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7
8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10
11 VIRGINIA MYLENKI,) No. TAC 18-05
12)
Petitioner,)
13)
vs.)
14)
PENELOPE LIPPINCOTT, an individual dba) DETERMINATION OF
FINESSE MODEL MANAGEMENT aka FINESSE) CONTROVERSY
15 MODELS,)
16)
Respondent.)

17
18 The above-captioned matter, a petition to determine
19 controversy under Labor Code §1700.44, came on regularly for
20 hearing on July 18, 2005 in San Francisco, California, before the
21 undersigned attorney for the Labor Commissioner, assigned to hear
22 the matter. Petitioner, VIRGINIA MYLENKI appeared in propria
23 persona; Respondent, PENELOPE LIPPINCOTT appeared and was
24 represented by her attorney, Ben Gale. For purposes of hearing,
25 this matter was consolidated with two other petitions filed against
26 the same respondent, TAC No. 14-05, filed by Laurel Suess, as
27 guardian ad litem for Martina Suess, a minor, and TAC No. 16-05,
28 filed by Leonor Tiongson. Based on the evidence presented at this

1 consolidated hearing and on the other papers on file in this
2 matter, the Labor Commissioner hereby adopts the following
3 decision.

4 FINDINGS OF FACT

5 1. At all times relevant herein, Penelope Lippincott was an
6 individual doing business as Finesse Model Management aka Finesse
7 Models (hereinafter "Respondent"), located in Sausalito,
8 California. Respondent has not been licensed as a talent agency by
9 the State Labor Commissioner at any time while doing business as
10 Finesse Model Management aka Finesse Models.

11 2. At all times relevant herein, Virginia Mylenki has resided
12 in ~~El Cerrito~~ Kentfield, California. In January 2003, she met Lippincott,
13 who urged her to become a model, stating that there were lots of
14 jobs through her modeling agency. On January 29, 2003, Mylenki
15 enrolled in a professional modeling workshop offered by the
16 Respondent, and paid the Respondent for this workshop, and for a
17 photo shoot, along with the services of a professional make-up
18 artist and hair stylist, and for 50 zed cards¹, with a total

19 _____
20 ¹ The two-sided zed cards show five photos of Mylenki, and
21 list her first name, height, measurements, dress size, and the
22 color of her hair and eyes. It also contains the name, address and
23 telephone number of Finesse Model Management, printed onto the card
24 (i.e., not affixed to a removable sticker). Zed cards are
25 typically used in the modeling industry as the means of advertising
26 the model to a potential customer, and providing the customer with
27 a number to call for securing the model's services. In written
28 materials provided to its models, Respondent explained, "your ZED
card is the most important tool we have with which to market
you.... Your fashion ZED card is submitted for Fashion Runway and
Print work." In a document given to its models, explaining
audition policies and procedures, models were instructed to "make
sure to bring portfolio and zed card to all auditions." Respondent
never offered to provide zed cards to petitioner without
respondent's business name, address and phone number, or with any
other business name, address and phone number as a contact for
potential purchaser's of the petitioner's modeling services.

1 payment of \$1,966.96 to Finesse Model Management. On March 1,
2 2003, Mylenki paid Respondent an additional \$1,603.38 for
3 additional photo shoots and prints, and for a "European model's
4 book." On March 5, 2003, Mylenki paid \$4,6000 to Respondent in
5 order to attend the 2003 MAAI Modeling Convention in New York City,
6 scheduled for the next month. Lippincott had encouraged Mylenki to
7 sign up to attend this convention, stating that it would open up
8 many job opportunities. This payment covered more photo shoots and
9 prints, the cost of attending the convention and participating in
10 various modeling competitions, and lodging. On April 14, 2003,
11 Mylenki paid \$546.96 to the Respondent for additional photograph
12 prints. There was no formal written contracts reflecting these
13 agreements between petitioner and respondent for the purchase of
14 these products or services, however, Respondent provided the
15 petitioner with a printed description of all of its "programs" and
16 "packages," and their costs, and there are written purchase orders
17 reflecting which "programs" and "packages" were purchased, and the
18 amounts paid. Neither the written description of the various
19 "programs" and "packages," nor the purchase orders contain any
20 statement indicating that petitioner had a right to a refund, or a
21 right to cancel the agreement to purchase the services or products.

