

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**

11 LESLIE REDDEN,

12 Petitioner,

14 vs.

16 CANDY FORD GROUP,

17 Respondent.

CASE NO. TAC 13-06

**DETERMINATION OF
CONTROVERSY**

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19 The above-captioned matter, a petition to determine controversy under Labor Code
20 §1700.44, came on regularly for hearing on November 13, 2006 in Los Angeles, California,
21 before the undersigned attorney for the Labor Commissioner assigned to hear this case.
22 Petitioner LESLIE REDDEN appeared. Respondent CANDY FORD GROUP failed to
23 appear at the hearing but submitted a written response to the petition.

24 Based on the evidence presented at this hearing and on the other papers on file in this
25 matter, the Labor Commissioner hereby adopts the following decision.
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1 \$20.00 to cover the bank fees charged on a previous check that Respondent had sent
2 Petitioner which had bounced. On or about March 21, 2006, Petitioner was informed by her
3 bank that the \$20.00 bank fee check also bounced. Consequently, Petitioner was charged
4 another \$20.00 bank fee. As of the date of this hearing, Respondent had failed to reimburse
5 Petitioner for the \$40.00 incurred in bank fees.

6 8. On March 17, 2006, after still not having received payment from Respondent
7 on the December 7 and 9, 2005 Warren Miller event, Petitioner contacted Warren Miller
8 Entertainment directly by e-mail to inquire as to whether they had paid Respondent for
9 Petitioner's services. Petitioner informed Warren Miller that Respondent had informed her
10 that they still had not been paid by Warren Miller and therefore had the "right" not to pay
11 her for the modeling work. A representative from Warren Miller responded to Petitioner's
12 e-mail writing that their records indicated that their payments to Respondent were up to date.
13 However, as of November 16, 2006, the date of this hearing, Petitioner still had not received
14 payment from Respondent for this event.

15 9. Respondent submitted a response to the petition dated May 8, 2006 in which it
16 claims that it cannot issue a replacement check for the bounced checks until Petitioner
17 submits a copy of the second check that allegedly bounced. Copies of Respondent's Check
18 Numbers 20574 and 20897 were submitted as evidence at the hearing. Both checks are
19 stamped "insufficient funds."

20 10. With regard to the Warren Miller event, Respondent claims that Petitioner was
21 only entitled to payment for 2.5 hours per day instead of 3 hours per day per the e-mail
22 Respondent sent Petitioner listing the work hours as 6:30 p.m. to 9:00 p.m. each day.
23 Furthermore, Respondent claims it has not been paid by Warren Miller in full and that it is
24 still actively seeking payment from them.

25 11. Petitioner filed a petition to determine controversy with the Labor
26 Commissioner on April 21, 2006 seeking disgorgement of all monies owed to Petitioner by
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1 Respondent, including bank fees.

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 §1700.4(a) defines "talent agency" as, "a person or corporation
6 who engages in the occupation of procuring, offering, promising, or attempting to procure
7 employment or engagements for an artist or artists."

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

14 4. The evidence presented establishes that Respondent procured work for
15 Petitioner in the entertainment industry without being licensed as a talent agency in the State
16 of California. Specifically, by e-mail dated December 1, 2005, Respondent contacted
17 Petitioner to inform her that it had obtained a job for her as a promotional model for Warren
18 Miller's ski movie called "Higher Ground." Such procurement is in violation of the Talent
19 Agencies Act.

20 5. The evidence also establishes that while Petitioner was only scheduled to work
21 2.5 hours per day, Warren Miller approved 3 hours per day. As such, they became obligated
22 to pay her for a total of 6 hours.

23 6. Respondent's response to the petition is not credible. It is hard to believe
24 that Respondent has not received payment on an event that took place in December, 2005.
25 While the response is dated May 8, 2006, no evidence was submitted by Respondent
26 showing that as of the date of the hearing, November 13, 2006, it still had not received
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1 payment from Warren Miller.

2 7. Moreover, Respondent made no attempt from May 8, 2006 to the hearing date
3 to pay the bank fees that it clearly owes Petitioner for the two bounced checks.

4 Respondent's refusal to pay until it received a copy of the second bounced check is in bad
5 faith, especially since it has access to its own bank information.

6 8. Since Respondent has violated the Talent Agencies Act by acting as a talent
7 agent without being licensed, its contract with Petitioner is void *ab initio*. Consequently,
8 Respondent is not entitled to any monies that it received from third parties on Petitioner's
9 behalf for work performed by Petitioner. This includes all amounts that were billed to and
10 received from third parties by Respondent for work performed by Petitioner that were above
11 and beyond the amounts actually paid to Petitioner by Respondent, which we view as
12 commissions. Because the contract between the parties is void *ab initio*, Respondent has no
13 rights to such monies / commissions. *Yoo v. Robi* (2005) 126 Cal.App.4th 1089, 1103-1104.

14 **ORDER**

15 For the reasons set forth above, IT IS HEREBY ORDERED that the aforementioned
16 contract between Petitioner LESLIE REDDEN and Respondent CANDY FORD GROUP is
17 unlawful and void *ab initio*. Respondent is ordered to pay Petitioner \$60.00 in bank fees
18 and \$360.00 in unpaid monies collected on Petitioner's behalf for a total of \$420.00.

19 Respondent is further ordered to provide an accounting to Petitioner within thirty (30)
20 days of this determination of all amounts billed to and monies received from third parties
21 during the period of April 22, 2005 to April 21, 2006 for work performed by Petitioner.
22 Respondent shall reimburse the Petitioner for those monies, (less any payments already
23 made), within sixty (60) days from the date of this determination.

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25 Dated: April 9, 2007.

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27 EDNA GARCIA EARLEY
28 Special Hearing Officer

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Dated: *April 9, 2007*

Robert A. Jones

ROBERT JONES
Acting State Labor Commissioner