

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

10	H. LEE BURTON,)	No. TAC 56-94
11)	
12	Petitioner,)	
13)	
14	vs.)	DETERMINATION OF
15)	CONTROVERSY
16	RUBY EDISON and DARLENE SAN PEDRO)	
17	dba PRESTIGE MODEL & TALENT)	
18	MANAGEMENT,)	
19)	
20	Respondents.)	
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INTRODUCTION

29 The above-captioned petition was filed on August 8,
30 1994 by H. LEE BURTON (hereinafter "Petitioner" or "BURTON")
31 alleging that PRESTIGE MODEL & TALENT AGENCY (hereinafter
32 "Respondent" or "PRESTIGE") violated the Talent Agencies Act
33 (Labor Code §1700, et seq.) by acting in the capacity of a talent
34 agency without a license and by failing to pay Petitioner for
35 modeling services that were provided in connection with an
36 assignment that had been procured by Respondent. By his
37 petition, BURTON seeks "full back pay and maximum penalties
38 allowed by law".
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1 Respondent, although having been served with the
2 petition, failed to file an answer. A hearing was thereupon
3 scheduled for September 21, 1994 in San Francisco, California,
4 before the undersigned attorney for the Labor Commissioner.
5 Petitioner appeared in propria persona. Respondent appeared
6 through DARLENE SAN PEDRO. Based upon the testimony and evidence
7 presented at this hearing, the Labor Commissioner adopts the
8 following Determination of Controversy.

9 FINDINGS OF FACT

10 1. Sometime in mid-May 1994, Petitioner and Wendie
11 Steffies, an employee of PRESTIGE, entered into an oral agreement
12 under which Respondent agreed to attempt to procure modeling
13 assignments for Petitioner. On or about May 30, 1994, Riva
14 Pidge, another PRESTIGE employee, telephoned Petitioner and
15 informed him that Respondent had obtained a modeling assignment
16 for him that would pay \$100, with the work to be performed on
17 June 1, 1994 at the Neptune Society Columbarium. Pidge did not
18 say anything to BURTON as to how PRESTIGE would be compensated
19 for having procured this assignment.

20 2. Petitioner reported to the modeling assignment on
21 June 1, 1994. He observed about a dozen other models at the
22 photo shoot. He performed his modeling assignment, which took
23 about two hours, and returned to Respondent's office later that
24 day with a voucher showing that he had completed the job. He
25 turned in the voucher, on which his address had been written, and
26 was told by Lisa, another PRESTIGE employee, that a payment check
27 would be mailed to him.

28 3. Respondent received full payment from the Neptune

1 Society in late June 1994. This payment was for the services of
2 all of the models provided by PRESTIGE, not just Petitioner.
3 According to DARLENE SAN PEDRO, PRESTIGE charged the Neptune
4 Society \$100 for Petitioner's services. PRESTIGE failed to
5 disburse the amount due to Petitioner.

6 4. On June 6, 1994, Respondent filed an application
7 with the Labor Commissioner for a talent agency license.
8 Respondent was not licensed as a talent agent at any time until
9 June 9, 1994, when it received a temporary license from the Labor
10 Commissioner. A second temporary license expired on October 18,
11 1994 and presently, Respondent is not licensed. Its application
12 for a permanent license is still pending.

13 5. In August 1994, Petitioner met with DARLENE SAN
14 PEDRO to demand payment. She promised to send him a check.
15 However, no money was provided to Petitioner until immediately
16 prior to the commencement of the hearing on September 21, 1994,
17 when SAN PEDRO gave Petitioner a check for \$80. At the hearing,
18 SAN PEDRO testified that she deducted 20% from Petitioner's
19 earnings of \$100 because the agency charges a 20% fee on all
20 earnings for work procured by the agency. At the conclusion of
21 the hearing, after the undersigned attorney explained that an
22 unlicensed talent agent is not permitted to charge any fee for
23 procuring work, and that Petitioner should be reimbursed for this
24 fee, SAN PEDRO provided Petitioner with a second check in the
25 amount of \$20.

