria persona; Respondent failed to appear. Based on the evidence presented at hearing, the Labor

1 Commissioner adopts the following determination of controversy.

2 FINDINGS OF FACT

3 1. Petitioner is a model and was previously represented by
4 Palmer's Model & Talent Agency. Her agent at Palmer's, Michael
5 Washington, procured two commercial modeling jobs for her with
6 'Media Loft' for August 15 and August 17, 1995, for which 'Media
7 Loft' was to pay a total of \$550, consisting of a 10% agency fee
8 and a balance of \$500 for petitioner. Petitioner performed these
9 modeling services pursuant to this agreement.

10 2. In August 1995, Michael Washington left Palmer's and
11 began working as an agent for respondent Ivan Adkison dba Adkison
12 Model Management. Petitioner decided to follow her agent to this
13 new agency. Petitioner agreed to pay respondent, rather than
14 Palmer's, the 10% commission for her modeling job with 'Media
15 Loft', and respondent sent an invoice to 'Media Loft' for
16 petitioner's modeling services.

17 3. On October 31, 1995, 'Media Loft' issued a check made out
18 to Adkison Model Management in the amount of \$550 as payment for
19 petitioner's modeling services. This check was received by
20 respondent sometime between November 7, 1995 and November 21,
21 1995, the date it was cashed by respondent.

22 4. Despite petitioner's repeated demands for payment,
23 respondent failed to make any payment to her for the 'Media Loft'
24 modeling jobs until December 20, 1995, when Ivan Adkison advised
25 petitioner that he had made out a check to her in the amount of
26 \$400, and that it was ready for her to pick up. Petitioner
27 accepted this check under protest, complaining that it was less
28 than the full amount she was owed.

1 5. Neither respondent nor Michael Washington has ever been
2 licensed as a talent agency by the State Labor Commissioner.

3 6. Petitioner incurred \$25 in costs in connection with the
4 service of the petition on the respondent.

5 CONCLUSIONS OF LAW

6 1. Petitioner is an "artist" within the meaning of Labor
7 Code §1700.4(b). Respondent is a "talent agency" within the
8 meaning of Labor code §1700.4(a). The Labor Commissioner has
9 jurisdiction over this controversy pursuant to Labor Code
10 §1700.44.

11 2. Labor Code §1700.5 provides that "no person shall engage
12 in or carry on the occupation of a talent agency without first
13 procuring a license therefor from the Labor Commissioner." Any
14 agreement between an artist and an unlicensed talent agency is
15 unlawful and void ab initio, and the unlicensed talent agency has
16 no right to retain commissions arising under such an agreement.
17 Waisbren v. Peppercorn Productions, Inc. (1995) 41 Cal.App.4th
18 246, Buchwald v. Superior Court (1967) 254 Cal.App.2d 347.

19 3. Here, the agreement to allow respondent to retain
20 commissions on petitioner's earnings is void from its inception
21 and respondent has no right to retain the \$150 charged to
22 petitioner as a commission¹ on her earnings for the 'Media Loft'
23 jobs. This amount must be reimbursed to petitioner.

24 4. Under Labor Code §1700.25(e) and Civil Code sections 3287
25 and 3289, petitioner is entitled to interest on the improperly

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27 ¹ It should be noted that even if respondent were licensed and could
28 legally collect commissions, the amount charged here was three times
greater than the amount that the parties agreed to.

1 withheld commissions, at the rate of 10% per year from
2 November 21, 1995, in the present amount of \$12.75.

3 5. Petitioner is also entitled to reimbursement of her costs
4 for serving the petition in the amount of \$25.

5 ORDER

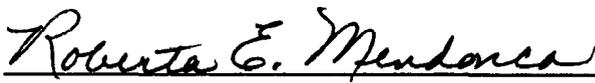
6 For the above reasons, IT IS HEREBY ORDERED that Respondent
7 IVAN ADKISON, an individual dba ADKISON MODEL MANAGEMENT, pay
8 petitioner HELEN CARO \$150 for unlawfully collected commissions,
9 \$12.75 in interest, and \$25 in costs, for a total of \$187.75.

10 DATED: 9/26/96

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12 _____
13 MILES E. LOCKER
14 Attorney for the Labor Commissioner

15 The above Determination is adopted by the Labor Commissioner
16 in its entirety.

17 DATED: 9/27/96

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20 ROBERTA E. MENDONCA
21 STATE LABOR COMMISSIONER