22 3. Records presented by Mylenki indicate that during the
23 period from May 9, 2003 (the date of her first modeling assignment
24 with Finesse) until December 2, 2004 (the date of her last), there
25 were about 20 different occasions in which Mylenki performed paid
26 modeling assignments that were obtained through the Respondent.
27 All of the payments that Mylenki made to the Respondent that are
28 detailed in paragraph 2, above, were made before she had obtained

1 the first of these modeling assignments.

2 4. For all of her modeling assignments performed in 2003,
3 Respondent deducted a commission equal to 20% of her earnings for
4 runway modeling, and 25% of her earnings for print modeling. These
5 commissions are reflected in a document entitled "Job and
6 Commission Payment Schedule - Year 2002," which Respondent provided
7 to Mylenki in early 2003. Starting in January 2004, Respondent
8 apparently discontinued the practice of charging commissions on its
9 model's earnings, as reflected in a document "Job Payment Schedule-
10 Year 2004," which was provided to petitioner in early 2004. Both
11 of these documents contained information about respondent's
12 practices regarding modeling assignments and the payment of models.
13 Among other things, these documents provided that "Finesse will
14 invoice clients after all time sheets have been turned in," that
15 models should "allow 60-90 days from completion of job for model
16 pay," and that job checks are distributed only once a month, at a
17 meeting on the second Tuesday of each month. Finally, the document
18 dated 2004 purports that the models are independent contractors,
19 ~~and further purports to release Finesse from liability for any~~
20 injury that may occur while performing work on the premises.

21 5. Respondent maintained a telephone number that provided
22 recorded information about upcoming auditions for modeling work.
23 This information was frequently updated, and in a written document
24 given to all models "on the Finesse roster," Respondent listed this
25 number and directed the models to "call the Finesse 'hot line'
26 daily.... It is your responsibility to keep abreast of open calls
27 and job opportunities." This same document warned models to "never
28 ever give out your home phone number or address to the client," on

1 an audition, but instead to "always give out the Finesse phone
2 number and address." Next, models were instructed to "call the
3 Finesse 'Hot Line' for audition results, call backs, etc." In
4 another document dealing with modeling assignment policies and
5 procedures, Respondent instructed its models "to call Finesse and
6 let us know of your finish time and a brief rundown on the job, as
7 soon as the assignment is completed. Finally, in a document
8 entitled "Who to Contact," Respondent instructed its models to
9 contact Brandi Morgan (Penelope Lippincott's daughter) for
10 "job/audition information," and to learn "what jobs I have been
11 submitted for."

12 6. Lippincott's business card, which she provided to models
13 and to clients, identified her as a "model & talent manager."

14 7. Petitioner testified that based on the manner in which
15 Respondent operated its business, and the content of written and
16 oral communications with the Respondent, petitioner believed that
17 Respondent was offering or promising to obtain modeling employment
18 on her behalf with third party clients, and that Respondent was
19 ~~attempting to obtain (and had obtained) such employment for her, at~~
20 least as to some of her modeling jobs.²

21 8. The evidence indicates that petitioner has been paid for
22 all of the modeling assignments including those which she performed
23 on behalf of the Respondent, or for third-party clients on work
24

25 ² For just one example of employment with a third-party
26 employer, on September 27, 2004 Mylenki performed modeling services
27 in connection with a print modeling job for Corin Rasmussen Jewelry
28 Designs, a job Mylenki learned about from Respondent. Mylenki got
this job after auditioning for it Respondent's headquarters. The
client, Corin Rasmussen, was present at the audition and decided
which models should be hired for the job, and which pieces of
jewelry should be worn by each model for the photo shoot.

1 that was obtained by the Respondent. However, payments were often
2 made months after the work was performed, and only after Mylenki
3 made repeated demands for payment. For example, although Mylenki
4 performed modeling services for the Respondent on December 2, 2004
5 in connection with a fashion show produced by the Respondent for
6 the purpose of promoting the Respondent's modeling business,
7 Respondent failed to pay Mylenki her compensation of \$125 for her
8 services at this event until March 8, 2005.