26 6. SAN PEDRO testified that PRESTIGE failed to pay
27 Petitioner in a timely manner because of the confusion resulting
28 from staff turnover and her inability to find Petitioner's

1 address. She did admit that BURTON's address was listed on the
2 petition, and that she had been served with this petition on
3 August 9, 1994, but stated that she "thought it would be best to
4 pay him at the hearing."

5 7. A day or two following the hearing, BURTON
6 contacted the undersigned attorney's office, claiming that one or
7 both of the checks provided to him by SAN PEDRO could not be
8 cashed by reason of non-sufficient funds in Respondent's bank
9 account.

10 CONCLUSIONS OF LAW

11 1. Petitioner is an "artist" within the meaning of
12 Labor Code §1700.4(b). Respondent is a "talent agency" within
13 the meaning of Labor Code §1700.4(a), which defines "talent
14 agency" as a person who "engages in the occupation of procuring,
15 offering, promising, or attempting to procure employment or
16 engagements for an artist". The Labor Commissioner has
17 jurisdiction over this matter pursuant to Labor Code §1700.44.

18 2. Labor Code §1700.5 provides that "no person shall
19 engage in or carry on the occupation of a talent agency without
20 first procuring a license therefor from the Labor Commissioner".
21 An unlicensed talent agent is not entitled to retain any
22 commissions purportedly earned pursuant to an agreement with an
23 artist, as any such agreement is void. Buchwald v. Superior
24 Court (1967) 254 Cal.App.2d 347, 351. Respondent therefore had
25 no right to retain any commissions on amounts earned by
26 Petitioner.

27 3. In 1994, prior to its recent amendment, Labor Code
28 §1700.25 provided that whenever a talent agency receives payment

1 of funds on behalf of an artist, the agent must immediately
2 deposit the funds in a trust account and, within 15 days after
3 receipt of the funds, make full disbursement, less the agent's
4 commission, to the artist. (As discussed above, an unlicensed
5 agent is not entitled to retain any commissions.) Respondent's
6 failure to promptly disburse the funds it received on behalf of
7 Petitioner constitutes an inexcusable and willful violation of
8 Labor Code §1700.25. The "excuses" asserted by DARLENE SAN PEDRO
9 at the hearing are wholly inadequate and underscore the
10 reprehensible manner in which this agency abrogated its fiduciary
11 duty.

12 4. Although the petition seeks "maximum penalties
13 allowed by law", the Labor Code does not provide for penalties in
14 a case such as this. Labor Code §203, which allows for the
15 imposition of penalties against an employer who willfully fails
16 to pay wages owed to an employee does not apply to a payment
17 dispute between an artist and a talent agency. An artist is not
18 an employee of the talent agency but rather, is employed by the
19 client who procures his or her services. A talent agency is not
20 the employer of an artist but rather, is the artist's agent for
21 the purpose of procuring employment from employers. Penalties
22 cannot be imposed by the Labor Commissioner absent statutory
23 authorization. Because there is no statute which would allow for
24 the imposition of penalties, the Labor Commissioner is unable to
25 provide for such a remedy.

26 ORDER

27 For all of the above-stated reasons, IT IS HEREBY
28 ORDERED that Respondent DARLENE SAN PEDRO and RUBY EDISON dba

1 PRESTIGE MODEL & TALENT MANAGEMENT pay Petitioner H. LEE BURTON
2 \$100 for his unpaid earnings, unless the two checks totalling
3 \$100 have been negotiated, in which case Respondent is directed
4 to immediately provide the Labor Commissioner with proof that
5 these checks have been negotiated.

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7 DATED: January 12, 1995

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

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11 The above Determination is adopted by the Labor
12 Commissioner in its entirety.

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14 DATED: 1-17-95

Victoria Bradshaw
VICTORIA BRADSHAW
State Labor Commissioner

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