

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 JOY JONES,) Case No. TAC 33-00
14) Petitioner,)
15 vs.) DETERMINATION OF
16) CONTROVERSY
17)
18)
19 TROY McVEY-SOLAREK & MITCHELL AGENCY)
20 INC., (a.k.a. MITCHELL TALENT AGENCY)
21 and a.k.a. MITCHELL MODEL MANAGEMENT))
22)
23 Respondents.)
24)
25)

26 INTRODUCTION

27 The above-captioned petition was filed on October 13,
2000, by JOY JONES, (hereinafter "Petitioner"), alleging that TROY
McVEY-SOLAREK acting on behalf of MITCHELL AGENCY INC., a.k.a.
MITCHELL TALENT AGENCY and/or MITCHELL MODEL MANAGEMENT,
(hereinafter "Respondent" or "Mitchell"), failed to pay wages
earned for modeling performed in violation of Labor Code
§1700.25(a)¹. Petitioner further alleges respondent willfully
withheld petitioner's earnings and is therefore entitled to

¹ All statutory citations will refer to the California Labor Code unless otherwise indicated.

1 attorney's fees and interest pursuant to 1700.25(e)(1)and(2).
2 Finally, petitioner seeks disgorgement of all commissions collected
3 and held by respondent.

4 Respondent telephoned the hearing officer designated to
5 hear this matter and indicated her response to the petition would
6 be filed on the day of the hearing. The hearing was originally
7 scheduled on December 20, 2000. The hearing was continued to
8 January 5, 2001, on request of the respondent. On January 4, 2001,
9 respondent again requested a continuance because Troy Solarek's
10 husband, a corporate officer and material witness, had broken his
11 arm in a ski accident. The hearing was again continued and
12 eventually held on January 24, 2001, before the undersigned
13 attorney for the Labor Commissioner. The petitioner appeared with
14 her attorney Carita T. Shanklin of Skadden, Arps, Slate, Meagher &
15 Flom LLP. The respondent failed to appear. Based upon the
16 testimony and evidence presented at this hearing, the Labor
17 Commissioner adopts the following Determination of Controversy.

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19 FINDINGS OF FACT

20 1. Petitioner, a professional model, entered into an
21 oral contract with the respondent on or around September, 1996.
22 Respondent procured modeling engagements on behalf of the
23 petitioner in exchange for 20% of petitioner's earnings. The
24 employer/client paid petitioner's earnings directly to the
25 respondent who then deducted a 20% commission and remitted the
26 remaining wages to the petitioner. The relationship operated in
27 this fashion for the next several years.

1 2. Between the months of April 17, 2000 and July 26,
2 2000, petitioner performed several modeling engagements procured by
3 the respondent, whereby the respondent collected petitioner's
4 earnings from the employer/client, but then failed to remit those
5 earnings to her.

6 3. The modeling assignments that were procured by the
7 respondent; performed by the petitioner and monies which were not
8 disbursed include the following:

9 A) On April 17, 2000, petitioner completed a photo
10 shoot for Levi Strauss & Co. Petitioner supplied invoices
11 establishing that respondent collected \$2,150.00 on behalf of the
12 petitioner.

13 B) On April 29, 2000, petitioner completed a photo
14 shoot for Eddie Bauer. Petitioner supplied invoices establishing
15 that respondent collected \$3,111.00 on behalf of the petitioner.

16 C) On July 26, 2000, petitioner completed a photo
17 shoot for Eddie Bauer. Petitioner supplied invoices establishing
18 that respondent collected \$3,120.00 on behalf of the petitioner.

19 D) On June 20, 2000, petitioner completed a photo
20 shoot for Mervyn's. Petitioner supplied invoices establishing that
21 respondent collected \$562.50 on behalf of the petitioner.

22 E) On June 22, 2000, petitioner completed a photo
23 shoot for Mervyn's. Petitioner supplied invoices establishing that
24 respondent collected \$562.50 behalf of the petitioner.

25 F) On June 23, 2000, petitioner completed a photo
26 shoot for Mervyn's. Petitioner supplied invoices establishing that
27 respondent collected \$562.50 on behalf of the petitioner.

1 G) On June 29, 2000, petitioner completed a photo
2 shoot for Nordstrom. Petitioner supplied invoices establishing
3 that respondent collected \$2,000.00 on behalf of the petitioner.

4 4. Additional credible testimony by the petitioner,
5 buttressed by phone logs and detailed memorandums reflected that
6 the respondent stated to the petitioner that Mitchell Talent had
7 not been paid by the employer/client and that monies earned would
8 be forthcoming as soon as payment from the client was rendered.
9 Petitioner, skeptical of respondent's story, directly contacted the
10 various clients of Mitchell to verify whether the clients had
11 indeed paid for petitioner's services. The clients (all well known
12 retailers in the garment manufacturing industry) indicated that
13 payment had been made soon after the photo shoot.

14
15 LEGAL ANALYSIS

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

19 2. Respondent is a licensed California talent agent.

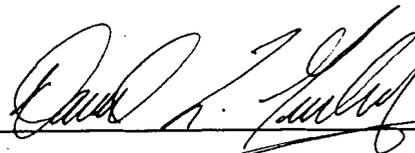
20 3. Labor Code 1700.25 states in pertinent part:

21
22 (a) A licensee who receives any payment of funds on
23 behalf of an artist shall immediately deposit that amount
24 in a trust fund account maintained by him or her in a
25 bank or other recognized depository. The funds, less the
26 licensee's commission, shall be disbursed to the artist
27 within 30 days after receipt.

1 petitioner is entitled to reasonable attorney's fees. IT IS SO
2 ORDERED.

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4
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6 Dated:

2/15/01



7 DAVID L. GURLEY

8 Attorney for the Labor Commissioner
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10
11 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:
12

13
14 FEB 15 2001

15
16 Dated: _____



17 ARTHUR S. LUJAN

18 State Labor Commissioner
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