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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
10

11 **ANITA BORCIA,**

12 **Petitioner,**

13 **v.**

14 **GARSON D. LESTER, dba GAR**
15 **LESTER AGENECY,**

16 **Respondents.**

Case No. TAC-41839

DETERMINATION OF CONTROVERSY

17
18 The above-captioned matter, a Petition to Determine Controversy under Labor Code Section
19 1700.44, came on regularly for hearing in Los Angeles, California, before the undersigned attorney
20 for the Labor Commissioner assigned to hear this case. Petitioner ANITA BORCIA appeared and
21 was represented by Jeffery M. Cohon, Esq. Respondent GARSON D. LESTER failed to appear,
22 although proof of service shows Mr. Lester was properly served with the Notice of Hearing by the
23 Labor Commissioner at his last known business address. The petitioner submitted a Proof of Service
24 showing Mr. Lester was personally served with the Petition to Determine Controversy and Notice to
25 Answer. Mr. Lester did not file an Answer to the Petition. At the conclusion of the hearing, the
26 matter was taken under submission.
27

28 In her Petition, Ms. Borcia seeks payment of wages the agent retained in violation of state

1 law and the parties' agreement, interest on those wages, reimbursement of a tax penalty imposed as a
2 consequence of the retention of the wages, and reasonable attorney fees. Ms. Borcia also seeks an
3 order requiring Respondent to provide an accounting "of all residuals and buy-outs owed to the
4 Petitioner, and the permanent revocation of Respondent Lester's talent agent license with a further
5 order that Respondent never be permitted to procure a talent agent license in the future."

6
7 Based upon the evidence presented at the hearing and on the other papers on file in this
8 matter, the Labor Commissioner adopts the following decision.

9 **FINDINGS OF FACT**

10 1. Petitioner Anita Borcia engaged Respondent Garson Lester as her exclusive talent agent
11 in or around February, 2011, pursuant to the terms of an oral agreement in which Ms. Borcia would
12 pay Mr. Lester ten percent of her earnings in the field of motion pictures, legitimate stage, radio
13 broadcasting and television.
14

15 2. Ms. Borcia performed in two television commercials under the terms of her agreement
16 with Mr. Lester, Mr. Lester received payment for Ms. Borcia's services in the production of the
17 commercials, and Mr. Lester has only paid a portion of that money to Ms. Borcia. The Petitioner
18 established the amounts Mr. Lester received on the jobs by written documentation from the payroll
19 companies the production companies used to pay the wages.
20

21 3. After reconciliation of the amounts owed as established by the payroll records, and the
22 payments Mr. Lester paid, as established by photocopies of the checks he gave Ms. Borcia, a balance
23 of \$1,809.37 in wages remains due.

24 4. The evidence shows for an extended period of time, Ms. Borcia was not aware there
25 were wages the Respondent had received from payroll companies on her behalf, and the Respondent
26 had been retaining, rather than paying them to her pursuant to the requirements of state law and their
27 agreement. When she became aware the Respondent was retaining those wages, she and her
28

1 attorney both demanded the wages be paid. In response to these demands, Mr. Lester paid a portion
2 of the wages, but those payments were made long after they were due to Ms. Borcia. Ms. Borcia is
3 required to make quarterly tax payments to the Franchise Tax Board. As a result of the
4 Respondent's retention of her wages, Ms. Borcia's quarterly tax payments were less than the wages
5 she had earned during the quarterly period. As a consequence of the Franchise Tax Board's revision
6 of Ms. Borcia's 2014 state tax return, the Franchise Tax Board imposed a tax penalty of \$14.45.
7 Ms. Borcia paid that penalty on September 2, 2015.
8

9 LEGAL ANALYSIS

10 Talent agents in California are required to comply with the provisions of the Talent Agency
11 Act (Labor Code §§1700 through 1700.47). Among other things, an agent who receives any
12 payment of funds on behalf of an artist shall immediately deposit that amount in a trust fund account
13 maintained by him or her in a bank or other recognized depository. The funds, less the licensee's
14 commission, are required to be disbursed to the artist within 30 days after receipt. (Labor Code
15 §1700.25). It is clear from the evidence presented in this case the Respondent received payment for
16 Ms. Borcia's services as an artist, and failed to pay the Petitioner the money which was due to her
17 within the time required by law. The evidence is clear Mr. Lester still owes Ms. Borcia \$1,809.37 in
18 funds he has retained in violation of the Talent Agency Act.
19