9 9. Mylenki terminated her affiliation with Respondent in
10 January 2005.

11 10. Respondent testified that Finesse never procured
12 employment for a model with any third party, and that she never
13 negotiated with any third party as to what a model should be paid
14 for modeling services. Instead, according to Respondent, Finesse
15 enters into agreements with third parties for the purchase of
16 Finesse's services as a "production company," and under these
17 agreements the third party pays Finesse to produce a fashion runway
18 show or a print advertisement³. Clients are not billed for the
19 ~~models' services, they are billed for Finesse's "production~~
20 services." In its capacity as a "production company," Finesse
21

22 ³ Following the close of the hearing, Respondent provided
23 copies of only two such agreements to produce events: an agreement
24 between the Respondent and Robin Montero Productions concerning the
25 production of the October 7, 2004 "Weddings in the Wine Country
26 Bridal Fashion Show," and an agreement between "Finesse Modeling
27 Agency" (another of Respondent's fictitious business names) and
28 General Growth Properties, Inc./New Park Mall, concerning the
November 13, 2004 fashion show at that mall, under which Respondent
agreed to provide models, contact mall tenants for fittings prior
to the start of the fashion show, run the fashion show, and return
the merchandise to retailers after completion of the show.
Respondent did not provide copies of agreements to produce any
other fashion show or print advertisement.

1 hires the necessary models, photographers, graphic designers, hair
2 stylists, etc., needed to perform the job for which Finesse was
3 hired. Finesse, not the third party client, decides how much to
4 pay the models, and anyone else hired in connection with the
5 production, as compensation for their services, and these payments
6 are made by Finesse.⁴ However, Respondent admitted that the
7 decision on which model to hire for a job is not hers alone,
8 acknowledging that she "need[s] to show clients zed cards, so they
9 can decide whether a model has the look they want."

10 11. Mylenki filed this petition to determine controversy on
11 April 4, 2005, seeking reimbursement of all amounts she paid to the
12 Respondent, allegedly \$8,812.75. (Based on the evidence presented
13 at this hearing, this amount is actually \$8,717.30.) Mylenki also
14 seeks an award of all appropriate penalties under the Talent
15 Agencies Act. Finally, the petition prays for payment of
16 outstanding modeling earnings in the amount of \$520, however, as
17 indicated above, the evidence presented at hearing reflects that
18 Respondent ultimately paid whatever modeling earnings were due to
19 ~~the petitioner, and Mylenki did not pursue this part of her claim~~
20 at the hearing.

21 12. Respondent filed an answer to the petition on June 6,
22 2005, asserting that "Finesse is not in the business of procuring
23 work for models," but "simply hires models, photographers,
24

25 ⁴ Despite the fact that the model's rate of compensation was
26 solely determined by Finesse, Respondent insisted that these models
27 are not employees of Finesse, but rather, independent contractors.
28 Models were required to sign an acknowledgment stating that "all
models are independent contractors." Respondent testified that in
accordance with her belief that the models are independent
contractors, Respondent is not covered by any workers compensation
insurance policy.

1 stylists, make-up artists and graphic designers on a per assignment
2 bases [sic] for the projects that we are engaged to develop or
3 produce." According to Respondent, her business consists of "a
4 full service marketing and production company," Finesse Creative
5 Productions, which "specializes[s] in the production of print ads,
6 live productions and promotional events, for retailers, designers
7 and manufacturers," and which "own[s] a new bay area fashion
8 magazine, where advertising is sold and ad development is a service
9 provided to our clients." In addition, the answer states that "we
10 have an In-House model development division, Finesse Model
11 Management," which runs "workshop programs ... strictly for skill
12 development." Finally, Respondent's answer acknowledged that
13 although she operated a talent agency, known as Clymer's Modeling
14 and Talent Agency, for a period of time from the late 1980's to
15 early 1990's, "[d]ue to the change in laws at that time regarding
16 the agency business we chose to eliminate that service and proceed
17 in production only."⁵

