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STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**

10
11 LYDIA WHARTON by MICHAEL
WHARTON,

12
13 Petitioner,

14 vs.

15
16 Karen Sewell AKA, KAREN N'
17 MANAGEMENT,

18 Respondent.

CASE NO. TAC 5243

**DETERMINATION OF
CONTROVERSY**

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20 The above-captioned matter, a Petition to Determine Controversy under
21 Labor Code §1700.44, came on regularly for hearing on April 1, 2008 in Los Angeles,
22 California, before the undersigned attorney for the Labor Commissioner assigned to hear
23 this case. Petitioner LYDIA WHARTON, a minor, appeared by her father, MICHAEL
24 WHARTON (hereinafter, "Petitioner"). Respondent KAREN SEWELL AKA, KARE
25 N'MANAGEMENT, (hereinafter, "Respondent"), who was properly served with the
26 Petition to Determine Controversy on October 2, 2007, failed to appear or to submit an
27 answer.
28

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

3 4 **FINDINGS OF FACT**

5 1. During the period of April 13, 2006 through January 25, 2007,
6 Petitioner appeared as a model for Old Navy advertisements.

7 2. Pursuant to an oral contract, Respondent acted as Petitioner's
8 manager from April 13, 2006 until Petitioner terminated Respondent's services by letter
9 dated March 28, 2007. Respondent charged a 15% commission fee for her services.

10 3. The Division of Labor Standards Enforcement (DLSE) Licensing &
11 Registration Unit's records show that Respondent was licensed as a talent agent from July
12 5, 2005 until June 20, 2006 when her license expired.

13 4. During the period of April 13, 2006 through January 25, 2007,
14 Petitioner was also represented by another agent, CESD, in connection with the Old Navy
15 photo shoots.

16 5. During the period of April 13, 2006 to January 25, 2007, Petitioner
17 appeared as a model at 8 photo shoots for Old Navy and earned a total of \$4,510.50. Of
18 this amount, 20% was due to CESD and 15% was due to Respondent for commissions.
19 Thus, Petitioner should have received 65% of the total earnings (\$2,931.83). Petitioner
20 testified that CESD took out its 20% and sent the balance to Respondent less \$340.00
21 which CESD paid Petitioner directly.¹ Respondent collected \$3,268.40 but only paid
22 Petitioner \$617.50.

23 6. Petitioner produced evidence showing that request for payment of
24 unpaid earnings was made to Respondent on several occasions beginning on November
25 20, 2006, to no avail.

26 7. Despite not being paid all of her earnings from Respondent,
27 Petitioner continued to model for Old Navy through January 25, 2007 and continued to be

28 ¹ The \$340.00 was paid directly to Petitioner by CESD because it was money that came
into CESD from Old Navy *after* Petitioner and Respondent's relationship had terminated.

1 represented by Respondent until March 28, 2007.

2 8. The Petition was filed on August 13, 2007. Petitioner seeks all
3 unpaid monies collected by Respondent on behalf of Petitioner which were unlawfully
4 withheld. Additionally, Petitioner seeks disgorgement of all commissions that
5 Respondent would have been entitled to under the oral contract (i.e., 15% of all earnings).

6 LEGAL ANALYSIS

7 1. Petitioner, a model, is an artist as defined in Labor Code §1700.4(b).

8 2. Per the DLSE Licensing & Registration Unit's records, Respondent
9 was licensed as a talent agency until June 20, 2006. The evidence presented established
10 that Petitioner hired Respondent to act as her manager in exchange for a 15% commission
11 and hired CESD to act as her agent in exchange for a 20% commission on all Old Navy
12 photo shoots that Petitioner appeared as a model. Despite this agreement, evidence was
13 presented that Respondent also acted as Petitioner's agent, even after her talent agency
14 license had expired on June 20, 2006 in violation of Labor Code §1700.5 which provides
15 that "no person shall engage in or carry on the occupation of a talent agency without first
16 procuring a license therefore from the Labor Commissioner."

17 3. The undisputed evidence shows that Respondent acted as an
18 unlicensed talent agent from June 20, 2006, when her talent agency license expired, to
19 January 25, 2007, in violation of the Talent Agencies Act. Accordingly, Respondent is
20 ordered to return all monies unlawfully withheld from Petitioner which represent
21 Petitioner's earnings. Respondent is also ordered to *disgorge* all commissions retained on
22 Petitioner's earnings. Petitioner is therefore awarded \$2,650.90. This amount reflects the
23 total earnings (\$4,510.50), less 20% commissions paid to CESD (\$902.10), less \$340.00
24 paid directly to Petitioner by CESD, less \$617.50 paid to Petitioner by Respondent.
25 Respondent is not entitled to any monies from any of the 8 photo shoots in which
26 Petitioner modeled for Old Navy as the oral contract between the parties is declared void
27 *ab initio*.


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ORDER

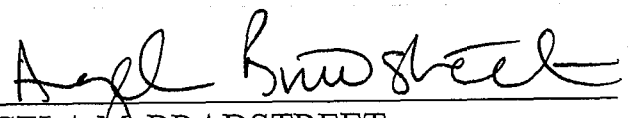
For the reasons set forth above, IT IS HEREBY ORDERED that Petitioner is awarded all amounts unlawfully withheld by Respondent and all commissions kept by Respondent from Petitioner's earnings for a total of \$2,650.90.

DATED: July 22, 2008

Respectfully submitted,

By: 
EDNA GARCIA EARLEY
Attorneys for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

DATED: July 24 2008 
ANGELA M BRADSTREET
State Labor Commissioner