20 While there are some exceptions in statute which would permit the retention of artist funds
21 beyond the thirty-day period, the Respondent did not provide any evidence which would give rise to
22 an exception to that requirement to pay on time. In fact, it is clear from the correspondence between
23 the parties which was introduced into evidence at the hearing, Ms. Borcia and her counsel made
24 repeated demands for the payment of the money which was being retained by the agent.
25 Mr. Lester's responses to those demands included admissions the money was due, excuses for his
26 failure to pay the wages, and unfulfilled promises to pay the money he was unlawfully holding. As
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28

1 such, the Respondent's failure to disburse funds to the Petitioner is held to be a willful violation of
2 the Talent Agency Act. As a consequence of this willful failure to pay, we award reasonable
3 attorney fees in the amount of \$1,250.00 under Labor Code Section 1700.24(e) (1) and pre-hearing
4 interest of \$572.48 and post-hearing interest of \$94.18 pursuant to Labor Code Section
5 1700.24(e)(2).
6

7 The evidence shows as a result of the Respondent's willful failure to pay wages when they
8 were legally due, Ms. Borcia incurred a tax penalty of \$14.45. That amount is awarded to her as a
9 damage arising as a consequence of the Petitioner's unlawful actions.

10 Under Labor Code Section 1700.27, a talent agent is required to "make such reports as the
11 Labor Commissioner prescribes". Pursuant to that statute, we order the Respondent make a true
12 accounting of all amounts he has received as payment on behalf of Ms. Borcia, and all amounts he
13 has paid or retained of those funds. This accounting is to be provided both to the Labor
14 Commissioner and counsel for the Petitioner within thirty days of service of this determination.
15

16 Ms. Borcia's Petition also requests action against the Respondent's Talent Agent license.
17 While grounds for that action may exist, that remedy is not available in this proceeding. Pursuant to
18 Title 8, Code of California Regulations, Section 12005 and Labor Code Section 1700.21, those
19 license actions are prosecuted by the Labor Commissioner's office but adjudicated by the Office of
20 Administrative Hearings in a separate proceeding than the instant hearing.
21

22 ORDER

23 Petitioner Anita Borcia is awarded \$1,809.37 in wages unlawfully retained by Respondent
24 Garson D. Lester, dba Gar Lester Agency;

25 Mr. Lester's failure to disburse funds within the time required by Labor Code Section
26 1700.25(a) is held to be willful;
27
28

1 The Petitioner is awarded \$1,250.00 in reasonable attorney fees, pursuant to Labor Code
2 Section 1700.25(e) (1);

3 The Petitioner is awarded \$572.48 in pre-hearing interest and \$94.18 in post-hearing interest,
4 pursuant to Labor Code Section 1700.25(e)(2);

5 The Petitioner is awarded \$14.45 in damages incurred as a consequence of the respondent's
6 failure to disburse funds within the time required by Labor Code Section 1700.25(a).

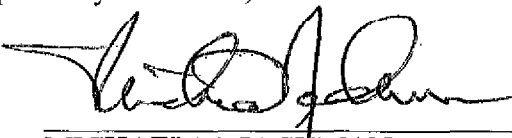
7 The Respondent shall make a true accounting of all amounts he has received as payment on
8 behalf of Ms. Borcia, and all amounts he has paid or retained of those funds received. This
9 accounting is to be provided both to the Labor Commissioner and counsel for the Petitioner within
10 thirty days of service of this determination.
11

12 **Total of award: \$3740.48**

13 Dated: March 24, 2017

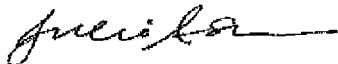
14 Respectfully submitted,

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16
17 By


MICHAEL N. JACKMAN
Attorney for the Labor Commissioner

18
19 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER.
20

21
22 Dated: 3/24/2017


JULIE A. SU
California Labor Commissioner

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013A) OR CERTIFIED MAIL**

I, JUDITH A. ROJAS, do hereby certify that I am a resident of or employed in the County of San Diego, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: 7575 Metropolitan Drive, Suite 210, San Diego, CA 92108-4421

On March 24, 2017, I served the within **DETERMINATION OF CONTROVERSY** by placing a true copy thereof in an envelope addressed as follows:

Jeffrey M. Cohon, Esq.
Cohon & Pollak LLP
10250 Constellation Blvd., Suite 2320
Los Angeles, CA 90067

Garson D. Lester
Gar Lester Agency
11026 Ventura Blvd., Suite 10
Studio City, CA 91604

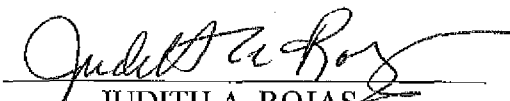
and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid, depositing it for pickup in this city by:

_____ Federal Express Overnight Mail

 X Ordinary First Class Mail

I certify under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2017, at San Diego, California.



JUDITH A. ROJAS

Case No. TAC-41839

PROOF OF SERVICE