18
19 ⁵ Two determinations issued by the Labor Commissioner in cases
20 that were filed against Clymer's Modeling and Talent Agency, TAC
21 No. 11-87 and TAC No. 60-94, explained the various requirements of
22 the Talent Agencies Act. In TAC 60-94, the Labor Commissioner
23 concluded that Respondent (then known by her married name, Penny
24 Clymer) had engaged in the occupation of a talent agency without a
25 license, and for that reason, determined that her contract with a
26 model was void and unenforceable, and ordered her to reimburse the
27 model for unlawfully collected fees. Previously, in TAC No. 11-87,
28 covering a period of time when Respondent was licensed as a talent
agency, the Labor Commissioner ordered the partial reimbursement of
amounts charged to a model for photo composites, and warned
Respondent that pursuant to a newly enacted amendment to the Talent
Agencies Act, talent agencies would no longer be allowed to charge
models anything for photographs. In the face of these Labor
Commissioner determinations, Respondent decided to change the
method by which she conducts her business, believing that by
restructuring as an ostensible "production company," the Talent
Agencies Act would no longer apply to her business operations.

1 LEGAL ANALYSIS

2 1. Labor Code §1700.4(b) includes "models" within the
3 definition of "artists" for purposes of the Talent Agencies Act
4 (Labor Code §§1700-1700.47). Petitioner is therefore an "artist"
5 within the meaning of Labor Code section 1700.4(b).

6 2. Labor Code §1700.4(a) defines a "talent agency" as any
7 person or corporation "who engages in the occupation of procuring,
8 offering, promising, or attempting to procure employment or
9 engagements for an artist." To be sure, the Labor Commissioner has
10 held that "a person or entity that employs an artist does not
11 'procure employment' for that artist within the meaning of Labor
12 Code §1700.4(a), by directly engaging the services of that
13 artist.... [T]he 'activity of procuring employment,' under the
14 Talent Agencies Act, refers to the role an agent plays when acting
15 as an intermediary between the artist whom the agent represents and
16 the third party employer who seeks to engage the artist's
17 services." *Chinn v. Tobin* (TAC No. 17-96) at p. 7. Following this
18 rationale, in *Kern v. Entertainers Direct, Inc.* (TAC No. 25-96),
19 ~~the Labor Commissioner concluded that a business that provided~~
20 clowns, magicians and costumed characters to parties and corporate
21 events did not act as a talent agency, within the meaning of Labor
22 Code §1700.4(a). In *Kern*, the respondent set the prices that it
23 charged to customers for the entertainers' services, selected the
24 entertainers that it provided to the customers, determined the
25 compensation that it paid to these entertainers for providing these
26 services, and thus, we concluded, "became the direct employer of
27 the performers." Significantly, however, in both *Chinn* and in
28 *Tobin*, no evidence was presented that the respondents "ever

1 procured or promised or offered or attempted to procure employment
2 for petitioners with any third party. That lack of evidence as to
3 promises or offers to obtain employment with third parties or
4 actual procurement activities" was found to distinguish those cases
5 from cases in which persons or business were determined to be
6 acting as talent agencies within the meaning of Labor Code
7 §1700.4(a). *Chinn v. Tobin, supra*, at p. 11. Thus, in determining
8 whether Respondent engaged in the occupation of a "talent agency,"
9 we must analyze whether Respondent engaged in any of the activities
10 which fall within the statutory definition of "talent agency,"
11 i.e., procuring or offering to procure or promising to procure or
12 attempting to procure modeling employment for the petitioner with a
13 third party employer.

