

1 **STATE OF CALIFORNIA**
Department of Industrial Relations
2 Division of Labor Standards Enforcement
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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
10

11 CAMERON RICHARDSON,
12
13 Petitioner,

CASE NO. TAC 26-05

**DETERMINATION OF
CONTROVERSY**

14 vs.

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16 WARNING MODEL MANAGEMENT,
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18 Respondent.

19 The above-captioned matter, a petition to determine controversy under Labor Code
20 §1700.44, came on regularly for hearing on September 7, 2005 in Los Angeles, California,
21 before the undersigned attorney for the Labor Commissioner assigned to hear this case.
22 Petitioner CAMERON RICHARDSON appeared and was represented by her Business
23 Manager, Robert C. Nii. Respondent WARNING MODEL MANAGEMENT, who was
24 properly served with the petition, failed to appear.

25 Based on the evidence presented at this hearing and on the other papers on file in this
26 matter, the Labor Commissioner hereby adopts the following decision.

1 **FINDINGS OF FACT**

2 1. At all times relevant here, Petitioner CAMERON RICHARDSON, (hereinafter
3 referred to as "Petitioner"), has been a resident of California.

4 2. Petitioner is a model.

5 3. Petitioner was previously represented by Respondent WARNING
6 MODEL MANAGEMENT, (hereinafter referred to as "Respondent"). Petitioner ended her
7 relationship with Respondent several years ago due to lack of payment.

8 4. Petitioner testified that Respondent is a licensed Talent Agent.

9 5. During the time that Petitioner was represented by Respondent, the parties had
10 a verbal agreement that Respondent would be entitled to 10% commissions on all earnings
11 arising from employment Respondent procured for Petitioner as a model.

12 6. In 2002, Petitioner appeared in a swimsuit print advertisement for LYCRA.
13 Petitioner testified that this modeling job was procured by Respondent.

14 7. In February, 2005, LYCRA contacted Respondent requesting to re-run the
15 2002 print advertisement. With Petitioner's permission, Respondent re-negotiated with
16 LYCRA to re-use Petitioner's image in the print advertisement for a \$15,000.00 fee.

17 8. Soon thereafter, LYCRA re-ran the print advertisement featuring Petitioner's
18 image.

19 9. Petitioner testified that in March 2005, Respondent verbally acknowledged to
20 her that LYCRA had paid Respondent the \$15,000.00 fee. Petitioner testified that
21 Respondent promised to forward Petitioner her fee. However, Respondent failed to do so.

22 10. On April 12, 2005, Petitioner faxed Respondent a demand letter requesting
23 payment of the \$15,000.00 fee.

24 11. Petitioner testified that on several occasions during the month of May, 2005,
25 Respondent informed her that the \$15,000.00 would be forthcoming. However, no such
26 payment was ever made to Petitioner. Accordingly, on June 9, 2005, Petitioner filed a
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1 Petition to Determine Controversy, requesting payment of the \$15,000.00 fee.

2 **LEGAL ANALYSIS**

3 1. Petitioner, a model, is an "artist" within the meaning of Labor Code
4 §1700.4(b).

5 2. Labor Code §1700.25 (a) provides as follows:

6 "A licensee who receives any payment of funds on behalf of an artist
7 shall immediately deposit that amount in a trust fund account maintained
8 by him or her in a bank or other recognized depository. The funds, less
9 the licensee's commission, shall be disbursed to the artist within 30 days
10 after receipt. However, notwithstanding the preceding sentence, the
11 licensee may retain the funds beyond the 30 days of receipt in either of
12 the following circumstances:

13 (1) To the extent necessary to offset an obligation of the artist to the
14 talent agency that is then due and owing.

15 (2) When the funds are the subject of a controversy pending before
16 the Labor Commissioner under Section 1700.44 concerning a fee
17 alleged to be owed by the artist to the licensee."

18 3. The evidence presented at the hearing in this matter established that
19 Respondent received \$15,000.00 in funds on behalf of Petitioner in exchange for LYCRA
20 re-running a print advertisement featuring Petitioner's image.

21 4. There was no evidence presented that Petitioner owed Respondent any monies.
22 Therefore, §1700.25 (a)(1) does not apply. Similarly, there was no evidence presented that
23 the funds are the subject of a controversy pending before the Labor Commissioner under
24 Section 1700.44 concerning a fee alleged to be owed by Petitioner to Respondent.
25 Therefore, §1700.25(a)(2) does not apply.

26 5. The evidence established that Respondent wilfully failed to disburse the
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1 \$15,000.00 fee paid by LYCRA, less Respondent's 10% commission, to Petitioner.
2 Accordingly, Petitioner is entitled to the unpaid funds plus interest at the rate of 10 percent
3 per annum, per Labor Code §1700.25(e)(2).¹

4 **ORDER**

5 For the reasons set forth above, IT IS HEREBY ORDERED that:

6 (1) Respondent is ordered to pay Petitioner \$13,500.00 (\$15,000.00 less 10%
7 commission/ \$1,500.00) received from LYCRA for use of Petitioner's image in a print
8 advertisement which LYCRA re-ran in February, 2005.

9 (2) Respondent is further ordered to pay Petitioner \$832.19 in interest on the
10 unpaid funds, pursuant to Labor Code §1700.25(e)(2), calculated at 10% per annum from
11 March 30, 2005, (approximate date payment should have been made), to the date of this
12 determination: November 10, 2005.

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14 Dated: November 10, 2005


EDNA GARCIA EARLEY
Special Hearing Officer

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17 **Adopted:**

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19 Dated: 11/14/05


DONNA M. DELL
State Labor Commissioner

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25 ¹Labor Code §1700.25(e)(2) provides: "If the Labor Commissioner finds, in proceedings
26 under Section 1700.44, that the licensee's failure to disburse funds to an artist within the time
27 required by subdivision (a) was a willful violation, the Labor Commissioner may, in addition
to other relief under Section 1700.44, order the following: (2) Award interest to the prevailing
artist on the funds wrongfully withheld at the rate of 10 percent per annum during the period of
the violation."