14 3. Labor Code §1700.5 provides that "[n]o person shall engage
15 in or carry on the occupation of a talent agency without first
16 procuring a license ... from the Labor Commissioner." The Talent
17 Agencies Act is a remedial statute that must be liberally construed
18 to promote its general object, the protection of artists seeking
19 professional employment. ~~*Buchwald v. Superior Court* (1967) 254~~
20 *Cal.App.2d* 347, 354. For that reason, the overwhelming weight of
21 judicial authority supports the Labor Commissioner's historic
22 enforcement policy, and holds that "even the incidental or
23 occasional provision of [talent agency] services requires
24 licensure." *Styne v. Stevens* (2001) 26 Cal.4th 42, 51. These
25 services are defined at Labor Code §1700.4(a) to include offering
26 to procure or promising to procure or attempting to procure or
27 procuring employment for an artist. In analyzing the evidence of
28 whether a person engaged in activities for which a talent agency

1 license is required, "the Labor Commissioner is free to search out
2 illegality lying behind the form in which the transaction has been
3 cast for the purpose of concealing such illegality." *Buchwald v.*
4 *Superior Court, supra*, 254 Cal.App.2d at 355.

5 4. The evidence before us leads us to conclude that at least
6 on some occasions Respondent procured modeling employment for
7 petitioner with third party employers. The evidence with respect
8 to the audition and photo shoot for Corin Rasmussen Jewelry Designs
9 leaves absolutely no doubt that Corin Rasmussen was a third party
10 employer who hired the petitioner to perform modeling services, and
11 that this employment was procured through Respondent's efforts.
12 Despite Respondent's claim that whenever it provided a client with
13 a model's services, she did so as a "producer" of the client's
14 fashion runway show or print advertisement, Respondent failed to
15 present corroborating testimony from any clients. Moreover, the
16 Respondent's documentary evidence related to only some of the
17 modeling engagements which she had obtained for the petitioner.
18 The status of the respondent as a "producer" of these print
19 ~~advertisements and fashion shows is an affirmative defense to the~~
20 allegation that respondent acted as a "talent agency" by obtaining
21 work for the model(s), and as such, the burden of proof shifts to
22 the Respondent once the petitioner establishes (as was the case
23 here) that the Respondent obtained modeling work for the
24 petitioner. At least as to some of the modeling employment at
25 issue herein, Respondent failed to meet this burden of proof to
26 establish she was the model's employer. But even assuming,
27 *arguendo*, that respondent never procured and never attempted to
28 procure modeling employment for the petitioner with any third party

1 employer, that does not dispose of the question of whether
2 Respondent ever offered to procure or promised to procure such
3 employment for the petitioner. Not only did the petitioner believe
4 that Respondent had offered and promised to do just that, but more
5 importantly, taking the evidence as a whole, we conclude that any
6 reasonable person in petitioner's position would have formed that
7 same belief. There is simply no other way to interpret many of
8 Respondent's policies and procedures, and Respondent's oral and
9 written representations of what she could or would do for the
10 petitioner. These policies and procedures and representations
11 include the use of zed cards with Finesse's name, address and
12 telephone number printed on the cards, instructions that the zed
13 cards are used "to market you," instructions to telephone
14 Respondent's business to find out "what jobs you have been
15 submitted for," business cards that identified the Respondent as a
16 "model and talent manager," instructions to call Respondent's
17 office at the completion of every modeling job to report that the
18 job has ben completed (something that would scarcely seem necessary
19 ~~if Respondent or other employees of the Respondent were involved in~~
20 the "production" of the fashion show or print advertisement for
21 which the petitioner performed modeling services), and the
22 Respondent's statement that work will be available because "I have
23 lots of clients." Each and every one of these policies and
24 procedures and representations necessarily has the effect of
25 leading the model to believe that Respondent will attempt to
26 procure employment on behalf of the model with third party
27 employers, and thus, as a matter of law, constitutes an offer to
28 procure such employment. Consequently, we conclude that through

1 Respondent's published policies and procedures and representations
2 to models, Respondent "offered to procure employment" for models
3 with third party employers, and therefore, engaged in the
4 occupation of a "talent agency" within the meaning of Labor Code
5 §1700.4(a). As such, despite Respondent's efforts to structure its
6 operations (or perhaps more accurately, efforts to appear to have
7 structured its operations) so as to avoid the requirements of the
8 Talent Agencies Act, Respondent violated the Act by operating as a
9 "talent agency" without the requisite license⁶.

10 5. An agreement between an artist and a talent agency that
11 violates the licensing requirement of the Talent Agencies Act is
12 illegal, void and unenforceable. *Styne v. Stevens, supra*, 26
13 Cal.4th at 51; *Waisbren v. Peppercorn Productions, Inc.* (1995) 41
14 Cal.App.4th 246, 262; *Buchwald v. Superior Court, supra*, 254
15 Cal.App.2d at 351. Having determined that a person or business
16

17 ⁶ Ironically, these efforts to reconstitute her business as a
18 "production company" have created a whole new set of liabilities
19 for the Respondent. The evidence presented compels the conclusion
20 that at least as to some of petitioner's modeling assignments,
21 Respondent was the petitioner's employer - by effectively engaging
22 her to perform modeling services as part of a fashion show or print
23 advertisement produced by Respondent, by establishing her rate of
24 compensation, and by exercising control over her work (determining
25 the time and place the work would be performed, the fashions she
26 would wear while modeling, etc.). As an employer, Respondent
27 violated a raft of Labor Code protections for employees, including
28 Labor Code §204 (which requires the payment of wages to employees
no later than 26 days after the work is performed, between the 16th
and 26th day of any month in which the work was performed between
the 1st and 15th day of that month, and between the 1st and 15th day
of the month following any month in which work was performed
between the 16th day and the final day of the month - - regardless
of when the employer receives payment from a customer), Labor Code
§226 (requiring itemized wage statements accompanying each payment
of wages), Labor Code §1299 (requiring employers to keep work
permits on file in connection with the employment of minors), and
Labor Code §3700 (requiring workers compensation insurance
coverage).

1 entity procured, attempted to procure, promised to procure, or
2 offered to procure employment for an artist without the requisite
3 talent agency license, "the [Labor] Commissioner may declare the
4 contract [between the unlicensed talent agent and the artist] void
5 and unenforceable as involving the services of an unlicensed person
6 in violation of the Act." *Styne v. Stevens, supra*, 26 Cal.4th at
7 55. Moreover, the artist that is party to such an agreement may
8 seek disgorgement of amounts paid pursuant to the agreement, and
9 may be "entitle[d] to restitution of all fees paid to the agent."
10 *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. The term "fees" is
11 defined at Labor Code §1700.2(a) to include "any money or other
12 valuable consideration paid or promised to be paid for services
13 rendered or to be rendered by any person conducting the business of
14 a talent agency." Restitution is therefore not necessarily limited
15 to amounts that the unlicensed agent charged for procuring or for
16 attempting to procure employment, but rather, may include amounts
17 paid for services for which a talent agency license is not
18 required.

19 ~~6. As a separate substantive basis for recovery of the amount~~
20 that were paid to the respondent, Labor Code §1700.40(a) provides
21 that "[n]o talent agency shall collect a registration fee." Labor
22 Code §1700.2(b) defines "registration fee" as "any charge made, or
23 attempted to be made, to an artist for any of the following
24 purposes ... (3) photographs ... or other reproductions of the
25 applicant." Subsection (b) of §1700.40 provides that "[n]o talent
26 agency may refer an artist to any person, firm or corporation in
27 which the talent agency has a direct or indirect interest for other
28 services to be rendered to the artist, including but not limited to

1 photography, ..., coaching, dramatic school ... or other printing."
2 Labor Code §1700.40 therefore made it unlawful for the Respondent
3 to collect of the amounts that were paid by petitioner for photo
4 shoots, prints, zed cards, a portfolio and for attendance at
5 respondent's modeling workshop. Labor Code §1700.40(a) provides
6 for the imposition of a penalty equal to the amount of the
7 unlawfully collected "registration fee," if the artist fails to
8 procure or be paid for employment for which a "registration fee"
9 has been paid.

10 7. However, under the facts of this case, restitution of the
11 amount that was paid and the imposition of this penalty is barred
12 by the statute of limitations that is applicable to proceedings
13 under the Talent Agencies Act, found at Labor Code §1700.44(c).
14 This statute provides: "No action or proceeding shall be brought
15 pursuant to this chapter with respect to any violation which is
16 alleged to have occurred more than one year prior to the
17 commencement of the action or proceeding." To be sure, this
18 proceeding itself is not barred by §1700.44(c), in that the
19 ~~petitioner alleged (and proved) that Respondent violated the Act~~
20 within one year of the filing of the petition by procuring modeling
21 employment with third party employers, and thereby acting as a
22 "talent agency" without the requisite license. But restitution and
23 imposition of a penalty, are forms of affirmative relief that are
24 subject to the one year limitations period set out at Labor Code
25 §1700.44(c), so that an artist is only entitled to restitution of
26 amounts paid to the talent agency within the one year period prior
27 to the filing of the petition to determine controversy. *Greenfield*
28 *v. Superior Court* (2003) 106 Cal.App.4th 743. Here, the payments

1 that petitioner seeks to recover were made to the respondent during
2 the period from January to April 2003, well more than one year
3 prior to the date of the filing of this petition to determine
4 controversy. Likewise, a penalty pursuant to Labor Code
5 §1700.40(a) cannot be awarded where the underlying violation which
6 results in the penalty took place more than one year prior to the
7 date of the filing of the petition to determine controversy. As a
8 result, despite evidence that would compel an order of
9 reimbursement (and likely result in the imposition of a penalty) if
10 these payments had been made within the limitations period, we are
11 unable to grant Mylenki the relief that she seeks through this
12 petition.

13 8. Petitioner may be entitled to remedies under the
14 provisions of the Advance-Fee Talent Services⁷ Act (Labor Code
15 §1701-1701.20), as to which the one year limitations period found
16 at Labor Code §1700.44(c) would not apply. But any available
17 remedies under the Advance-Fee Talent Service Act ("AFTSA") cannot
18 be awarded in the instant proceeding to determine controversy under
19 ~~the Talent Agencies Act (Labor Code §1700-1700.47).~~ Labor Code
20 §1700.44 authorizes the Labor Commissioner to hear and decide
21

22 ⁷ The term "advance-fee talent service" is defined at Labor
23 Code §1701(b) to mean a person who charges, or attempts to charge,
24 or receives an advance fee from an artist for any of the following
25 products or services: procuring, offering, promising or attempting
26 to procure employment or auditions; managing or directing the
27 artist's career; career counseling or guidance; photographs or
28 other reproductions of the artist; lessons, coaching or similar
training for the artist; and providing auditions for the artist.

The term "advance fee" is defined at Labor Code §1701(a) as
any fee due from or paid by an artist prior to the artist obtaining
actual employment as an artist or prior to receiving actual
earnings as an artist or that exceeds the actual earnings received
by the artist.

1 controversies arising under the Talent Agencies Act. In contrast,
2 the provisions of AFTSA may be enforced by the Attorney General,
3 any district attorney, any city attorney, or through the filing of
4 a private civil action. (See Labor Code §§1701.15, 1701.16.)
5 Furthermore, under Labor Code §1701.10(a), any person engaging in
6 the business or acting in the capacity of an advance-fee talent
7 service must first file a bond with the Labor Commissioner in the
8 amount of \$10,000, for the benefit of any person damaged by any
9 fraud, misstatement, misrepresentation or unlawful act or omission
10 under the AFTSA. We hereby take administrative notice of the fact
11 that Respondent has not posted such bond with the Labor
12 Commissioner.

13 ORDER

14 Based on all of the above, IT IS HEREBY ORDERED that despite
15 our finding that Respondent violated the Talent Agencies Act by
16 engaging in the occupation of a talent agency without a license,
17 and by collecting fees that are prohibited under the Act, the
18 statute of limitations found at Labor Code §1700.44(c) precludes us
19 ~~from granting the relief sought by the petition, and that~~
20 therefore, petitioner's request for reimbursement of fees that were
21 paid to respondent and for penalties is denied.

22
23 Dated: 11/22/05

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

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26 ADOPTED AS MODIFIED BY THE LABOR COMMISSIONER AS THE DETERMINATION:

27 Dated: 11/22/05

Donna M. Dell
DONNA M. DELL
State Labor Commissioner